A SEARCH BOOK: INTERSECTING JURISDICTIONS

Reframing Questions
and In Search for Answers
on the Interface of State
and Indigenous Justice Systems

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FOREWORD

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LIST OF ACRONYMS & GLOSSARY

ADR Alternative Dispute Resolution

ALG Alternative Law Groups, Inc.

APJR Action Program for Judicial Reform

BALAOD Balay Alternative Legal Advocates for Development in Mindanaw

CADC Certificate of Ancestral Domain Title

ELAC Environmental Legal Assistance Center

ICCs/IP *Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs)* - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

ICCs/IP Indigenous Cultural Communities/Indigenous Peoples

IDRM Indigenous Dispute Resolution Mechanisms

IJS *Indigenous Justice Systems* - refer to different customary/indigenous law based forums that not only mediate ICC/IPs access to state or public justice institutions but also settle the issues, administer justice from mediated 'judgement' to communityassisted 'execution' in their venue; norms or institutions, often viewed as having the force of law by those subject to them, that claim to draw their moral authority from traditional culture or customs;

IKSP Indigenous knowledge systems and practices

ICC/IPs Indigenous Cultural Communities/Indigenous Peoples

INTERFACE - a point at which independent systems or diverse groups interact. A boundary across which two independent systems meet and act on or communicate with each other;

IPRA Indigenous Peoples Rights Act

JURIS Justice Reform Initiatives Support Project

LEGAL PLURALISM - seeks to understand the complex ways in which local practices and the formal law compete, co-exist and incorporate each other in contemporary societies (Benda-Beckmann 2002; Chiba 1993; Santos 2006).

LJR Legal and Judicial Reform

NCIP National Commission on Indigenous Peoples

NGO Non-Government Organization

PANLIPI Tanggapang Panligal ng Katutubong Pilipino

PBPF Paglilingkod Batas Foundation

PLRC Pilipinas Legal Resource Center

PMO Project Management Office

SALIGAN Sentro ng Alternatibong Lingap Panligal

SC Supreme Court

STATE JUSTICE SYSTEM – refers to state-funded interlocking formal institutions that are involved in one way or another in the administration of justice and delivery of justice services.

TJG Traditional Justice Governance

BACKGROUND: ON THE 'SEARCH BOOK'

The meaning of *Weltanschauung* seems unknown. Worldview, a 'calque' or loan verbum for verbum translation of the German word, should be more familiar.

The worldviews wherein the state justice system and the indigenous justice systems operate appear to be fundamentally different. The quote—attributed to Macli-ing Dulag, famed Kalinga elder while explaining his community's refusal to accept the offer of Sen. Jose W. Diokno to file a case against a hydroelectric dam project before Philippine courts—illustrates it well: "Outsiders' law is not able to understand us, our customs and our ways," he said. He could not have said it any better. He may or may not have been referring to clogged court dockets, the protracted litigation process, and other formal processes of the public justice system.

This search book explores two different legal systems in many instances when and where they meet, match and clash. Then it attempts to make sense of it all, finding ways to understand and explain why a draft Procedural Rule on the "Interface" of the State Justice System and Indigenous Justice Systems is not the answer to the challenge of strengthening IJS.

["IF WE ACCEPT, IT WILL BE AS IF WE EVER DOUBTED THAT WE BELONG TO THE LAND; OR THAT WE QUESTION OUR ANCIENT LAW... IF WE ACCEPT, IT WILL BE RECOGNIZING WHAT WE HAVE ALWAYS MISTRUSTED AND RESISTED. IF WE ACCEPT, WE WILL THEN BE HONOR BOUND TO ABIDE BY THE DECISION OF THAT TRIBUNAL. LONG EXPERIENCE HAS SHOWN US THAT THE OUTSIDERS LAW IN NOT ABLE TO UNDERSTAND US, OUR CUSTOMS AND OUR WAYS. ALWAYS, IT MAKES JUST WHAT IS UNJUST, RIGHT WHAT IS NOT RIGHT."]

CITED IN LEONEN, AT 42 CITING PARAGUSA, AT 92. ALSO IN M. LEONEN, *HARNESSING CREATIVITY: TENTATIVE NOTES TOWARDS PROGRESSIVE LAWYERING*, ISSUE PAPER, LRC KSK, 6 (1991).

A unique knowledge product reflective of the issues it seeks to unpack, it is unlike sourcebooks that function as a supplement or replacement for a textbook. Or bench books that provide an overview of legal procedure for a judge. The latter are used by judges while hearing cases as guides to assist in the disposition of a case. A bench book is not is not a source of substantive law but rather a guide to procedure. This is neither a sourcebook nor a bench book. As a knowledge product, it has some aspects of both a sourcebook and a bench book. The search book however is the first of its kind in this jurisdiction. In search for answers the book seeks to:

[1] Better understand amongst stakeholders on the various interface, dynamic and accommodations of State Justice System and Indigenous Justice System; and

[2] Generate policy reform strategies and practical approaches that will help strengthen traditional justice systems while interfacing in various modes and levels with the formal/national justice system.

"Different, culturally distinct but still indigenous peoples are equal to all other peoples. ICC/IPs are as Filipino as Pedro and Maria, the man from Manila and Gabriela Silang."

INTRODUCTION

The Philippines is a country of diverse cultures with its multi-linguistic, multiethnic, mutli-faith and geographically dispersed population estimated at 89 million as of 2007.[1] To illustrate diversity and multi-ethnicity, the oft cited statistics approximates a nation-state with peoples scattered in 116 ethno-linguistic groups. In terms of numbers it is estimated that there are over 15,000,000[2] or 17% of the Philippine population are estimated to be indigenous peoples. A 2011 Fact book on indigenous peoples worldwide provides for a more conservative estimate:

> OF THE COUNTRY'S CURRENT PROJECTED POPULATION OF 94,01 MILLION, INDIGENOUS PEOPLES ARE ESTIMATED TO COMPRISE SOME 10%, OR AROUND 9,4 MILLION. THERE HAS BEEN NO ACCURATE COMPREHENSIVE COUNT OF PHILIPPINE INDIGENOUS PEOPLES SINCE 1916, ALTHOUGH THE NATIONAL CENSUS IN 2010 INCLUDED AN ETHNICITY VARIABLE.
>
> *-THE INDIGENOUS WORLD 2011*

For non-indigenous Filipinos who are not very familiar with indigenous peoples issues and struggles *katutubo*, *lumad*, *tribo*, natives and cultural minorities should ring a bell. These nouns however are often very erroneously associated with damaging stereotypes. Be it the *Igorot* that local tourist take photos with at the botanical garden in Baguio City or the images of Badjao mother and her baby or Aetas that go begging in the streets of urban centers during the holidays.

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[1] The first sentence was purposely lifted from the Philippine Report to the Committee on Elimination on Racial Discrimination. This document contains the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth periodic reports of the Philippines, due on 4 January 1998 to 2008, submitted in one document. For the eleventh to fourteenth periodic reports and the summary records of the meetings at which the Committee considered the report, see documents CERD/C/299/Add.12, CERD/C/SR.1218,1219 and 1231.

[2] 15,000,000 is a conservative estimate. ADB by comparing NCIP and NSO sources suggests that the indigenous population might even exceed 20% of the national total. Caution should be taken: the Government may have excluded groups or individuals as indigenous because they did not qualify in the technical definition of the term. It is possible that the actual indigenous population is much bigger.

ICC/IPs: WHERE ARE THEY?

Republic Act 8371 more popularly known as Indigenous Peoples Rights Act (IPRA) defines indigenous cultural communities/indigenous peoples (hereinafter ICC/IPs) as:

> a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos.

Following the quoted partial definition above, state law through the IPRA clearly recognizes peoples identified by ***self-ascription*** and ***ascription by others***, who have ***continuously lived as organized community on communally bounded and defined territory***, and who have, under claims of ownership ***since time immemorial, occupied, possessed and utilized such territories***, sharing common ***bonds of language, customs, traditions and other distinctive cultural traits,*** or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos.

The elements of what defines ICC/IPs are what set them apart from the Tagalogs, Ilocanos, Cebuanos[3] and other regional groups that are generally bounded by a region's lengua franca. Crucial too for non-IPs to understand Indigenous Filipinos is the last half of the definition as provided by law such that:

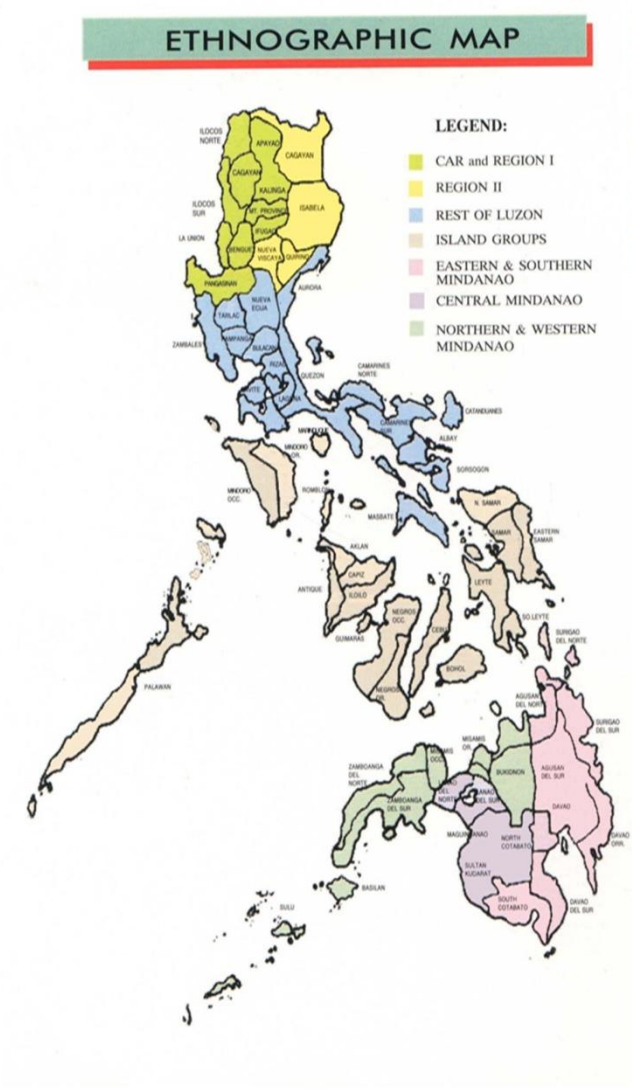
> "ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or t he establishment of present state boundaries, who ***retain some or all of their own social, economic, cultural and political institutions***, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;"

There is no question that distinctiveness of ICC/IPs contributes to the 'diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.' They have after all managed to retain some or all of their own social, economic, cultural and political institutions. Different, culturally distinct but still indigenous peoples are equal to all other peoples. ICC/IPs are as Filipino as Pedro and Maria, the man from Manila and Gabriela Silang.

[3] Note further and it bear emphasizing that tagalog, Ilocano, Cebuano, Bisaya, Hiligayno and the likes are not included nor counted in the 116 etho-linguistic groups.

CORDILLERA & REGION
Bontoc; Balangao, Isneg, Tingguian,, Kankanaey Kalanguya, Karao, Ibaloi, Ayangan, Ifugao, Tuwali, Kalinga

ISLAND GROUP
Agutaynon, Tagbanua, Dagayanen, Tao't Bato, Batak, Palawanon Molbog, Iraya Mangyan, Hanunuo Mangyan, Alangan Mangyan, Buhid Mangyan, Tadyawan Mangyan, Batangan Mangyan, Gubatnon Mangyan, Ratagnon Mangyan, Ati, Cuyunon, Ati Sulod/Bukidnon, Magahat Korolanos, Ata, Bukidnon, Escaya, Badjao



NORTHERN & WESTERN MINDANAO
Subanen, Talaandig, Higaonon, Matigsalog, Umayamnon, Manobo, Kamigin, Yakan, Sama, Badjao/Sama Laut, Kalibugan, Jama Mapon

CENTRAL MINDANAO
Aromanon, Tiruray, Bagobo, Ubo Manobo, Higaonon, Subanen, Maguindanao, Maranao, Iranon, Karintik Blaan, Lambangian

REGION II/ CARABALLO MOUNTAIN Range
Agta, Kalanguya, Bugkalot, Isinai, Gaddang, Aggay, Dumagat, Ibanag, Itawis. Ivatan

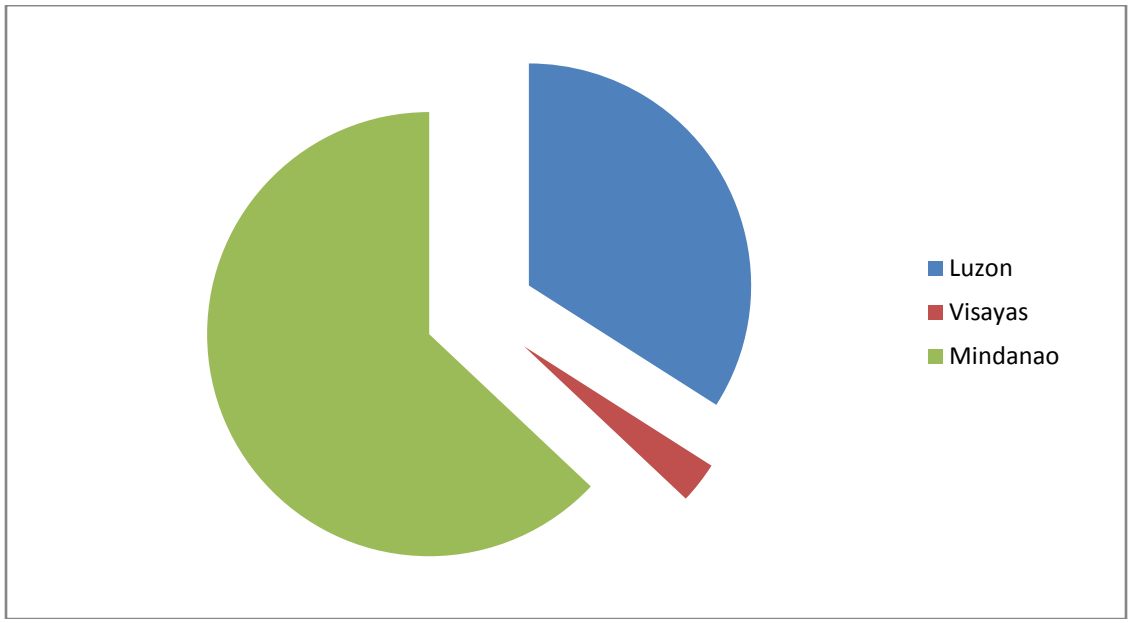
REST OF LUZON/SIERRA MADRE MOUNTAIN Range
Aeta, Negrito. Pugot, Abell ing, Agta, Dumagat, Remontado, Bugkalot, Cimaron, Kabihug, Tabangnon, Abiyan, Isarog, Itom

EASTERN MINDANAO
Manobo, Mandaya, Mansaka, Dibabawon, Banwaon. Bagobo, Ubo Manobo, Tagakaolo, Talaingod, Langilan, Mamanwa, Higaonon, Blaan, T'boli, Kalagan, Tagabawa, Manobo Blit, Matigsalog, Sangil, Tigwahanon

REGION	POPULATION
CAR	1,470,977
Region 1	1,206,798
Region II	1,030,179
Region III	236,487
Region IV	936,745
Region V	213,311
Region VI	168,145
Region VII	35,767
Region IX	1,203,598
Region X	1,802,266
Region XI	2,289,268
Region XII	1,856,300
Region XIII	1,004,750
ARMM	730,054
TOTAL	**14,184,645**

Table 1: Regional Distribution of ICC/IPs Population

Source: NCIP Master Plan NCIP 2010 Budget Folio Briefing



	LUZON	VISAYAS	MINDANAO
Estimated IP Population	4,822,779	425,540	8,936,326

Table 2: Estimated IP Population per Island Group

ICC/IPS JUSTICE NEEDS

The issues that ICC/IPs confront and grapple with are also borne out of the need to further realize what it is to be truly equal to all other peoples. As the preamble of the United Nations Declaration on the Rights of Indigenous Peoples states:

> "Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,"

Simply put, the essence of the ICC/IPs right to equality begins by asserting their right to be different, to consider themselves different, and to be respected as such. For as much as ICC/IPs recognize the Philippine Constitution, the three branches of government. There too is the challenge to this multi-ethnic and multi-linguistic nation state to accommodate diversity in the interest of peace, justice and development.

The judicial branch of the unitary form of government is often represented by the presence of courts and judges all over the country. The state justice system (hereinafter, SJS) that these courts observe and uphold ***co-exists*** with effective, diverse and struggling to survive indigenous justice systems (hereinafter IJS). On the ground, plurality exists, whereby disputes and conflict can be governed by various norms, rules and courts/councils.

Tongtong among the Kakanaey and Bago peoples of Bakun; *Tigian* among the Alangans and Hirayas of Mindoro Occidental; *Mame'epet* among the Tagbanuas of Coron in Palawan; *Husay* among the Higaonons and Talaandigs of Misamis Oriental and Bukidnon; *Kukuman* among the Tinananon Manobo of Arakan Valley; *Iskukom* among the T'bolis of Lake Sebu; *Tiwayan* among the Tedurays of Maguindanao; and *Gukom* among the Subanons of Zamboanga. There are also many existing IJS that have no formal or common names but are still very much in place and in use.

In line with justice reform and access to justice discourse it gets even more complicated. The right to be heard is suddenly not just a question of ensuring a fair trial and a suspect's day in court. For ICC/IPs it also becomes a matter of a fair trial or its equivalent in their preferred tribunal.

For indeed, how can state institutions and policy makers be it in judicial or political reform unpack and translate ICC/IPs demand for 'recognition of customary law.' How well are ICC/IP rights' advocates doing in terms claim making and registering their protests and demands? How did we even get here?

This is what drives the development of this "search" book, this is what it seeks to understand.


Judicial Map of the Philippines
1ST JUDICIAL REGION
Abra
Benguet
Ilocos Norte
Ilocos Sur
La Union
Mountain Province
Pangasinan
3RD JUDICIAL REGION
Aurora
Bataan
Bulacan
Nueva Ecija
Pampanga
Tarlac
Zambales
NATIONAL CAPITAL REGION
Manila
Quezon City
Pasay City
Kalookan City
Makati City
Pasig City
Malabon City
Marikina City
Parañaque City
Las Piñas City
Muntinlupa City
Valenzuela City
4TH JUDICIAL REGION-A
Batangas
Cavite
Laguna
Quezon
Rizal
4TH JUDICIAL REGION-B
Marinduque
Mindoro Oriental
Mindoro Occidental
Palawan
Romblon
2ND JUDICIAL REGION
Batanes
Cagayan
Isabela
Ifugao
Kalinga Apayao
Nueva Vizcaya
Quirino
5TH JUDICIAL REGION
Albay
Camarines Norte
Camarines Sur
Catanduanes
Masbate
Sorsogon
8TH JUDICIAL REGION
Eastern Samar
Leyte
Samar
Northern Samar
Northern Leyte
Southern Leyte
10TH JUDICIAL REGION
Agusan del Norte
Bukidnon
Butuan
Misamis Occidental
Misamis Oriental
Surigao del Norte
6TH JUDICIAL REGION
Aklan
Antique
Capiz
Iloilo
Negros Occidental
7TH JUDICIAL REGION
Bohol
Cebu
Negros Oriental
Siquijor
9TH JUDICIAL REGION
Basilan
Jolo
Sulu
Tawi-Tawi
Zamboanga del Norte
12TH JUDICIAL REGION
Lanao del Norte
Lanao del Sur
Maguindano
Sultan Kudarat
11TH JUDICIAL REGION
Compestella Valley
Davao del Norte
Davao del Sur
Davao Oriental
Sarangani
South Cotabato
I
II
III
NCR
IV-A
IV-B
V
VI
VII
VIII
IX
X
XI
XII
N
W
E
S

SEARCH BOOK

Search book—there really is no such a thing. This is the first of its kind in the tradition of the Supreme Court PMO, United Nations Development Program and even the Alternative Law Groups.

This search book seeks to contribute to the knowledge gap in literature and to deepen the understanding amongst stakeholders on the various interface, dynamic and accommodations of SJS and IJS. In search for answers the search book also touched on:

[1] Generate policy reform strategies and practical approaches that will help strengthen traditional justice systems while interfacing in various modes and levels with the formal/national justice system.

[2] Consider and review the consolidated insights and recommendations generated from the regional policy and practices workshop and the national policy and practice discussion session.

[3] Review and validate initially identified strategies towards the sketches of a roadmap that will help strengthen traditional justice systems while interfacing in various modes and levels with the national justice system.

It is a search book and not a sourcebook that list prescriptive laws rules and ready answer in dealing with the conflicts of interlegality. It is a search book that unpacks a policy dilemma that was prior to this research freely and generally referred to as 'recognition of customary.'

WHAT EXACTLY IS BEING RECOGNISED OR INCORPORATED?
IS IT A 'THING', A CLAIM, A PROCESS, AN INSTITUTION,
OR A COMBINATION OF THESE?

IF CULTURE IS UNDERSTOOD TO BE A DYNAMIC HUMAN ENDEAVOUR, IT BECOMES CLEAR THAT RECOGNITION IS NOT JUST A TECHNICAL MATTER BUT DEEPLY POLITICAL IN CHARACTER.

- *WHEN LEGAL WORLDS OVERLAP: HUMAN RIGHTS, STATE AND NON-STATE LAW*

Unpacking a policy dilemma?

The "call for recognition" was at a stage where it was yet to be fully unpacked and defined when the Judiciary led justice reform efforts gained momentum. Amongst the mix of access to justice programs, IP mobilizations and justice reform initiatives an opportunity came along.[6]

In 2003, ALG conducted six (6) regional consultation conferences throughout the country. The over-all objective of the regional consultations is to popularize justice reform, by:

(1) bringing down information on justice reform efforts to the grassroots, and
(2) raising up the perspectives and involvement of the poor and marginalized groups on justice reform into the policy arena.

Through these regional workshop, an interesting moment in the history of clashing legal systems an opportunity for dialog emerged. IP elders and leaders automatically articulated the call for judicial recognition of indigenous justice systems in the interest of promoting respect for indigenous customary law in the Northern Luzon regional consultation.[7] This is how "the call for recognition" made it to the long list of justice reform agenda.

In Search for Answers

True to the process of searching for answers, the development of this search book dared to confront dilemmas that play out when weaving worldviews in the midst of colliding legal worlds. What with the dynamics, interplay and nature of the subject. The demand seems to be no different from other policy issues. However, it is so much more complex when scrutinized.

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[6] In 2001, the Philippine Supreme Court embarked on an ambitious six-year judicial reform program known as the Action Program for Judicial Reform (APJR). Franco notes that APJR's strengths attracted both foreign funders and domestic advocates of justice sector reform (Franco:2008:1861). Accordingly: "First, the initiative focused much needed attention on flaws in the judicial system at a time when law reform was rising on the international agendas. Second, the plan itself was relatively comprehensive in scope, showing an unprecedented degree of seriousness. Third, the project's consensus-building approach generated new state and societal support behind judicial reform, through a strategy, however inchoate, of pro-reform state-society alliance building." Franco further relates that "the judicial initiative succeeded in recruiting the NGO ALG." ALG tangentially got on board APJR through the Justice Reform Initiatives Support Project (JURIS). ALG saw JURIS as an opportunity for complementation of efforts towards law reform and empowerment of the poor for greater access to justice.

The search book draws from two tiered policy and practices sessions through (1) three regional discussion sessions and (2) one national conference that were conducted in 2010. It capitalized on the need to create venues for constructive dialogue to address the call to talk across the systems. It was a venue to rethink and reframe the conflicts of inter-legality that were encountered; clarify meanings; and with workshop participants from the IPs, elders, advocates and non-IPs – attempted unpack the conflict altogether

Internal Discussion	October 7 – 8, 2010	ISO Complex, Ateneo de Manila University
Regional Policy and Practice Discussion Session – Island Group	October 26 – 28, 2010	ISO Complex, Ateneo de Manila University
Regional Policy and Practice Discussion Session – Mindanao	November 8 -10, 2010	Songco, Lantapan, Bukidon
Regional Policy and Practice Discussion Session – Luzon	November 11, 2010	Mictotel Inn and Suites, Baguio City
Regional Policy and Practice Discussion Session – Select participants form regional workshops, Metro based support groups, NCIP officials	November 16, 2010	Astoria Plaza, Mandaluyong, Metro Manila
Internal Discussion	November 17 – 18, 2010	Astoria Plaza, Mandaluyong, Metro Manila
Validation Workshop	1 February 2011	ISO Complex, Ateneo de Manila University

The search book is divided into five parts.

Justice Reform and Access to Justice Project: *An arena for unpacking a policy dilemma?* It considers and reviews the consolidated insights and recommendations generated from the regional policy and practices workshop and the national policy and practice discussion session. This section likewise asks the meaning behind the call for recognition of IJS and customary law. Realizing further too that justice reform in relation to NJS and IJS is caught between - Rubi, Cayat, La Bugal pronouncements; and the full meaning of the call for recognition.

Contextual landscape: *"How did we get here?"* The chapter looks back, way back. It begins with a brief history of the Philippine Legal System and the parallel struggle of the pre-conquest justice systems to survive. It recalls how IJS in diverse forms adapted and endured in varying degrees, through time. This discussion traces the

way that the highly-centralized Philippine SJS continues to utilize and reinforce legal structures and concepts first imposed during colonial regimes.

The chapter ends with a review of existing normative rules from international human rights standards to domestic laws. The discussion brings up the seemingly contradictory provisions and domestic normative rules.

Of Harmonization, Interface and Negotiating Jurisdiction Affirming that NJS and IJS co-exists with friction and even in conflict, this chapter looks into negotiated practice of varying degrees. This portion also explores the various aspects of accommodations made in resolving conflict alongside NJS and IJS. Further, this chapter highlights several cases illustrating varying degrees of overlap, harmonization and interface (read as where they meet, match or clash).

ICC/IPs in Jurisprudence: *"Who do they say I am?"* Rubi vs Provincial Board, People vs. Cayat, every law student must have read the digest of the former and must have heard of the latter. This part revisits the cases of Rubi, Cayat and Cariño and moves to check on all other cases of significance to ICCs/IPs in jurisprudence a century hence.

Quo Vadis? The final part of the paper ends by saying that there is no one size fits all judicial policy reform or national level rule that can "harmonize" NJS and IJS. It ends on a positive note by listing ways of moving forward towards a culturally-sensitive judicial response to the quest for the recognition of plural legal orders and indigenous justice systems. Further, it likewise poses a challenge to IP rights activists and advocates in their messaging and the process articulating the call for recognition of indigenous justice systems.

Methodology

This research project picked up from where the previous unpublished Alternative Law Groups study temporarily and analytically ended.[8]

[8] With the main objective of promoting respect and recognition for traditional indigenous practices for settling disputes, the Indigenous Peoples (IP) Cluster of the Alternative Law Groups (ALG) conducted a study on IDRM. The primary goal of the project was to generate policy proposals or recommendations mainly for the judiciary to analyze the possibility of interfacing it with the current judicial system. The proposal likewise provided that if the research process arrives at a conclusion that a policy proposal for purposes of interfacing is not feasible, recommendations would still be generated to find other more workable and acceptable options.

The specific goals of the project were to: (1) Undertake review and legal research of relevant legal instruments and related literature on existing indigenous and Moro dispute resolution mechanisms; (2) Provide substantive and qualitative documentation through one-shot case studies, at the community level, of existing IDRM; and (3) Undertake analysis of gathered data, focusing on areas of conflicts on IDRM, as practiced, vis-à-vis the wider divide of indigenous justice, versus the formal justice system.

A review of existing literature on the subject of indigenous customary law, plural legal orders, and legal pluralism was also conducted. The review also included a survey to find out if there are any Supreme Court decided cases and other materials on the topic of indigenous customary law and/or traditional justice systems.

The research project conducted two tiered policy and practices sessions through the following: [1] three regional discussion sessions and [2] one national conference. It capitalized on the need to create venues for constructive dialogue to address the urgent call to talk across the systems.

The development of this sourcebook as a research process became the most opportune time for research team to step back. The process inspired and even to demanded to rethink and reframe the conflicts of inter-legality that were encountered; clarify meanings; and with workshop participants from the IPs, elders, advocates and non-IPs – attempted to unpack the conflict altogether.

Limitations of the Study

The search book is NOT a documentation of customary law.

Documentation of customary law was never a part or an intention at any point of the research. Cases studies and focus areas are looked upon not on the merit of the case not to focus on the laws that govern them but on the process by which the NJS and IJS interact, overlap or clash.

PART ONE

THE CONCEPTUAL LANDSCAPE—

HOW DID WE GET HERE?

The current Philippine legal order evolved with the process of nation building and the struggles that continue to come along with it. This legal phenomenon was shaped by interrelated and overlapping factors. Among which are colonialism; the state's need for legitimacy; the quality, reach and relevance of official legal systems; respect for diversity, multiculturalism and identity politics (ICHRP:2010:15).

If the worldviews where the SJS and the IJS operate are fundamentally different it is in part due to the circumstances by which both developed were very dynamic and complicated. Both have had parallel legal histories that developed within the same geopolitical space. Although the more popular story also the more dominant one is the development SJS.

The short version of the story that goes around from law schools to travel book and Wikipedia it is a confluence of the Roman Civil Law which was inherited from Spain; the Anglo-American Common Law courtesy of the United States; and Islamic Law.

The little known side of the story is the fact that the system was designed for colonial administration. The core systems of policing and judicial process were established during the colonial era. It was primarily built to serve the colonial administration and their interests and beneficiaries. To accommodate the "natives," "[c]olonial rulers adopted various strategies to ensure state control, many of which contributed, with different effects, to the strengthening of plural legal orders" (ICHRP:2010:7).

Colonization of the Indigenous Lifeworld[11]

After "discovering" the group of islands which would later be called the Philippines, Spain imposed the Law of Indies. The law did not only introduce the legal fiction and western concept of jura regalia , it also reduced existing justice and legal systems of the non-hispanized indios and moros to mere customs and traditions. By doing so, customs and traditions, by law, automatically became a secondary source of law operating in their laws' absence and technically, never in contradiction to it (contra legem). (Fajardo, 2002:35)

[11] The concept of lifeworld - in a Habermasian sense - represents the discursive means for the symbolic and cultural perpetuation and evolution of society en large. On the one hand it represents the socio-cultural plane on which everyday speech acts and pursuant discourses are carried out and, on the other, ensures a more or less stable - as discursive - transmission of traditions, symbols and knowledge in which speech acts are embedded and made available for communicative participants. The lifeworld is, in short, the communicative locale for affirming individual agency and forming cultural identity(Luedert::2010:3).

Thus began the systematized imposition of hundreds of years of legal structures and concepts of the colonial regimes. "Spanish colonists saw little value in the centuries old social systems which have been evolving within the Philippine archipelago. The Spaniards also saw little, if any reason to recognize the native's living law. Instead indigenous customs and traditions were suppressed if they interfered with the aspirations of soldiers, priests, entrepreneurs and government officials."(Lynch, 1983:459)

It was further observed that the colonial legal systems failed to acknowledge, appreciate and/or reinforce indigenous norms, laws and processes. The legal importation did not stop there. Neither was its implementation limited to those who were baptized or Christianized. In time, and in the process of "nation-building," even those groups of peoples who were largely unconquered[12] and had their own pre-conquest legal norms, leadership structures and dispute settlement processes, by legal fiction, were affected by the impositions made under the bell.

Over a span of three and a half centuries, Lynch noted that subjugated Filipinos learned to disdain their cultural heritage and to imitate their colonial masters. The best and most willing imitators were rewarded with power and privilege. Meanwhile, native traditions and legal systems slowly withered. Lynch further pointed out that unlike their Western counterparts, Muslim missionaries were much more accommodating[13] to indigenous legal systems (Lynch:459).

At this point, the colonial legal institutions were established in just the "civilized" parts of the archipelago, where the Christianized Indios are located. Meanwhile, those who were branded as *"infiels," "paganos"* and *"moros"*[14] managed to regulate their social interactions such as marriage, inheritance and land contracts, as well as resolve their conflicts according to their culture, customs and traditions.

The Legal Bases of Philippine Colonial Sovereignty: An Inquiry — Owen J. Lynch Jr.

[12] The Bangsa Moro struggle for self-determination is an ongoing struggle for survival, cultural identity and the right to self-determination. Spanish aggression did not subjugate the Moro people who remained determined to resist any colonial rule in their homeland.

[13] An observation affirmed by this study. The full research covers two case studies of indigenous justice systems within the Autonomous Region in Muslim Mindanao. See also, case studies of Teduray and Lambangian in Upi, Shariff Kabunsuan, as well as Barira and Buldon of the same province.

[14] The terms used by the Spanish conquistadores

The Philippine Republic "born" in 1946 inherited the hybrid Spanish-North American system. Fernandez posits that the highly-centralized form of government that was imposed by the colonial powers is still very much in place. After independence however, this type of government has persisted partly out of institutional inertia, partly because of the successful political conditioning of the ruling elite, and partly because a centralized government is appropriate, if not indispensable, to the requirements of post-colonial development. (Fernandez, 1980:385)

Meanwhile, the colonial and neo-colonial experiences heavily impinged upon the growth and development of IJS, indigenous justice systems and other indigenous institutions. Resilient as the peoples who are the bearers of these systems and processes; IJS - that was reduced into "norms and custom" and practically considered in contra legem – evolved and endured.

'80s Call for Recognition

Even prior to the legislative and policy paradigm shifts occurring after the enactment of IPRA, a felt need to reorient the SJS and make it more reflective of local cultural realities started emanating. In 1980, it was suggested that: "[w]e must incorporate in our national policy, specific strategies for the recognition of indigenous or ethnic law, within the Philippine legal order" (Fernandez:1980:383). The policy proposal did not take root at the time (see also Discarding Dichotomies, foregoing).

Outside the legal discourse however, bigger upheavals were taking place. That same year, Macli-ing Dulag, whose quote is prominently, featured this Search book, was killed by Philippine Army Troops. He held the ire of the state forces in his principle attempt to fight for their homeland. There were others women and men, like him. The struggles of ICC/IP then collectively referred to by state law as tribal minorities began to gain support for non-indigenous Filipinos. It is believed that the rise of the Social Movement in Mindanao for example naturally included the rise and growth of civil society's support for the IP's struggle for self-determination.

> As more and more IPs became empowered to speak, the Marcos dictatorship grew even more repressive, leading to the further disenfranchisement of the IPs… [D]espite the harassment, many Indigenous Peoples Organizations (IPOs) persisted in their struggles and the number of support groups increased… In the final years of the Marcos dictatorship, a considerable segment of this broad social movement was supportive of the IPs shift to radical politics. The cause of the IPs became known abroad and received support from international groups and networks. The international movement in turn entered the public

> sphere through the United Nations and the International Labor Organization (ILO). The former set up a Working Group on Indigenous Populations (WGIP) in 1982, which dealt with land rights, IPs control of their homelands, the need for autonomy, and right to self-determination (Gaspar:2011:115-117)

The downfall of Marcos regime changed the course, shape and turns of the IP struggle. The developments that followed likewise affected the separate and parallel developments of SJS and IJS interlegality. "A major segment of the movement participated in the processes leading to a new constitution" (Gaspar:2011:117).

Legal Pathways and/or Roadblocks to Justice?

The constitutional recognition of customary law should be construed as one of the more symbolic responses in correcting a grave historical injustice. The Constitution currently provides that "(t)he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."[18] This provision is further affirmed where the state guarantees to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.[19] Providing further that "(t)he State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies."[20]

These affirmations were followed by making room for IDRM at the Barangay Level through the BJS[21] where the law mandates that customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.[22]

[18] See Art.I, Sec. 22 of the 1987 Philippine Constitution.

[19] See Art.XII, Sec.5 of the 1987 Philippine Constitution.

[20] See Art.XIV, Sec.17 of the 1987 Philippine Constitution.

[21] See Sec 399, 408 of RA 7160.

[22] See Sec 412 (c) of RA 7160.

A. International Human Rights Standards	
1. Universal Declaration of Human Rights	*Article 2.* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. *Article 8.* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. *Article 10.* Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
ICCPR	*Article 14.* All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. *Article 27.* In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

UNDRIP	***Article 4.*** Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. *Article 5.* Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. *Article 34.* Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.
UN Declaration on Minorities	*Article 1* (1) States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. (2) States shall adopt appropriate legislative and other measures to achieve those ends. *Article 3* (1) Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination. (2) No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration. *Article 4* (1) States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. (2) States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. (3) States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. (4) States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole. (5) States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

CERD	*Article 2* (1) States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. (f) States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved. *Article 5* In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; Article 6 States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

ILOC 169	*Article 8* 1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws. 2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. 3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties. *Article 9* 1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. 2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

IPRA is usually regarded as the law recognizing IPs rights to ancestral lands and domains. IPRA is more than just an Ancestral Domains Law. IPRA as spelled out it is the Indigenous Peoples Rights Act, with tad more comprehensive scope. The bundle of rights is as follows:

RIGHTS	SECTION
Rights to Ancestral Domain	Sec. 4 - Sec. 12
Rights to Self – Governance	Sec. 13 - Sec. 20
Social Justice and Human Rights	Sec. 21 - Sec. 28
Cultural Integrity	Sec. 29 - Sec. 37

It provides for the primacy of customary law, as it mandates that disputes involving indigenous peoples are to be settled using customary law and practices. Further, "ICC/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices." The form of recognition provided however comes with seemingly harmless yet restrictive qualifiers. It drawback provisions limits the

"practices within their respective communities and as may be compatible with the national legal system and with international recognized human rights."

The promise and generosity are all there. That a state law that is IPRA dares to uphold the primacy indigenous justice system, traditional conflict resolution institutions and peace building processes are indicators of spaces created if not accommodated. To be appreciated a bit more IPRA could also be read against the provision provided by the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP).

Token recognition, one might dare say particularly when read against the land rights provision of the law. But that is another story. The articulations are not absolute forms of recognition. It pales in comparison to the "most dramatic and unexpected achievements in the constitutional recognition of cultural differences that have occurred in Latin America. (VanCott:2000) Where through "canny mobilizations… customary law- the mostly unwritten forms of dispute resolution and social control practiced by ethnic communities or language groups among their members are constitutionally incorporated" (2000:208).

These affirmations were followed by making room for indigenous dispute resolution mechanisms and processes at the Barangay Level through the Barangay Justice System (BJS). Customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities. Another form of institutionalized recognition is provided for in the Organic Act for the Autonomous Region in Muslim Mindanao (ARMM).

The Organic Act provides for a system of tribal courts for the indigenous peoples in the ARMM. The Said system may include a tribal appellate court, as determined by the Regional Legislative Assembly (RLA), which is also mandated to define the composition and jurisdiction of the said tribal courts. The law recognizes the power of these tribal courts to determine, settle, and decide controversies and enforce decisions involving personal and family and property rights of members of the indigenous cultural community concerned in accordance with their own tribal codes.

B. National Laws	
Philippine Constitution	**Article 2**, **Section 22.** The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. ARTICLE XII NATIONAL ECONOMY AND PATRIMONY Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.
Organic Act for the Autonomous Region in Muslim Mindanao – RA 6734	Tribal Courts Section 14. There is hereby created a system of tribal courts, which may include a Tribal Appellate Court, for the indigenous cultural communities in the Autonomous Region. These courts shall determine, settle and decide controversies and enforce decisions involving personal, family and property rights in accordance with the tribal codes of these communities. The Regional Assembly shall define their composition and jurisdiction in accordance with this Act. Customary Law Section 16. The Regional Assembly shall provide for the codification of indigenous laws and compilation of customary laws in the Autonomous Region.
National Integrated Protected Areas System (NIPAS) – RA 7586	ARTICLE IV Ancestral Lands And Domains And Tenured Migrants 1. Sec. 16. Ancestral Lands and Domains. — The rights of ICCs/IPs in the NSMNP to their lands and domains shall be fully recognized. Traditional property regimes exercised by ICCs/IPs in accordance with their customary laws shall govern the relationship of all individuals within their communities with respect to all land and other resources found within the ancestral lands and domains traditionally used by them.
Local Government Code – RA 7160	CHAPTER VII Katarungang Pambarangay **Section 399.** Lupong Tagapamayapa. - (f) In barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of datus or elders shall be recognized without prejudice to the applicable provisions of this Code. **Section 412.** *Conciliation.* - (c) Conciliation among members of indigenous cultural communities. - The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

	Section 408. *Subject Matter for Amicable Settlement; Exception Thereto.* - The lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except: (a) Where one party is the government, or any subdivision or instrumentality thereof; (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions; (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (P5,000.00); (d) Offenses where there is no private offended party; (e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon; (f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon; (g) Such other classes of disputes which the President may determine in the interest of Justice or upon the recommendation of the Secretary of Justice. The court in which non-criminal cases not falling within the authority of the lupon under this Code are filed may, at any time before trial motu propio refer the case to the lupon concerned for amicable settlement.
Indigenous Peoples Rights Act (IPRA) – RA 8371	CULTURAL INTEGRITY **Section 29.** ***Protection of Indigenous Culture, traditions and institutions.*** - The state shall respect, recognize and protect the right of the ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation of national plans and policies. **Section 63.** ***Applicable Laws.*** - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs. **Section 66.** ***Jurisdiction of the NCIP.*** - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

	CHAPTER XI PENALTIES Section 72. *Punishable Acts and Applicable Penalties*. - Any person who commits violation of any of the provisions of this Act, such as, but not limited to, authorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, ***shall be punished in accordance with the customary laws of the ICCs/IPs concerned***: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.
Mining Act – RA 9742	Section 4 *Ownership of Mineral Resources Mineral* resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors. The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution. Section 16 *Opening of Ancestral Lands for Mining Operations* No ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.

Nota Bene: This chapter walks through a typical indigenous justice system process for purposes of illustrating the nature and process.

PART TWO

WALKING THROUGH THE INDIGENOUS JUSTICE PROCESSES

"O heavenly spirits, may you guide the conscience and hearts of both contending parties so they will stick to the truth. And, O unseen spirits, may you disturb the conscience of those who attempt to lie, so they will not veer away from the truth."
- -Opening Petik

THE INDIGENOUS DISPUTE RESOLUTION PROCESS

The local name speaks for itself. Kalamian Tagbanuas call it *pagkeresen* which roughly translates to conversation/discussion/talk. The Kankanaey and Bago peoples of Bakun call it *Tongtong* which when translated refers to a dialogue. The Teduray Lambangian refers to the process as *setiyawan* meaning to adjudicate together.[28] For the IJS, the process, by any other name, remains to be generally non-adversarial, non-confrontational and participatory.

The process is generally initiated by a complainant or an offended party approaching an elder to report a conflict and seek resolution. The elder confers with members of the council of elders and calls for a dialogue. A date or a given time is set for the actual dialogue, and the involved parties are notified.

It commonly begins with an opening ceremony, ritual or prayer. The mediating Talaandig datus[29] for instance, pray to *Magbabaya* to ask for guidance and invite the spirits of the *laas* or ancestors to provide wisdom in resolving the conflict. A *gukom* leads the *pangimunag* or opening ritual for cases.[30]

AREA	ETHNO-LINGUISTIC GROUP	ALG - IP CLUSTER
Ayungon, Negros Occidental & Inablang, Kabangkalan City	Karul-anon	Legal Assistance Center for Indigenous Filipinos (PANLIPI)
Arakan Valley, Cotobato	Tinananon-Manobo	PANLIPI
Baguio City	Mixed	PANLIPI

[28] There are also many existing indigenous justice systems that have no formal or common names but are still very much in place and in use. *Pagkeresen* among the Tagbanuas of Coron in Palawan, *Husay* among the Higaonons and Talaandigs of Misamis Oriental and Bukidnon, *Kukuman* among the Manobos of Arakan Valley, *Iskukom* among the T'bolis of Lake Sebu, *Tiwayan* among the Tedurays of Maguindanoa and *Gukom* among the Subanons of Zamboanga.

[29] Claveria, Misamis Oriental

[30] A *Timuay* may endorse a case to the *Gukom.* A *Gulang Gukom* (chief justice) then convenes the *Timuays* of the seven rivers. The *pangimuan* is conducted by a *Gukom* before the process starts.

Bakun, Benguet	Kankanaey-Bago	PANLIPI
Barira, Shariff Kabunsuan Buldon, Shariff Kabunsuan	Iranun	Sentro ng Alternatibong Lingap Panligal (SALIGAN) – Mindanao
Calintaan, Occidental Mindoro	Tao-buhid	PANLIPI
Caragan Va. Maragusan, Compostela Valley	Mansaka	Paglilingkod Batas Pangkapatiran Foundation (PBPF)
Claveria, Misamis Oriental	Higaonon	Balay Alternative Legal Advocates for Development in Mindanaw (Balaod-Mindanaw), Inc.
Coron, Palawan	Kalamian-Tagbanua	Environmental Legal Assistance Center
Kabankalan City (Brgy. Kamang-Kamang)	Ati (resettled community)	PANLIPI
Kabankalan City (Brgy. Kamingawan)	Bukidnon	PANLIPI
Maragusan Va, Maragusan, Compostela Valley	Mansaka	PBPF
Lake Sebu, South Cotabato	T'boli	PANLIPI
Lake Sebu, South Cotabato	Ubo	PANLIPI
Magsaysay, Occidental Mindoro	Ragatnon	PANLIPI
Miarayon, Bukidnon	Talaandig	Balaod-Mindanaw
Sablayan, Occidental Mindoro	Alangan Mangyan	PANLIPI
Siocon, Zamboanga	Subanon	Legal Rights and Natural Resources, Inc. – Kasama sa Kalikasan or Friends of the Earth Philippines [LRC-KsK/FOEI-Phils] – Cagayan de Oro Regional Office
Upi, Shariff Kabunsuan	Teduray-Lambangian	SALIGAN – Mindanao

Up north, *tongtong*[31] is opened through a prayer or *petik* led by an elder or one of the *Papangoan*. Offering a drop of *tapuey,* or traditional rice wine, the elder chants the *petik* that asks the heavenly spirits to guide the conscience and the hearts of the contending parties so the truth may come out. Over the years, particularly after the introduction of Christianity in the communities, opening rituals have gone through changes.

If the past, the prayer was led by a senior member of the council of elders, who can either be a male or a female. Now, it is jointly led by a senior member of the council of elders and representatives of the various religious groups attending the *tongtong*.[32] The *petik* is now carried out with an invocation of the traditional prayer by a senior elder, and a Christian prayer led by a religious leader. Meanwhile,

[31] Bakun, Benguet

[32] True for both Bakun, Benguet and the *tongtongs* mediated by the Metro Baguio Tribal Elders and Leaders Assembly.

somewhere in Bukidnon, *Magbabaya* although not entirely replaced in terms of spiritually shares top billing with Lord God.

The opening ritual or its equivalent is common to all IJS documented. The closing ritual however, does not necessarily apply, for some processes. In the case of the Tiwayan System of Conflict Resolution,[33] the ritual called *Iném Kénugéw* is performed only when there is a perceived need to finally settle any ill feelings remaining between the parties. After the ritual, the relationship between the two is considered restored. The same is true for the Higaonon tribe of Misamis Oriental. A *singampo pasalamat* ritual is performed to thank the spirits for their guidance and presence during the process of conflict resolution. The ritual is also performed to seal the agreement and bind the parties to the agreement. The closing *petik* is also considered a cleansing ritual; an elder chants a closing prayer that asks the spirits to restore harmonious community relations, which can only be done if contending parties remove all hard feelings in their hearts so that stability and prosperity reigns, as they resume normal lives (Arquiza *ed.,* 2005: 45). For the Mangyans[34] of Occidental Mindoro, on the other hand, the closing prayer is not only for the purpose stated above, but also a prayer of thanksgiving; praising the heavenly spirits for their guidance which ultimately helped achieve a peaceful resolution.

There are also processes where settlement agreements are not only sealed by prayers but with ceremonials gatherings. For the Iranun[35] of Barira and Buldon, Shariff Kabunsuan, when parties to the conflict are able to reach an agreement or amicable settlement, there are prayers and ceremonial gatherings to seal the agreement and celebrate the reconciliation. The different gatherings common among the Iranun include: *kapangangawid*, *kapapamanikan*, and *kandori*. *Kapangangawid* involves the payment of moral, physical and material damages to the offended party while *kapapamanikan* requires family members and close relatives of the offending party to go to the house of the offended party as a manifestation of acceptance of guilt or submission to appease the offended party and his/her relatives. In both gatherings, *kandori,* which is a thanksgiving ritual involving the serving of food and drinks, may be performed; it may also be held separately from the *kapangangawid* and *kapapamanikan*.

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[33] Upi, Shariff Kabunsuan

[34] The study documented the Indigenous Dispute Resolution Mechanisms and Indigenous Justice System of three ethno-linguistic groups namely, Tagabuhid, Alangan and Ragatnon.

[35] Although largely based on Iranun customary laws and traditions, the local government unit and its system of governance is also a factor in the administration of justice by the JUMPOC. This is evident in the many similarities between the Katarungang Pambarangay system and the conflict resolution process of the JUMPOC, as mentioned above. This may be explained by the fact that the JUMPOC was created through the initiative of the local government unit. Another undeniable source of influence is the Muslim faith which is central in the Iranun culture.

The *tongtong* in Bakun and the *tongtong* facilitated by MBETELA also observe closing ceremonies for high impact cases. There are cases (not all) and negotiations where the parties and participants are not allowed to eat until a settlement is had. The concluding ritual usually requires the slaughtering and cooking of a pig or cow, and the parties and witnesses partake of a meal together, signifying the end of the dispute or hostilities.

Nature and Venue of the IDRM/IJS

As a general rule, the dispute resolution process, being participatory and communal in nature, is open to all. The aggrieved, the offender, their families, women, children and all other concerned members of the community may participate in the settlement process. For the Marikudo of Negros however, the sessions are limited to contending individuals and members of the tribal council. In Mindoro Occidental, the Alangan prefer closed-door sessions. The Tiwayan System of Conflict Resolution is generally open to all except when the case calls for a *Séékémén* which is a swift and confidential settlement of sensitive or delicate cases [i.e. most, if not all, involve offenses that are sexual in nature]. Only the assigned *Kefedewan*[36] and the parties directly involved (i.e. the alleged perpetrator and the complainant/victim) are present.[37] In Siocon, despite the fact that women and children are welcome to attend, the participation is usually limited to their men.

There are no designated mediation centers or courts of justice for purposes of the customary and/or traditional processes. The Subanon calls their tribal house *Baloy Nog Gukom.*[38] Most of the focus areas of the study however, do not have fixed venues. Usually the venue for the conflict resolution process is the house of the Datu, Tribal Chieftain or any member of the Council of Elders. In the past, the venue for *tongtong* is an open space where the hearing and resolution process is in full view of the main participants and the general public. However, with the advent of barangay halls[39] or government structures, the *tongtong* is now held in these places.

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[36] The *Kefedewans* are the administrators of the *Tiwayan* or the conflict settlement process or tribal judicial procedure.

[37] It is forbidden for any of the parties to reveal the details of the settlement. There will be a fine of P1,500.00 imposed on those who will violate the confidential nature of said proceedings.

[38] Of the 18 IDR/IJS case studies, three focus areas mentioned the exclusive use of the tribal house. These are Gubatnon, Manobo and Subanon.

[39] The barangay hall is also becoming the preferred venue for the Talaandig and Higaonon.

Peace of mind is the absence of conflict in the community, whether physical or emotional. This is the basis for justice and development for all and not the satisfaction of one person or a few people in the community.
-Article 1, Section 7, Ukit Notion of Justice

The adherence, albeit to varying degrees, to the IDRM/IJS—despite the existence of BJS, the courts of justice and the influx of influences from other cultures—is generally attributed to the fact that these systems manage to serve and meet the justice of the parties and the community. Justice, once served, ultimately restores peace and harmony in the community.

This study is very conscious and careful of falling into the trap of overly generalizing observations and findings from the gathered data. But for purposes of emphasizing a trend worth noting, 14 of 18 IDRM/IJS documented case studies heavily anchors the notion and concept of justice to the restoration of peace and harmony within and amongst communities. Justice is equated to concepts like peace, harmony, contentment, order and common good.

The study also notes that there are IDRM/IJS that anchors their sense of justice on the protection of one's dignity and alleviation of the injury caused to the victims and their families.[40] The *Karulanons* of Negros on the other hand, value the sense of satisfaction and contentment of both parties, while the *Kalamian Tagbanwas* of Coron tend to link their sense of justice to retribution, punishment and reward.

Despite these notions, the prevailing element and institutional foundation of these IDRM/IJS are still driven by the need to strengthen community relationships and instill good values and norms. *Kefiyo fedew*[41] or peace of mind is defined as "a state of mind and physical being of an individual who is free of any problem be it emotional or physical."[42] Thus, conflicts are always resolved through "win-win solutions," where both parties are satisfied and have no ill feelings. Most of the IDRM documented have no appeals process. In fact, only the Tiwayan System of Conflict Resolution specifically provides for a *baruwat.* Here a previously-settled case may be reopened before another *kefedewan*.[43] While there is strictly no appeal

[40] Mandaya and Mansaka of Compostela Valley

[41] Good state of mind

[42] See Section 1, Article I, Chapter I, Ukit.

[43] *Baruwat* = Form of appeal

in the Subanon Justice System, they have the *Gukom* of Seven Rivers[44], the highest tribunal of the Subanon that convenes only when the matters to be settled involve disputes which are of general interest to the Subanons. A concept that is akin to issues of 'transcendental importance' in state law legalese.

Then and now, the main purpose of IJS has been the maintenance of stability, peace and harmony in the community. To this date despite the challenges, the various IDRM/IJS covered still serve their purpose—justice is still served—for the peoples with their family and even community who seek redress.

Nature of Crimes and the Penalty System

The IDMR/IJS takes cognizance of all types of cases. And by ***all*** it could really mean ***all***. By and large, there is no distinction between civil and criminal cases. Thus, offenses are appreciated not solely in the context of the offender and offended, but also within the community and, if inter-tribal, between communities.

Thus, disputes are generally always seen in a personal context (offender-offended) ***and*** in the context of the community. As a consequence, when an offense or crime is committed against a member of a community, it is usually treated as if it was committed against the whole community, not only against a particular individual. In the case of the Teduray-Lambangian, this is reflected in their penalty system where the amount imposed as penalty is given (in most cases) not only to the offended party but the *Fénuwo* (village) as well. The amount given to the *Fénuwo* is further divided between the *Kéféduan* (tribal justices) and the *Ingéd* (whole tribe or ancestral domain).

For the Manobos of Arakan Valley, any offense committed against an individual is an offense committed solely against the offended party. *Oson,* committing acts of discrimination against any tribe member is the only crime they consider as having been committed against the whole tribe.[45]

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[44] The Highest Tribunal of the Subanon in Siocon, Zamboanga. This *Gukom* convenes only when the matters to be settled involve disputes which are of general interest to the *Subanons*. Also, when the *Timuay* of a *pigbogolalan* endorses a case to the *Gukom* of Seven Rivers because he knows that he cannot settle the controversy/conflict within his jurisdiction. Further, the *Gukom* will lead the settlement when it involves conflict between *Timuays* of different *pigbogolalan.*

[45] Refers to remarks or actions made either by a Manobo to another Manobo member or a non-IP to a Manobo that caused embarrassment to the offended. Based on customary law, the offended party, if not appeased, can kill the offender. The resolution process, therefore, concentrates on discussing the appropriate penalty to avoid any killing. An example of this case involves a former City Councilor of Kidapawan who was quoted in writing by a columnist of a local paper uttering discriminatory remarks against the tribe during the last elections. The tribe filed a case with the NCIP against the City Councilor and the local journalist, and moved for the application of customary law in the resolution of the case. The NCIP upheld the motion in its entirety.

Conflicts are not strictly defined. There are no definitive lists that provide for specific offenses with corresponding penalties. Rather, "the offenses are evaluated based on threats to or infringements on the life, property and dignity of the offended party or community."[46] There are emerging forms of documentation[47], and semi-assimilated and highly assimilated focus areas loosely refer to the offenses using crimes enumerated in the Revised Penal Code. When parties refer to murder or adultery for instance the terms are used loosely, unmindful of RPC distinctions and elements.

The *Kitab Keadatan* or body of customary laws of the Teduray and Lambangian peoples is an exception to the general observation. It is composed of three major works: 1) the *Ukit* or Constitution; 2) the *Tegudon* or Creed, and 3) the *Dowoy* or penal laws.[48] The *Kayang Bala* covers the range of penalties set by the *Tegudon*. Although this serves as the primary reference regarding penalties, there are other bases that may be considered in setting the exact amount of penalty to be imposed by a *Kefedewan*. The sanction and/or penalty imposed are set in the *Tiwayan* or settlement of conflict. After which, it is the responsibility of the entire community to enforce the penalty (Arquiza, *ed*:2007).

Similar to the indigenous notion of crimes and offenses, there are also, generally, no fixed sanctions.[49] Penalties are still mostly determined based on the weight or severity of the offense as perceived by the offended party and the community. Precedents and penalties, as listed, are generally only of persuasive value.

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[46] As narrated to PBPF in the FGD conducted for *Mandaya* and *Mansaka*. This observation is also true for almost all other focus areas except as listed and discussed above.

[47] Anhtropologist Antoon Postma who is known to have extensively studied the culture of the *Hanunuo* tribe in Oriental Mindoro came up with a four-volume publication entitled Kulturang Mangyan in 2005. In the fourth volume, he wrote about the *Hanunuo*'s justice system and listed 164 offenses or crimes punishable under the tribe's customary law. Such offenses cover all sorts of behavior that pertain to conduct of relationship with family members, relatives, neighbors and tribal leaders. They range from petty to serious offenses like rape and murder.
All three tribes confirmed Postma's listing. One of the FGD participants even said that he did not realize that they had such a long list.

[48] *Dowoy*: *Teduray* and *Lambangian* penal laws. Over time, there have been certain adjustments made in the *Dowoy*, especially in the area of penalties imposed. These penalties traditionally took the form of the giving of goods (e.g. gong, sundang) to the aggrieved party. However, since most of these goods are now rather hard to find, the penalties were converted to cash equivalents. For example, the equivalent of *Mérémoto Tamuk* ranges from P3,000.00 and above; while for *Séékét*, it is set below P3,000.00.

[49] In the case of the *Teduray Lambangian* the offenses, penalty and sanctions where documented over time in their efforts to strengthen *Timuay* Justice and Governance. In partnership with support groups and non-government organizations, a project dubbed as Community Access to Justice through Recognition of Indigenous Justice System was launched. This initiative resulted in the documentation of the *Timuay* Justice and Governance, with a *Kefedewan* Training Module and Handbook.

The process described below is basically the same process observed in the focus areas covered:

> "At all times, the penalties imposed are defined based on a case-specific situation. The *Limpong ng Mangkatadongs* (Council of Elders) who administers the settlement and judgment processes are only mediators or arbitrators of justice. The extent of sanctions to be imposed is articulated first by the victims and their families. The *Limpong* then communicates the demands of the victim to the family of the offender through a designated negotiator called "*pilipiti*". In cases where the family of the offending party cannot afford to comply with all the demands made, the *Limpong ng Mangkatadong* actually contributes to fully pay off the demand. This assumption of responsibility by the *Limpong ng Mangkatadong* affirms the community's view of collective responsibility. The practice has been carried out since time immemorial to strengthen kinship and ensure cohesion among members of the tribe."

The Subanons' notion of retribution and penalty best describes the general notion observed and affirmed in this study. The case study in Siocon affirmed that Subanons prefer reconciliation to retribution. Harmony within the community comes first. For them, the concept of social cohesion and restorative justice are at par. As one *Timuay* said, for the Subanons, the principle is "*Palita ang Kalinaw*" (buy peace).

Most of IJS documented do not impose capital punishment. Six of the focus areas even revealed that they have long abolished the said form of penalty. These communities arrived at the decision to abolish the penalty on various grounds but the two main reasons are: (1) religious teachings and influences; and (2) community recognition of State prohibition on the matter.

The study gathered two focus areas that have not abolished the penalty in the sense that it is still there, but it has not been imposed for a very long time.[50] There were also areas that are careful not discuss it, in view of the sanctity of the process. Suffice it to say that the few focus areas concerned observe several internal processes before imposing the penalty.[51]

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[50] "*Bubuwan*" for the *Subanon* means a cage. This is similar to a fish cage put in the sea used to trap fish. The culprits, as in the case of incest, will both be placed in the *bubuwan* and before sunrise they will be brought to the sea and submerged to death. This death execution happened once in the history of the *Subanons* in the person of *Tumonglon* and *Putian*. This was an incest case. Both of them were found guilty and they were subjected to death by drowning through *bubuwan.* As narrated by *Timuay* Nanding for the case study.

[51] The execution of an offender who has committed a crime considered heinous by the *Mandaya/Mansaka* communities is considered the highest form of restitution for crimes committed against life and dignity. The execution of an offender and all other sanctions are not viewed as a punishment for an offense/crime committed. From their perspective, it is a matter of "*giving back what is wrongfully taken*". Under this principle, the family of the offender/s has to give its consent to give as restitution for a wrongfully taken life, the life of a member of the family who seriously committed an offense. However, the family of the offender has recourse in the administration of *Mandaya/Mnsaka* traditional justice through an appeal mechanism

In case, for instance, of Timuay Justice and Governance:

> ***Fetindegon Turos*** – Literally translated as death penalty, this is the highest form of penalty that may be imposed on a person. This is imposed when the offender may no longer be corrected through the payment of property or cash. Thus, the life of the offender shall be taken from him as payment. Although in actual practice, any one with good record in the village can stop the execution. Said person must then be ready to take custody of the offender. A ceremonial execution of the declaration, referred to as *bangun*, shall follow.[52]

Another ticklish issue is the perception of some people that some forms of IJS impose "…excessive fines, and cruel, degrading or inhuman punishment."[53] Examples include the imposition of *bordon*[54], a form of penalty where the offender is lashed with a rattan cane, and *panglao*[55], a sanction where the offender is humiliated in front of fellow villagers by undergoing an ordeal.

Let it be emphasized that the penalties described were part of the information that were entrusted to the 2008 case studies of ALG. At the time, there was no attempt on the part of the researchers to evaluate the same under the standards of penalties imposed under the national justice system. (See separate discussion on Human Rights and Plural Legal Orders) Suffice it to say that the penalties meted out are part of a complex process inherent and unique to the existing IJS. They also stem from a justice system that knows how to value life, peace and harmony.

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that exists to seek a reversal of judgment. This can be granted but only given the following circumstances: (1) When the offender shows sincere remorse for the crime/s committed; and (2) When the offender, upon evaluation and judgment of the *Limpong ng Mangkatadong*, shows a possibility for transformation. Reversing an execution judgment is not seen as a move to lower the sanction for a particular serious crime. Rather, it happens only as shown above - when a person is willing to begin life anew by undergoing a process of remorse and transformation. In the eyes of the *Limpon*g, this, in a sense, allows the offender to give back what he has taken.

[52] TJG notes as documented by choice of the Tedurays. Records and copies of which are in their safekeeping.

[53] See Sec. 72 of IPRA, IRR.

[54] *Bordon* and *Panglao* are part of the penalty system of the *Calamian Tagbanuas* of Coron, Palawan.

[55] In Banuang Daan and Cabugao, the offender is made to squat with a two-foot bamboo pole resting at the back of his knees to attract ants. A more benign but no less humiliating form of *panglao* is practiced in other villages such as Malawig, Buenavista and Tara. Here, the offender's feet are separated by a wooden clamp and he is made to squat for several hours.

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PART THREE

OF STATE AND INDIGENOUS JUSTICE DYNAMIC AND NEGOTIATING JURISDICTIONS

Barangay Justice borrowed and adopted "mediation" from the indigenous conflict resolution systems of all indigenous peoples in the country, and probably in the whole world.
*- **Datu Veloso Suhat**[56]*
Supreme Datu, Arakan Valley, Kidapawan, No. Cotobato

Meeting Point: when and where legal worlds meet, match and clash

From state law perspective, it can be said that various forms of IDRM/IJS managed to survive despite the lack of state recognition.[57] Fact is, IJS are deep rooted and they pre-date the state. The advent of the 1987 Constitution and enactment of IPRA in 1997, provided an impetus for the State to create more space - further acknowledging the time immemorial existence of more than "one" law or legal system in the Philippines.[58] This phenomenon is generally referred to as legal pluralism. Accordingly, legal pluralism is created in several situations, among which are:

> One is a situation of Colonialism, in which a Colonial government imposes a new regulation in a territory ruled already by previous authorities, norms and proceedings. So, some sectors of the population or some areas of the social life continue to be regulated by the old legal system. Legal pluralism also exists in the contexts of wars, revolutions, and processes of fast modernization, where the old legal system and the new coexist for a certain period. Legal pluralism may occur too where indigenous peoples or ethnic minorities co-exist with an ethnic majority that imposes a "national legal system"(Fajardo:39)[59].

[56] Datu Veloso Suhat served as one of the key informants in the conduct of the research amongst the *Manobo* in Arakan Valley.

[57] See discussion on the two perspectives on dealing with legal pluralism in Anne Griffith's *Customary Law in a Transnational World*: Legal Pluralism Revisited for Conference on Customary Law in Polynesia, 12th October, 2004.

[58] The theory of legal pluralism "has become a major theme in socio-legal studies. However, under this very broad denomination, one can identify many different trends which share little but the very basic idea that law is much more than state law."

[59] Santos Boaventura de Sousa as quoted in Raquel Yrigoyen Fajardo, *Pathways to Justice,* http: alertanet.org

The Philippine experience falls within the purview. Legal pluralism, although not initially and fully reflected and recognized by state law, thrived and existed. From an academic and anthropological perspective the situation we described is but a natural consequence of legal pluralism. Where "both state law and customary law are complexly interrelated and mutually determining" (Merry 1991). Accordingly systems of rules will sometimes come into conflict and their officials will sometimes dispute supremacy (Roughan 2009). And between the relations of the dominant (herein the NJS) and the subordinate groups (ICL), the dominant which endeavors to adopt uniform state law imposes on the other, with pockets of resistance of varying degrees from those groups whose law is more rooted to customs, culture and traditions.

Another consequences of legal pluralism in that systems of law are frequently engaged in interaction with one another (Roughan 2009). This observation is particularly true in the Philippine experience. The dynamics between and among these indigenous legal systems vis a vis the national legal system meet, match and clash in various shapes and forms. The coexistence of different systems of rules at the same time, in the same geopolitical space, may produce conflicts of inter-legality.

PLURAL LEGAL ORDERS: WHAT ARE THEY?

'Legal orders' may be understood as the norms, rules and institutions formed by a society or group of people to ensure social stability. They usually describe what is right and how to act, and what is wrong and how not to act; and the remedies for and consequences of such actions. Plural legal orders arise when a specific dispute or subject matter may be governed by multiple norms, laws or forums that co-exist within a particular jurisdiction or country.

Source: When Legal Worlds Overlap: Human Rights and Non-State Law page 2

Legal pluralism covers "diverse and often contested perspectives on law, ranging from the recognition of differing legal orders within the nation-state, to a more far reaching and open-ended concept of law that does not necessarily depend on state recognition for its validity".[60] According to a legal pluralist perspective, a 'plural

[60] When Legal Worlds Overlap quoting Griffiths, 2002, p. 289.

legal order' is a situation in which diverse legal orders are "superimposed, interpenetrated, and mixed".[61]

BJS/IPRA limitation	Observed in Practice	Notes
territorial	X	Inter-barangay; inter-tribal – within AD
criminal sanctions mediated/imposed	X	As negotiated by parties; can go beyong Php 50,000.00
cognizability of serious offenses	X	Takes cognizance of *all* cases
Mediating Authorities: Dual role, elder and barangay official		

One common aspect of interface documented is when the barangay council and *Lupon* are composed of the same tribal leaders holding traditional leadership posts. Tribal leaders *cum* barangay council members claim that they generally prefer the use of customary law in settling disputes.[62] If there is any modification in the process, it is the adoption of the documentation requirement of the BJS. The Kankanaey–Bago and Karulanon however, give contending parties the option not to have their case recorded and reported. It has likewise been reported that migrant non-IPs in the area prefer to have their conflicts settled using customary law.

The Tao-Buhid has adopted the documentation requirement of the BJS. For its leaders, documentation of conflict resolution proceedings will help form a repository of knowledge that will be passed on to the next generations of Mangyans. The Alangan and Gubatnon tribes have not started documenting their settled cases. They, however, expressed openness to adopting the documentation requirement using their traditional script.

The case of the Mandayas in Caragan Valley is a case where the BJS in place is fully interfaced with the Mandaya's IJS. Although, in a sense it would be more accurate to say that the Mandaya's IJS subsumed the BJS, since all disputes brought to the barangays are referred to the *Limpong ng Mangkatadong,* who are likewise members of the Lupong Tagapamayapa. Despite the dual role, the *Limpong/Lupon* relies more on their customary law and nothing else.[63]

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[61] When Legal Worlds Overlap quoting de Sousa Santos in Dupret, 2007, p. 9.

[62] This particular type of interface was observed among the *Calamian Tagbanua, Higaonon, Bukidnon, Karulanon, Talandig, Teduray-Lambangian* and *Subanons*.

[63] See also the Tale of Two Valleys, case study PBPF. The prevalent use of traditional mediation/dispute resolution processes in the context of the Barangay justice system principally stems from the community's familiarity with customary practices. This is a natural tendency, considering the fact that residents of the area are dominantly IP (*Mandaya*). The elders view the primacy of traditional processes not as an interface of two mechanisms, but as a recognition of the tribe's collective rights to self-governance and cultural integrity.

The T'boli and Ubo of Lake Sebu have their own unique way of coordinating their legal worlds. The mix allows them to settle disputes using their own customary law while acknowledging the presence of a government structure in their area. Aside from adopting the recording and reporting requirements of the BJS, the tribal council submits a report to the *Lupon.* The *Lupon* then approves and files the report.

In Bakun, five of the seven[64] barangays instituted a process where every complainant is required to register or file his/her case to the L*upon.* After registration, the complainant is asked to choose between BJS and *tongtong* as the means for resolving the case. This arrangement was borne out of the need to diffuse tensions between the conflicting systems.

BJS/IPRA limitation	Observed in Practice	Notes
territorial	X	Village level
criminal sanctions mediated/imposed	X	As negotiated by parties; can go beyond Php 50,000.00
cognizability of serious offenses	X	Takes cognizance of *all* cases
Reporting Process: Tribal elder submits 'documentation'		

Another set up was tested, this time *Lupon* members participate in the *tongtong* as representatives of the BJS. Sometimes a *Lupon* member presides over the *tongtong* and the resolution process is counted as an accomplishment of the *Lupon*. This created confusion and discomfort between *Lupon* members and members of the council of elders. The confusion ended with the current set up.[65]

In the towns of Buldon and Barira in Shariff Kabunsuan[66] a council called Joint Ulama Municipal Peace and Order Council a.k.a. JUMPOC exists.[67] It harmonizes the Iranun's IDRM/IJS, Shari'a law and the BJS or barangay justice system. Such being the case, the decisions made and the processes used are largely based on the

[64] The two remaining villages, Brgy. Ampusunga and Dalipey, decided to marry the *tongtong* and the BJS.

[65] Parties to the agreement can choose not to have the settlement of their case documented so that no record or proof of the wrongdoing exists. As earlier discussed, any record of a wrongdoing is a stigma that will forever be attached to the family of the offender.

[66] Shariff Kabunsuan was a province of the Philippines within the Autonomous Region in Muslim Mindanao (ARMM) that existed from 2006 to 2008. The law establishing the province was nullified by the Philippine Supreme Court in 2008.

[67] The JUMPOC of *Barira* and *Buldon, Shariff Kabunsuan* are surviving offshoots of a 1996 provincial government mandate to create a Task Force *Kalilintad* in every municipality. Aside from being a conflict resolution body, JUMPOC primarily aims to propagate Islamic teachings and peace. The council likewise conducts Arabic writing lessons while it works to promote and preserve *Iranun* Indigenous culture.

Qur'an and hadiths/ahadith[68] as sources of the Shari'a law. Customary laws and traditions are also consulted and considered. The penalties set for each of the offenses are based on customary law or Shari'a law or both. JUMPOC has three levels: barangay, district and municipal. The barangay level has original jurisdiction over the cases. This however is not exclusive; the municipal level can take cognizance of all cases brought before it. As a general rule however, the municipal level JUMPOC requires an endorsement from the barangay and district level JUMPOC.

BJS/IPRA limitation	Observed in Practice	Notes
territorial	X	Municipal wide and Inter-municipal
criminal sanctions mediated/imposed	X	As negotiated by parties; can go beyong Php 50,000.00
cognizability of serious offenses	X	

Sources of law: Qur'an and hadiths/ahadith;customary law

The incorporation of the indigenous systems in the barangay and municipal structures has generally resulted in a more peaceful community. SALIGAN observed that justice has become accessible to the *Iranun* peoples of Barira and Buldon. Regular state funded courts are located in Parang, Maguindanao or in Cotabato City. Getting there can be difficult and time-consuming, especially for rural folk who may want to save the money for public transportation for some other more basic needs of the family, or to use their time for income-earning activities. (SALIGAN: 2005)

Arakan Valley, Barira, Buldon and Caragan Valley, the focus sites, are unheard of by many. It would be easy to attribute the continued existence of IJS to the fact that these are rural indigenous communities with their indigenous systems, practices, and structures relatively intact. This study however, has been privileged to have been allowed to get a glimpse of a unique assembly of mediating elders and leaders based in Baguio City.

BJS/IPRA limitation	Observed in Practice	Notes
territorial	X	Cordillera Wide
criminal sanctions mediated/imposed	X	As negotiated by parties; can go beyond Php 50,000.00
cognizability of serious offenses	X	

The Metro Baguio Tribal Elders and Leaders Association (MBTELA) was borne out of an urgent need and call to end hostilities that had all the makings of a tribal war.

[68] The collection of traditions and sayings of the Prophet Muhammad

Sometime in the 1980s, several Baguio based tribal elders from various ethno-linguistic tribes of the Cordilleras started an anti-tribal war campaign.

In 1984, a conflict between the Sumadel and Lubuagan[69] tribes of Kalinga erupted. Violence and clashes, resulting in several revenge killings spilt over to Baguio City. To prevent further bloodshed and an escalation of a full-scale tribal war, where no one is spared from the revenge, MBETELA members stepped in. They invited representatives from both Sumadel and Lubuagan to a dialogue. Elders from both factions were determined to see the end of the clashes particularly in Baguio City. Most members of the tribes who were in the city were either students or workers/laborers. Utmost care was taken to prevent the escalation of a full-scale tribal war. The dialogue started at 8 o'clock in the morning, and after almost twelve heated hours, a peace pact was adopted between the Sumadel and Lubuagan. To this day, no violence has ever erupted between the two Kalinga tribes.

Since then, MBETELA slowly evolved into an assembly of skilled elders and leaders acting as a conflict resolution conduit from time to time. It was officially registered with the Securities and Exchange Commission in 2003. Due to its vast experience in assisting or facilitating disputes between and among different communities, the MBETELA has distinguished itself not only in Metro Baguio but within their Cordillera-wide jurisdiction without borders.

Preferred Exit Option

CREATIVE DISMISSAL

On instances when the conflict reach prosecutorial level

MBETELA continues to perfect the art of creative dismissals. Of the 19 focus areas, the cases handled by MBETELA are the ones[70] that frequently brush with the other pillars of the national justice system such that:

In criminal cases wherein the police are called to investigate and cases are being readied to be filed, dialogues are usually called before a case is filed with the Prosecutor's Office or the Court, as the case may be. In instances where a case has already been filed, dialogues are still called and settlement between the parties could still be had. In these cases, the offended party or his family will execute an Affidavit of Desistance so that the case will no longer be filed by the Prosecutor or it will be used as a basis for a Motion to Dismiss to facilitate the dismissal of the case.

[69] Both *Sumadel* and *Lubuagan* are *ilis* (municipalities) of the province of Kalinga.

[70] The *Iranuns* and *Manobos* interviewed for the study likewise mentioned instances of filing Affidavits of Desistance.

It was noted that the filing of cases before entering into dialogue is sometimes used as a bargaining tool to get a better settlement. There are likewise instances when even the Courts have given the parties time to settle the case before proceeding. In these dismissals, the only basis cited is the claim that the offended party is no longer interested in pursuing the case. There is neither mention nor acknowledgement of the fact that it was settled though 'customary law'.[71]

Incongruent Justice Systems

The narrative above carried illustrations of spaces and loopholes where the legal orders meet,[72] match[73] and clash.[74] Cases and conflicts that are managed mediated and negotiated that go way beyond state law mandated limits.

The recognition of customary laws accorded by the BJS[75] can be confusing at best. So, while the law recognizes the customs and traditions of indigenous cultural communities by allowing its application in settling disputes, the same provision limits its application between members of the cultural communities. The limitations further imposed include: [1] territorial limitation; [2] limitations on the authority to impose criminal sanctions and; [3] limitations on the cognizability of serious offenses (Humiding:1998)

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[71] As narrated by MBETELA members for the Baguio Case Study.

[72] In Arakan Valley, when a non-IP is involved in a case, the complainant decides where to bring the case for settlement. The *Manobo* always prefer to bring the case to the tribal court for settlement. Cases of land dispute brought to the BJS or to the Department of Agrarian Reform (DAR) for settlement, usually by a non-IP, are sent back to the tribal court for application of customary law.

[73] In the case of the *Mandayas*, the members of the *Limpong ng Mangkatadong* are also members of the *Lupong Tagapamayapa*. The *Limpong* in their dual capacity as Lupon by default employ their traditional disputes processes and mechanisms. The Barangay Captains of the two areas are both *Mangkatadong* and are considered by the community members as part of the *Limpong*. The elders view the primacy of traditional processes not as an interface of two mechanisms but as recognition of the tribe's collective rights to self-governance and cultural integrity.

[74] From December 12,-15 2007 the *Gukom* of the Seven Rivers was specially convened. For the first time in their history twenty-three cases from *Subanon* and non-IP complainants against the Toronto Ventures Inc, a multinational mining firm and SCAAs, were heard. The dates for the hearing were set as early as the 2nd week of September 2007. Notices were duly sent to the proper parties. TVI acknowledged the notice through a letter from the President of the Company. Following a resolution from the NCIP, they refused to recognize the authority of the *Gukom* of the Seven Rivers. Following the *Subanon* customary law, the *Gukom* proceeded with the hearing as scheduled. The notice requirement after all was complied with. After four straight days of ascertaining days of hearing and trying the complaints, judgment was rendered. The execution thereof was however held.

[75] See Sec 412 (c) RA 7160, see also Secs 399 (f) and 408. See also Sec 407 (c) Muslim Mindanao Autonomy Act No. 25. (MMAA No. 25). MMAA No. 25, is the regional local government code of the ARMM.

IPRA clearly provides for the primacy of customary law. The law mandates that disputes involving indigenous peoples are to be settled using customary law and practices. There are, however, certain provisions[76] that tend to say otherwise. Section 63 states that customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. The provision as stated tends to give an impression that customary law is applicable **only** in conflicts arising from property rights, claims and ownerships, hereditary succession and settlement of land disputes.[77] Even Section 15 comes with a drawback provision by indicating that conflict resolution institutions, peace-building processes or mechanisms and other customary laws and practices may be used, but only within their respective communities, and as may be compatible with the national legal system. A proviso mandating that the IJS be ***compatible with*** the national legal system is very constricting. It is a mandate even a tad more stringent than being within the framework of national development. Although IP rights advocates insist that any doubt should be ruled in favor of the IP/ICCs, this ambiguity may be subject to abuse by limiting the application of customary law.

The legal creation of tribal courts in ARMM through the Regional Legislative Assembly has yet to be realized. But, as prescribed by the Organic Act, tribal courts jurisdiction are limited to:

> Settling and deciding controversies and enforcing decisions involving personal and family and property rights of members of the indigenous cultural community concerned, in accordance with the tribal codes of these communities; and
>
> Exercising exclusive jurisdiction over crimes committed by members of indigenous cultural communities. These include crimes whose imposable penalty does not exceed imprisonment of six years or a fine not exceeding P50,000.00 or both, and where the offended party or parties are also members of the indigenous cultural community concerned.

Although wider in scope than the BJS, the degree of recognition provided for in IPRA and the Organic Act are limited in terms of territory, authority to impose fines and criminal sanctions and cognizability of serious offenses. This is not surprising. After all, the IPRA and the ARMM Organic Act are formulations that attempt to

[76] See Secs. 29, 63, 66, 72 of RA 8371.

[77] See also, RULE IX Section 1: Primacy of Customary Law. All conflicts related to ancestral domains and lands, involving ICC/IPs, such as, but not limited to, conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.

harmonize the IJS and NJS. By recognizing customary and other indigenous institutions, these laws in effect attempted to define the preferred mode of interface by the state. This study shows however, that there is a wide gap between the spaces of interface accommodated on the ground and the state prescribed interface.

Despite Sec. 15 of IPRA and the prior recognition provided through the Barangay Justice System, in practice the legislated mode of pluralism is observed more in breach than in practice. Often the conflicts of interlegality is managed by simply ignoring the legal rule imposed by the dominant system, while allowing the indigenous customary law to prevail at the local level. The perceived status quo however is so fragile; "such that as one area of jurisdiction expands, the other one constricts such that the other now runs the risk of tipping towards the vanishing point."[78]

Resistance in response to risks of destruction is often taken not locally but in a different arena. Some demands come in the form of IPs call and demand for state recognition of IJS and ICL. The call of recognition is not peculiar to Philippine experience. It is call does not exist in isolation neither is it voiced out in random. It is even valued as "an integral part of asserting IPs collective right to self-determination."

The call for 'more meaningful' recognition of ICL beyond the Philippine constitution and IPRA has been made before various platforms. From rallies and street protests against large scale mining and other forms of development aggressions to the session halls of the UN Committee on the Elimination of Racial Discrimination and in between other forums of various persuasions. But since the call in not made in isolation and is most often bundled with more urgent calls for indigenous lives lost and ancestral domains claims, the issue of recognizing IJS and ICL beyond IPRA has yet to be fully understood, operationalized and properly articulated.

[78] A description used by Environmental and Legal Assistance Center's Dante Dalabajan

PART FOUR

WHO DO THEY SAY I AM?– ICC/IPs IN JURISPRUDENCE

They were all members of an uncivilized tribe. They were reared in absolute ignorance of law and order. They were impregnated with superstitions of degrading character, under the influence of which it frequently became the duty of one to take the life of another. They had not a single element of civilization, as that term is generally understood, and had no adequate conception of the value of human life."

US vs. Palidat
1910

Carino vs Insular 1909	*US vs Palidat* 1910	*Tubban* 1915
The Court ruled that the parcel of land claimed by Cariño has never been a public land. **In this case, the Court applied the concept of "Native Title". Under this concept, ICCs/IPs are the private owners of areas and territories that they have possessed, occupied and utilized since time immemorial. These territories are considered to have been held as private properties since time immemorial and as such, have never been part of the public domain.**	The defendants were spared from death penalty. As the high court said *"[t]hey were all members of an uncivilized tribe. They were reared in absolute ignorance of law and order. They were impregnated with superstitions of degrading character, under the influence of which it frequently became the duty of one to take the life of another. They had not a single element of civilization, as that term is generally understood, and had no adequate conception of the value of human life."*	The court was not ready to recognize the marriage of Tubban as observed in their customary law. But the court considered the fact that he is a member of a tribe a tribe which the court perceived as "*uncivilized, of a low order of intelligence, uncultured, and uneducated."* as extenuating circumstance.

Rubi vs Provincial Board 1919	*People vs Cayat* 1939	*Pit-og vs People* 1990
The case upholds the Mindoro's assimilationist policy.	Cayat, a native of Baguio, Benguet, Mountain Province, was imprisoned for having in his possession one bottle of A-1 gin, an intoxicating liquor. The Court upheld, Act No. 1639 The law prohibited the natives *"to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the natives have been accustomed themselves to make[and use]."*	The Supreme Court does not hesitate to call a spade a spade – the clash and conflict between NJS and IJS – and did not hesitate to uphold customary law. We see this case as exemplifying a clash between a claim of ownership founded on customs and tradition and another such claim supported by written evidence but nonetheless based on the same customs and tradition. when a court is beset with this kind of case, it can never be too careful More so in this case, where the accused, an illiterate tribeswoman who cannot be expected to resort to written evidence of ownership, stands to lose her liberty on account of an oversight in the court's appreciation of the evidence. We find, that Erkey Pit-og took the sugarcane and bananas believing them to be her own. That being the case, she could not have had a criminal intent.

Cruz vs. NCIP
2000
Petitioners Isagani Cruz and Cesar Europa, assailed the validity of RA 8371 or IPPRA and its IRR. Petitioners claim that certain provisions of IPRA and its IRR as unconstitutional for it warrant the unlawful deprivation of State's ownership over lands of the public domain as well as minerals and other natural resources, a clear violation of the Regalian doctrine.

The SC deliberated upon the matter. After deliberation, the votes were equally divided. The case was re-deliberated and the same result transpired. Cruz's petition was dismissed and the IPRA was sustained. Since there was a tie and the necessary majority was not obtained, according to rule 56, section 7 of the rules of Civil Procedure, the petition should be dismissed.

La Bugal-B'laan Tribal Association Inc., v Ramos
2004

In January 2004, the court ruled that the FTAA provisions of the Mining Act of 1995 as unconstitutional. By December of the same year, the court reverses its ruling.

Accordingly, "[t]he Constitution should be read in broad, life-giving strokes. It should not be used to strangulate economic growth or to serve narrow, parochial interests"

The court felt compelled to balance interests and after carefully the rights and interests of all concerned, and decided for the greater good of the greatest number."

Mariano Tanenglian vs. Silvestre Lorenzo, et al.,
2008

This case involves two parcels of land registered in the Registry of Deeds of Baguio City both in the name Tanenglian. Respondents espondents Silvestre Lorenzo, et al., members of the Indigenous Cultural Minority of the Cordillera, filed a Petition for Redemption under Sec. 12, Republic Act No. 3844 before the Department of Agrarian Reform Adjudication Board (DARAB) praying that the properties be declared as ancestral land pursuant to Section 9 of Republic Act 6657 (CARL). The Regional Adjudicator declared the properties as part of the ancestral land of the respondents.

It is irrefragable, therefore, that the **Regional Adjudicator overstepped the boundaries of his jurisdiction** when he made a declaration that the subject properties are ancestral lands and proceeded to award the same to the respondents, when **jurisdiction over the delineation and recognition of the same is explicitly conferred on the NCIP.**

Respondents, thus, cannot pray for the Regional Adjudicator to declare petitioner's TCTs null and void, for such would constitute a collateral attack on petitioner's titles which is not allowed under the law.

City Mayor vs Masweng
2010

The NCIP may issue temporary restraining orders and writs of injunction **without any prohibition against the issuance of the writ when the main action is for injunction**. The power to issue temporary restraining orders or writs of injunction allows parties to a dispute over which the NCIP has jurisdiction to seek relief against any action which may cause them grave or irreparable damage or injury.

The low turnout is not surprising. It can even be gleamed as favorable. A phenomenon that is beneficial to both. The untested hypothesis has always been that it is an affirmation of the perception that IJS lives on. A practical proof that justice needs between ICC/IPs are still very served by the current shape and form of their indigenous justice systems and processes. Case load and case management wise this feeds into declogging court dockets in the reverse.[79] So by itself, IJS are effective providers of access to justice—if only for the fact that the conflicts never make it to courts of (state) law.

The study may or may not have missed a Supreme Court decided case. The multi-platform survey to the best of the project's ability and with due diligence tried to be thorough and comprehensive. It appears however that there were only 9 Supreme Court decided cases between 1909-2010 with major implications and repercussions on ICC/IP rights and issues.

Is that all there is to it? Can the access to justice equation be reduced to such, that IJS are well in place in varying degrees and forms, therefore ICC/IPs have no use for the courts of (state) law in their lives? The quote[80] below is well worth pondering on:

> *"If we accept, it will be as if we ever doubted that we belong to the land; or that we question our ancient law… If we accept, it will be recognizing what we have always mistrusted and resisted. If we accept, we will then be honor bound to abide by the decision of that tribunal. Long experience has shown us that the outsiders law in not able to understand us, our customs and our ways. Always, it makes just what is unjust, right what is not right."*
>
> Macli-ing Dulag, famed Kalinga elder
> Explaining their refusal to accept the offer
> of Sen. Jose W. Diokno to file a case against a
> hydroelectric dam project before Philippine courts

[79] When the Justice Reform Support Initiatives Support Project (JURIS) introduced Court Annexed Mediation and Judicial Dispute Resolution, the project's local action research data tracking monitor indicated that courts outside Baguio City where IJS are still in place have low case load. These courts reported high rates of mediated cases that never make it to trial stage as well.

[80] Cited in Leonen, at 42 citing Paragusa, at 92. Also in M. Leonen, Harnessing Creativity: Tentative Notes Towards Progressive Lawyering, Issue Paper, LRC KsK, 6 (1991).

The judiciary and the NJS have structural and systemic problems—issues that impede the poor and marginalized groups' access to justice. The justice needs and state court cases ICC/IPs are just as immune and exposed to these weaknesses. The above statement attributed to Macli-ing Dulag captures the ICC/IP "access to justice". It comes with a particular dimension that involves culture and worldviews. SJS in this instance the courts/judiciary ***co-exists*** with very robust, diverse and struggling to survive IJS. On the ground, plurality exists, whereby disputes and conflict can be governed by various norms, rules and courts/councils.

Philippine case law fares (or fails) in respecting IP rights and indigenous customary law and their jurisdiction.

Palidat, Rubi et al., in Retrospect

Landscape matters, the court pronouncements on certain peoples of uncivilized tribes and of a low order of intelligence, uncultured and uneducated must be contextualized. Fact is, the state policy then strongly favored assimilation of ICC/IPs. The magistrates must have been so convinced that for *Rubi "[s]egregation really constitutes protection for the Manguianes."*

It was the early 1900s. Although the case timeline indicates that *Cariño* was decided first, the *Cariño* decision on native title was not immediately transmitted from the US to the insular government in the Philippine islands. Even if it were, segregation of the non-christian tribes would have been the norm; thereby interpreted as consistent with the equal protection clause.

Fast forward to the 21st century—the tides of change in the indigenous rights movement have long reached Philippines shores. State policy, influenced by global standard setting developments managed to shift from assimilation policies towards self-governance and self-determination. ICC/IPs can now so insist that the right to equality ***can be*** exercised with their right to be different, to consider themselves different, and to be respected as such.

Unfortunately, the paradigm shift is yet to be reflected in case law and legal framework. Nine cases over a hundred years do not over much promise. Be that as it may, the study notes the incremental change and movement.

In terms of language and terminology, out with non-christian tribes and in with in tribal groups[81] and indigenous cultural tribe.[82] The case assailing the

[81] La Bugal B'laan Tribal Association vs. Ramos

constitutionality of IPRA was more forthcoming by readily using indigenous peoples. Then again the court had to – it was after all about IPRA – the indigenous peoples rights act, itself. Over and beyond terms and usage, the source of hope post Cariño in terms of moving towards a more progressive accommodation and respect for IJS and customary law is the case of Pit-og vs People of the Philippines.[83]

> "We see this case as ***exemplifying a clash between a claim of ownership founded on customs and tradition and another such claim supported by written evidence but nonetheless based on the same customs and tradition.*** When a court is beset with this kind of case, it can never be too careful More so in this case, where the accused, an illiterate tribeswoman who cannot be expected to resort to written evidence of ownership, stands to lose her liberty on account of an oversight in the court's appreciation of the evidence. We find, that Erkey Pit-og took the sugarcane and bananas believing them to be her own. That being the case, she could not have had a criminal intent. It is therefore not surprising why her counsel believes that this case is civil and not criminal in nature. WHEREFORE, appellant Erkey Pit-og is hereby ACQUITTED for lack of proof beyond reasonable doubt that she committed the crime of theft." *(emphasis provided)*

There ought to be more decisions that should gradually contribute to a more progressive Philippine jurisprudence in terms of upholding ICC/IP rights. As it is however, MUCH is to be desired.

The rhythm of this chapter along with unnatural pauses and compartmentalized jottings and excerpts is a reflection in itself. Leonen on the same article (see sidebar) contemplates on the fact that in deciding Rubi and Cayat, 'the formal adjudicatory system was simply not ready to expand existing notions of non-discrimination' (Leonen: 2007: 45).

> *Rubi* and *La Bugal* (see sidebar of this page) are eighty five years apart. There is no overlooking the fact that both cases despite the dramatic change in landscape and milieu (between 1919 and 2004) are highly discriminatory. Across the seas in South America, 'Colombian Indians developed a tradition of using the (state) legal system to defend rights and of taking legal petitions to every possible channel of redress of grievances within the state. They have enjoyed numerous successes, blocking or modifying laws detrimental to their interests and defending colonial-era privileges' (Vancott:232:2000).

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[82] City Mayor of Baguio et. al., vs Masweng

[83] G.R. No. 76539 October 11, 1990

The most discriminatory misrepresentation of indigenous populations in the Philippines found judicial expressions in the early case of Rubi v. Provincial Board…

The irony was that the most basic principle on non-discrimination – that no person shall be denied equal protection of the law – was construed to limit the freedoms of significant populations of indigenous groups…

Marvic MVF Leonen
Seeking the Norm: Reflections on Land Rights Policy and Indigenous People Rights

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Discriminatory concepts that pre-date both the IPRA and the 1987 Constitution continue to inform the decisions of the courts and actions of Government agencies. The Supreme Court ruling in La Bugal-B'laan Tribal Association, Inc. v Ramos is illustrative of this. The Supreme Court based its decision on the highly discriminatory argument that sacrificing B'laan Indigenous Peoples' rights, lands and welfare - all characterized as "parochial interests" – for unsubstantiated claims of revenues to be received by the central Government and a mining corporation is acceptable and in the national interest.

Philippines Indigenous Peoples ICERD Shadow Report
A submission made by 14 IPOs **and Support Groups including the** Alternative Law Groups Inc.

Rubi tried that route in the form of an original petition for habeas corpus. *Cayat* tried the same and very rightly so, but both found not an ally nor any redress in the early 20th century judiciary. Fast forward to the 21st century, the court in Cruz vs NCIP and La Bugal could have decided differently and more progressively— but instead:

> "The Constitution should be read in broad, life-giving strokes. It should not be used to strangulate economic growth or to serve narrow, parochial interests."

Justice Puno's while citing Judge Richard Postner on matter might provide some insight:

"Law is the most historically oriented, or if you like the most backward-looking, the most 'past-dependent,' of the professions. It venerates tradition, precedent, pedigree, ritual, custom, ancient practices, ancient texts, archaic terminology, maturity, wisdom, seniority, gerontocracy, and interpretation conceived of as a method of recovering history. It is suspicious of innovation, discontinuities, 'paradigm shifts,' and the energy and brashness of youth. These ingrained attitudes are obstacles to anyone who wants to re-orient law in a more pragmatic direction. But, by the same token, pragmatic jurisprudence must come to terms with history."[84]

[84] Quoting Judge Richard Postner while expounding on classic essay on the utility of history written in 1874 by Friedrich Nietzsche entitled "On the Uses and Disadvantages of History for Life."

PART FIVE

TOWARDS A ROADMAP OR IN LIEU OF IT: *QUO VADIS?*

Now what? This has been the common reaction in the regional workshops once the dilemma is realized. It becomes clearer to IP leaders and elders their "the call for recognition" might have little if no room at all within the justice reform policy arena. It becomes clearer to justice reformers that this is not just a question of translating practical issues to policy formulation. It becomes clearer to advocates that considered attention on the issue is still in order. It becomes clearest to all even more that there is a need to engage despite complexity of the issue. To break the impasse the focus question shifts to what can be done for the time being.

This sounds like a universal prescription, but creating venues for dialogue and cooperation is the key to unlocking the policy and practical dilemmas of legal pluralism.

LONG TERM **SHORT TERM**

AUTONOMOUS JURISDICTION	EXPANDED JURISDICTION	SHORT TERM
[1] ICC/IPs [2] IP Rights Advocates, Support Groups and Human Rights Organizations and [3] Justice Reformers – (Judiciary/Donor Agencies)		
Autonomous indigenous governance Total or holistic understanding of the Indigenous Justice system.	Encourage local government support like that of Kalinga's justice of the peace fund for the elders and leaders Community Justice Officers	Strengthen IJS, by means of massive cultural awareness – from the lawmakers, the executive officials, etc.
	State support for local efforts to traditional leadership training systems Access to Justice or JLR programmes support initiatives that can facilitate dialogues that attempts to break all stakeholders involved out of their 'comfort zones' and short hand versions of the ways we view NSOs and NSLOs/IJS? In the process create opportunities for insight and growth.	Testing the possibilities and limits of "Judicial Rules" on TJG. Caveat: "it is NOT possible, on a national scale to generalize the content of specific policy corresponding to unique communities of specific ethno-linguistic groups. It is only within specific communities that it is possible to understand their existing legal systems and also the process thourhg which these systems change" (ed:Gatmaytan: 2007)
	Create settings to engage the overlapping legal worlds.	Work towards the development of area and culture specific rules in application.

[1] The HR vis a vis Multiculturalism Issue

By design this research project focuses more on understanding the dynamics of IJS and FJS. Inevitably though, the questions surfaces particularly amongst the internal discussions within the ALGs.

As it unfolded the issue of HR was dealt with separately. Methodologically, focus questions did not include questions on HR and perceived HRV on many IJS punishments and practices in the earlier stages of the research. The ALGs as facilitators and participants to the inquiry kept its gender and human rights lens on, saving issues and questions that had to be dealt with for the concluding and validation workshop.

During the National Discussion Session Workshop in November, one ALG participant raised his concern on the human rights aspect of customary law. It was immediately and directly addressed by one of the workshops key informants explaining that "we have a separate process and procedures for non-IPs." She emphasized the relative value of judgment.

A prominent anthropology professor suggested that it could be a two - step process. *First*, address the need of ensuring that the State and non-IPs support groups recognize and respect that IJS forms part of IP rights and RSD as distinct peoples. *Second* and only then can it be forwarded to the larger human rights framework.

Accordingly, "that is when you are now becoming a community of human rights based "organizations". Emphasizing further that any exploration on recognition of IJS should be mindful of the fact that; "prior hard won IP rights should not be diluted in the process."

Still, while at the height of discussions within the ALG, an advocate from PLRC made it very clear that our inquiry and research on indigenous customary law cannot continuously dance around the issue of human rights, particularly gender issues. The discussions narrowly managed not to fall into the trap of the cyclical debate on cultural relativism and human rights.

Literature on the framework of intersectionality[85] helped inform the inquiry as participants and facilitators alike grappled with the issue.[86] In the third and last

85

'search' book presentation and round table discussion, seasoned IP advocates strongly suggested that that continuing discussions on "recognizing customary law," gender justice issues and human rights can and should go hand in hand.

The most comprehensive inquiry on human rights, state and non-state law to date explored the dilemma at all fronts. A chapter for instance is dedicated solely on human rights and plural legal orders and:

> "It highlights the complexities and challenges that legal plurality, and the demand for it, poses to human rights principles, practice, mechanisms and instruments. It discusses some of the most relevant standards set out in human rights instruments and their interpretation by human rights bodies. It then underscores some major concerns with respect to legal plurality: focusing on the fragmented and uncoordinated development of standards; and the problem of 'balancing' rights, especially sex equality and religious freedom. In addition, it also points to the problem of addressing human rights concerns that arise due to the structure of plural legal orders; the human rights system's difficulties in speaking about culture; and, the lack of substantive clarity and direction in standard-setting" *Emphasis supplied* (27: 2009).
>
> The International Council on Human Rights Policy study noted further that "[a] constructive understanding of the relationship between human rights and culture is advanced by recognising the various ways in which universal general principles of human rights have been appropriated in local struggles for justice through application in particular circumstances and contexts (26:2009)."

This we propose is where subsequent initiatives or dialogues may take off. With the 2007 UN Declaration of the Rights of Indigenous Peoples, the Indigenous Peoples Rights Act, proposed house bills pushing for the creation of tribal courts and this study – ensuing policy discussion on the matter might just be ripe for stepping up and be ready for the question of human rights.

The ICHRP included recommendatory list dubbed as "Guiding Principles for Human Rights Advocates."

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[86] The concept of intersectionality was introduced by Crenshaw for dealing with the specific problems of black women in the USA, whose position was different from that of other women or black men (Crenshaw 1994). The intersections of different identities determine the social position and power of each person, which can be an advantage or disadvantage in given situations (Wekker 2002).

Some Guiding Principles for Human Rights Advocates

These principles represent the most important points that human rights advocates need to bear in mind when they engage with plural legal orders. They are also at the core of the framework for advocacy and policy presented later in the chapter.

Start from the perspective of those who experience inter and intragroup discrimination, and the need to redress this and analyse the role of state and non-state actors at the level of family and community, as well as at national, regional and international levels.

Plural legal orders are neither intrinsically good nor bad for human rights – use a power lens to examine the processes behind their development, content and structure, and human rights implications.

Adopt a comprehensive contextual approach to analysis taking into account historical as well as current social, economic and political factors.

The benefits and disadvantages of state and non-state legal orders need to be questioned and supported by quantitative and qualitative empirical evidence.

Discussion of, and decisions about, how best to promote and protect rights in relation to plural legal orders involves moral and political preferences. All those involved – including human rights advocates – must be reflexive and transparent about these preferences.

Despite limitations, international human rights standards offer useful tools for policy and advocacy, especially when advocates can apply universal standards
meaningfully to their local contexts.

People are bearers of both rights and culture – transcend the apparent problem of 'balancing' rights by: a) adopting an intersectional approach to identity; b) seeing culture, custom, tradition and religion as changing, internally diverse and contested; and, c) using a situated analysis that regards rights-holders as simultaneously individuals and members of multiple collectives.

As the study summed up, the research team reflected on the prescribed guiding principles. The list coming from a global inquiry on the issue helped contextualize the issues further. Moving forward, of the seven ideas listed, as per discussions and ranking the points are likely to be most applicable and helpful in Philippine experience and jurisdiction:

LAST ON THE LIST 1ST	People are bearers of both rights and culture – transcend the apparent problem of 'balancing' rights by: a) adopting an intersectional approach to identity; b) seeing culture, custom, tradition and religion as changing, internally diverse and contested; and, c) using a situated analysis that regards rights-holders as simultaneously individuals and members of multiple collectives.
FIRST ON THE LIST **2ND**	Start from the perspective of those who experience inter and intragroup discrimination, and the need to redress this and analyse the role of state and non-state actors at the level of family and community, as well as at national, regional and international levels.
SECOND ON THE LIST **3RD**	Plural legal orders are neither intrinsically good nor bad for human rights – use a power lens to examine the processes behind their development, content and structure, and human rights implications.
FOURTH ON THE LIST **4TH**	Adopt a comprehensive contextual approach to analysis taking into account historical as well as current social, economic and political factors.
SIXTH ON THE LIST **5TH**	Discussion of, and decisions about, how best to promote and protect rights in relation to plural legal orders involves moral and political preferences. All those involved – including human rights advocates – must be reflexive and transparent about these preferences.

[2] Strengthening of IJS/NSLOs

The discussions likewise forced IP participants to confront the fact that that rate of customary law extinction is disturbingly more rapid than the rate of the state and its instrumentalities capacity to accommodate plurality. That being the case, a couple of IP leaders consulted raised the urgency of putting emphasis on the value of internally consolidating and strengthening IP governance and justice systems.

The matrix below is list short term to long term suggestions gathered that elaborates further on ways that the ICC/IPs on their own and in their respective communities can strengthen IJS:

LONG TERM		SHORT TERM
Proactively develop and strengthen traditional leadership training systems.	Continued use and assertion of the processes and the system.	Develop traditional leadership training systems Ensure that the custom, traditions and the justice processes and mechanisms are effectively passed onto the younger generation. In areas where IJS is weakest: Start by asserting primary jurisdiction as provided by IPRA/BJS.

Without abandoning the "call for recognition"; IP elders and leaders exchanged ideas on how they can internally ensure survival of their justice systems and processes. Their animated discussions also generated immediately doable and practical actions points. The exchanges in the Island Group while under the topic of strengthening (internal and external) heavily reflected on the state of IJS in their communities. The Mindanao leg had vibrant discussion on cultural revival. A participant in Baguio may have captured it best when it put forward that:

> "when we always wait or demand for recognition that may never come. But there is already recognition in the Constitution, but we are saying that that is not enough. What will fill in the gaps would be our assertion - our assertion that these are our traditional and customary practices, and that we keep on doing it, and that we keep on developing it."

No draft rules, none just yet but who knows, maybe not ever. If the generations of lawyers who read the cases or digests of *Rubi* and *Cayat* start revisiting the case, then the legal world just made one step towards the right direction.

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CASE STUDIES

ARAKAN, COTABATO:

The Manobo-Tinananon Conflict Resolution Process & Justice System

A. The Study Site

Arakan is a third class, upland municipality in the province of Cotabato (formerly North Cotabato). It is one of the 5 municipalities that comprise the Arakan Valley. Located some 55 kilometers or a 3-hour winding and bumpy ride away from Kidapawan City, the province's capital city, Arakan is home to several groups of indigenous peoples, predominantly the Manobo-Tinananom and Manobo-Kulamanon. Other groups found in valley are Matigsalog, Aromanon, Teduray, Ubo, Ilonngo, Cebuano and Muslim.

The word Arakan is a combination of the Manobo term "ara," which means abundance of natural resources, and another Manobo term "kan," which refer to the heroism, bravery and valor of the early Manobo leaders and settlers in the area. Arakan also refers to a big river in the valley. The municipality is divided into 28 barangays. Its population of 34,500 in 2000 thrives on agriculture (crop production, poultry and livestock, and fish production).

1. The Tinananon Manobo Tribe

The Tinananom Manobo, comprising 40 percent of the total population of the municipality and 80 percent of the total population of the valley, is a sub-tribe of the Manobo ethno-linguistic group.
The name Manobo is the Hispanic version of Manuvo which means "person" or "people." The Manobo belongs to the original stock of proto-Philippine or proto- Austronesian people. They came from South China thousands of years ago, earlier than the Ifugao and other terrace-building peoples of the northern Luzon.

The upland Manobo practices swidden or slash-burn farming whereas those inhabiting the valleys, such as the Manobo-Tinananon, practices wet-rice farming. Rice culture is central to the Manobo way of life that there are more than 60 different names for rice varieties, and all agricultural rituals center around it. In Arakan, 10 of its 28 barangays are major producers of irrigated rice, rain fed rice, and upland rice. But during the last 8 years, the municipality's rice production had been wavering prompting many to shift to corn production

2. Ancestral Territory

The Manobo-Tinananon people claim the whole of Arakan Valley as their ancestral domain. They have filed for titling but their CADT has yet to be granted.

3. Level of Assimilation to Modernity

In Arakan municipality, there is an elementary school in each barangay. Also, there are 4 high schools located in the Poblacion and other strategic barangays, and a college – the Cotabato Foundation College and Technology (CFCT) located in barangay Doroluman. Literacy level is low. According to tribal leaders, roughly 10 percent only of the municipality's population has attended elementary and reached high school. Some 5 percent reached and finished college. The whole valley is highly accessible by land travel. Buses, vans, jeepneys and motorbikes regularly ply the Arakan-Kidapawan route. Other modes of transportation
are trucks for goods and commodities. In far-flung barangays, horses and carabaos are used to transport people and goods. Radio ownership is high with almost all households even in the remotest barangays
owning one. Access to cable television is high only in the town centers and barangays along the main highway.

B. Concept of Justice, Retribution and Penalty

To the Tinananon Manobo tribe, justice means *kalinaw* or peace and unity. There is peace if harmonious relations exist between and among members of the tribe. Moreover, tribe members happily and openly relating with each other easily bond together and unite for their common good. Peace and harmony, however, are disturbed if tribe members run in conflict with each other or with persons not belonging to the tribe. Not only conflicts affect relationships between conflicting persons and their families, they also disturb in different ways other members of the tribe.

Peace, harmony and unity in the community can thus be restored if conflicts involving tribe members are immediately settled and conflicting parties find the settlement process and outcome acceptable and satisfying. To ensure that contending parties are satisfied by the process and outcome of conflict resolutions, the indigenous conflict resolution mechanism observed and practiced by the tribe since time immemorial is described by its leaders as communal and consultative. It is communal because the whole resolution process is not limited to conflicting parties and the mediators; it is open to participation and observation by other members of the tribe. It is consultative because the resolution process involves a series of meetings and discussions among mediators, conflicting parties, tribal elders and tribal leaders before
decisions or judgments are reached. In addition, the resolution process provides for negotiations of penalties and other agreements between conflicting parties or litigants.

C. Elements of Indigenous Justice System

1. Justice Administration – the conflict resolution process

The tribe calls its indigenous conflict resolution process *kukuman*. Traditionally, settlement of both petty and serious crimes involves the following steps: first, each party chooses a datu to represent him/her in the conflict resolution process. Second, representatives convene the tribal council to establish the offense and to discuss appropriate penalties. If the accused initially denies the offense, a traditional procedure of determining the guilty party is imposed. The procedure requires dipping of hands of the accused and other suspects, if there are any, into a pot of boiling water. The person whose hands get scalded is declared guilty of the offense.

If a case is not resolved in this level, it is forwarded to the *Panolihan*, the "right-hand" of the supreme datu. Discussions and negotiations proceed. If the case remains unresolved in this level, it is raised to the supreme datu who gives the final judgment on the case. With the barangay system and the BJS in place, the tribe has set in motion certain modifications

in the process. The process still starts with each party choosing its representative or spokesperson. It proceeds with the two spokespersons along with the respective family of the conflicting parties establishing the offense or crime. Once the offense or crime is established, they discuss and negotiate on the penalties. Dipping of hands of the accused and/or suspects into a boiling pot of water is not widely practiced anymore. Accused or suspects choose to admit to the crime than go through the agony and embarrassment of scalding his/her hands.

After the crime has been established but negotiations for penalty fail in this level, the case is elevated to the barangay-level datu (*buyyahon*). If the case remains unresolved in this second level, the case is referred to the municipal/provincial level datu (*longngahon*) or supreme datu (*lipatuan*) where final resolution rests. At each level, an assistant datu (*panolihan*), who can either be a female or a male, leads in the settlement or negotiation process.

When a non-tribe member is involved in a case, the complainant decides where to bring the case for settlement. Tribe members always prefer to bring the case to the tribal court for settlement. Cases of land dispute brought to the BJS or to the Department of Agrarian Reform (DAR) for settlement, usually by the non-tribe member involved in the case, are sent back to the tribal court for application of customary law.

The conduct of weddings has been modified. While weddings continue to be officiated by the supreme datu, as traditionally practiced, they are now registered with the Local Registry office. The supreme datu has sought from government the authority to act as solemnizing officer of weddings in the tribe. This practice was observed since the implementation of the Family Code in 1988.

2. Participants in Conflict Resolution Process

Like in the past, the resolution process remains open and participatory. Aside from the mediators and family members of the conflicting parties, the mediation process is also open to all members of the tribe.

3. Venue of Conflict Resolution Process

As traditionally observed, all mediation sessions take place in the *balay datu* or tribal hall.

D. Interface with State Laws and Policies

1. Aspects Interfaced

To Datu Veloso Suhat, Supreme Datu of Arakan municipality, it was the BJS that borrowed and adopted "mediation" from the indigenous conflict resolution systems of all indigenous peoples in the country, and probably in the whole world. For its part, the tribe has adopted recording and reporting of cases, an aspect of the BJS. It has also complied with the state's requirement of registering weddings and births with
appropriate government agencies. To make all weddings legally binding, the supreme datu sought permission from the state to act as authorized solemnizing officer in the tribe. As authorized solemnizing officer, he is tasked with ensuring that all legal and documentary requirements of the state for weddings are satisfied.

2. Problems and Limitations of Interface

Like elsewhere in the country, the *Lupon* in every barangay within the Arakan Valley is composed if not dominated by migrant lowlanders who are usually prejudiced to indigenous peoples like the Tinananon Manobo. To ensure that cases involving tribe members brought to them are fairly handled and resolved, the tribe pushes for its representation in all *Lupon* in the valley

3. Recommendations

The tribe calls on government agencies as well as NGOs to recognize and respect its customary law and indigenous justice system. It strongly prefers the use of its indigenous justice system and application of customary laws in conflict resolutions not only on cases involving tribe members as contenders but also on cases involving a non-tribe member as a contender.

To promote an understanding of its customary law and indigenous justice system among tribe members and the general public, the tribe considers the following activities as essential:

1. Information and education campaign – development and dissemination of print and broadcast materials;
2. Cultural leadership training – inclusion in its module a review and discussion of customary law and indigenous justice system;

3. School for living traditions – inclusion in its curriculum a discussion of customary law and indigenous justice system;

4. IP Day Care Center – introduction of the customary law and indigenous justice system to young Manobo children; and

5. Formal school curriculum – discussion of customary law and indigenous justice system in appropriate subjects.

E. State of Indigenous Justice System

1. Strengths and Weaknesses

The tribe's indigenous justice system remains intact and continues to be favored by all tribe members because it is swift (resolution is achieved within 7 to 15 days), inexpensive (does not require money for filing and settlement of conflicts) and fair to them (*wala daya)* as compared to the state justice system which requires money to file a case, hire the services of a lawyer and attend court hearings, and takes years to obtain a court decision or ruling.

On top of the promotion of the customary law and indigenous justice system is the Manobo Lumadnong Pinaghiusa sa Arakan Valley, Inc. (MALUPA), the organization representing the whole tribe. In addition, there is a women's organization and a youth organization that address the concerns and problems of tribal women and youth, respectively. These organizations work for the strengthening, preservation and promotion of the tribe's cultural integrity (ancestral domain, tribe and indigenous
systems).
If the tribe's indigenous justice system has any weakness, according to tribal leaders, it is the practice of passing on to the datu representing the offender the obligation to temporarily assume payment of the penalty if the offender is unable to do so. Tribal leaders find this practice very challenging as they sometimes do not have the resources to assume albeit temporarily payment of penalties. Tribal leaders, however, help each other. When a particular datu is incapable of assuming the penalties because he himself is broke, other datu in the place help raise the amount needed to pay the penalty.

2. Challenges

External influences or factors that weaken the tribe's culture serve as a major threat to its customary law and indigenous justice system:

a. Political factor - local politics entice some datu to run and get elected as barangay captain or councilor. Once elected, customary law and other cultural practices get compromised as their attention and loyalty is divided between formal and traditional politics;

b. Religious factor - refers to the increasing conversion of datu to pastors or religious leaders and of tribe members to religious followers. This contribute to the erosion of cultural beliefs and practices; and

c. Socio-economic factors – refer to the proliferation of NGO-initiated livelihood programs that destroy the natural resources in its ancestral domain, and the increasing number of tribal youth that migrate to urban centers either to attend formal, mainstream education or to find jobs.

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BAKUN, BENGUET:
The Kankanaey-Bago Conflict Resolution Process & Justice System

A. The Study Site

Bakun is a municipality in the mountainous province of Benguet in northern Philippines. Itis inhabited by the Kankanaey and Bago peoples. It is the first indigenous community in thecountry to be awarded a Certificate of Ancestral Domain Title (CADT) by the government.

The CADT gave the tribe an official title to its ancestral domain (The Municipality of Bakun,Benguet, 2008; The Benguet Province, 2008; ILO 2005, 41).Bakun, which officially became a municipality in 1963, lies on the northern part of theBenguet province. It is 336 kilometers or eight (8) to 10 hours drive from Manila. It can be
accessed from Sinipsip (Km 71) of the Halsema Highway, Acop Tollgate via Kapangan andKibungan, or Colliding in Madaymen, Kibungan. Composed of seven (7) barangays, namely,Ampusongan, Bagu, Dalipey, Gambang, Kayapa, Poblacion and Sinacbat, it has an area of29,444.34 hectares and is populated by 17,000 Kankanaey and Bago peoples who mostly relyon agriculture for a living (ILO 2005).

The indigenous folks of this municipality are known for their strong adherence to their indigenous justice system called *tongtong* in resolving disputes. Despite the existence of Barangay Justice System (BJS) and despite all influences of the modern culture, they continue to resort to *tongtong* in settling conflicts, dispensing justice and ultimately restoring peace and harmony in the community.

1. The Kankanaeys and Bago People

The Kankan aeys and the Bago peoples are the main inhabitants of the place. The Kankanaeys, who comprise the majority of the inhabitants, is one of the major ethnic groups in the Cordilleras. They are also found in other municipalities of Benguet such as Mankayan, Buguias, Kapangan and Kibungan, and in municipalities in western
Mountain Province such as Bauko, Besao, Sagada and Tadian (NCIP, 2008). Their ancestors settled in Bakun because they found the place viable for rice farming. They introduced stonewalling or terracing, an indigenous technology that controls soil erosion on rice fields built along the slopes of mountains (The Municipality of Bakun, 2008).

The Bago people is an ethnic group that is a product of intermarriage between lowland Ilocanos and any of the different indigenous groups of the Cordillera. Unlike the Kankanaeys who have shorter body built, they are of medium built but some resemble the Kankanaeys having fair complexion and sturdy built. Being of Ilocano descent, they practice simple agricultural methods and produce Ilocos cash crops such as tobacco, garlic and onion (NCIP, 2008).

2. Ancestral Territory

The ancestral territory of the Kankanaey-Bago or the CADT boundaries nearly coincide with those of the local government unit's (The Benguet Province, 2008). Of the municipality's

total land area, 51 percent is forest land (timberland, industrial lands, rivers and creeks), 41 percent is being utilized for agriculture (production of temperate
vegetables, sweet potato and rice), 7.5 percent comprises pasture land while the remaining 0.47 percent is occupied by government and religious institutions (The Municipality of Bakun, Benguet, 2008). The whole territory or municipality boasts of a generally pleasant weather -- pleasantly cool in the higher areas where heat is only felt during noon times. Pine trees and other highland vegetations cover the hills, mountainsides and mountaintops. Lowland woods dominate the lower elevations (ibid).

3. Assimilation to Modernity

The *tongtong* now faces extinction as Bakun residents increasingly gets acculturated to the mainstream society. Particularly in barangays Ampusongan and Dalipey, where the *tongtong* has been interfaced with the BJS, residents tend to look at the *tongtong* as backward (ILO 2005, 47). Alongside this changing notion on the *tongtong* is an increasing access to formal education, exposure to new information through the mass media, and growing access to urban centers by Bakun residents.

Bakun residents increasingly gain access to formal education with all seven (7) barangays each having an elementary school, and with two (2) high schools in the municipality. Presently, according to tribal leaders, roughly 55 percent of Bakun's entire population has earned some elementary and high school education, and 30 percent has earned some college education or has finished diploma or college courses. The remaining 15 percent consists of the elderly who have not gained any formal education at all.

Exposure to new information through the mass media is also escalating. Television ownership or television viewing continues to expand among those residing in the town center and those who get to travel to urban center. Radio ownership is high even among those residing in the more remote areas. Meanwhile, those from the town center also have access to local and national newspapers. Nestled on top of a range of mountains and hills, Bakun's terrain is rugged but the place is accessible. A bus plies the Poblacion-Halsema Highway route once in a day. Halsema Highway is the residents' gateway to the world outside Bakun. Those who are unable to catch the bus hitch-hike with privately owned vehicles that regularly travel from and to Bakun.

1. Concept of Justice, Retribution and Penalty

The main goal of the *tongtong* is to restore harmonious community relations. This goal is declared in both the opening and closing *petik* or prayer. The opening *petik* asks the heavenly spirits to guide the conscience and hearts of the contending parties and the mediators so the truth may come out and the conflict may be appropriately resolved. The closing *petik*, which is delivered after a decision has been reached, asks the heavenly spirits to bless and seal the resolution process with renewed harmonious community relations. Even in their Christianized version, the opening and closing prayers ask for the restoration of harmonious relationships between contending parties, for them to become brothers and sisters once again so peace and harmony in the community will return.

For the Kankanaey-Bago people, the community is an extension of the family. If there is no peace and harmony within a family or between families, there can be no peace and harmony in the whole community as relatives, neighbors, friends and others can be affected by the conflict in one way or another. For this reason, tribal mediators or arbiters called the *Papongoan* exert utmost efforts to settle disputes in the community within the shortest time possible so peace and harmony in the community will be immediately restored.

Considering the goal of the *tongtong* – to restore harmonious community relations, justice for this people is thus reflected in two conditions 1) satisfaction by contending parties over

the decision and agreements reached by the resolution process, and 2) restoration of peace and harmony in the community. Justice, therefore, is achieved in two stages. It is initially and partially attained when contending parties are satisfied with the decision and agreements reached during the *tongtong*. It is finally and totally achieved when harmonious community relations completely return.

Initial and partial justice is achieved after contending parties have negotiated and agreed on the penalties. As a general rule, penalty for the offender is determined based on the value of what was "lost" or "destroyed" by the offense. The value is expressed in terms of property (animal, etc.) or money. Moreover, both the offender and offended are jointly penalized for having disturbed or taken the time of all those who were involved in the *tongtong* process. They are asked to jointly spend for the concluding feast or banquet that signals the restoration of peace and harmony in the community.

Everyone who partakes on the food served on the feast serves as witness to the resolution of the conflict. Taking part in the feast is tantamount to signing a document as witness to a contract or agreement.

Part of attaining total justice is not keeping a record of the wrong doing or ill feelings in the hearts of the contending parties. The closing *petik* is thus a cleansing ritual that aims to erase all hard feelings and misfortunes. An additional ritual called *sabosab* is performed where an additional chicken is killed and sacrificed to cleanse unpleasant remarks uttered during the *tongtong*. The Kankanaey-Bago people believe that once all hard feelings and misfortunes are cleansed, stability and prosperity reigns as both parties resume normal relations. Prosperity or blessings come in the form of abundant harvests, productive livestock, good health and long lives (ILO 2005, 45).

C. Elements of Indigenous Justice System

1. Nature of Crimes/Offenses and Penalty System

Present use of *tongtong* in administering justice covers all aspects of behavior – from marriage problem and land disputes to petty theft, physical assault, rape and murder (ILO 2005, 43). Leaders of the Bakun Indigenous Tribes Organizations (BITO), however, revealed that land disputes were non-existent in the past. They are conflicts that surfaced along with the entry of business companies and intrusion of lowlanders with vested interests on the land and other natural resources of the place. Although not a very common one, rape is also a recent problem. Only one (1) case was ever encountered, which happened in 2001. Nonetheless, these new offenses are being settled through the *tongtong* because the Kankanaey-Bago people do not want to put on record, as the Barangay Justice System requires, any offense committed by any of its member.

Penalties are initially determined by the *Papangoan*, the arbiters for a dispute. Penalties now can either be in kind (animals, etc.) or in cash. But in the olden days, penalties were always in kind. that the offender will give the offended. If deemed unacceptable by any The *Papangoan*, based on the nature and degree of the offense, decides on the type (chicken, hog or cattle) and number of animals of the contending parties, negotiations or bargaining ensue until both parties agree on an acceptable penalty or a just compensation. Part of the negotiation is whether to convert the penalty into cash.

As also discussed earlier, both parties are penalized for all the disruptions they have caused on everyone involved in the *tongtong* process. The penalty comes in the form of feeding all participants and observers in the *tongtong* process. Both parties provide meals during the hearing of the case which means slaughtering and cooking several chicken, a pig or a cow depending on the number of people gathering for the *tongtong* and the severity of the offense or crime (ILO 2005, 45). Moreover, they also assume the food for the feast during the concluding ritual of the *tongtong*.

2. Justice Administration – the Conflict Resolution Process

The *tongtong* process has changed over the years, particularly when the BJS was enforced. When before the enforcement of the BJS contending parties for a dispute go directly to the *tongtongan* or community court to register their complaint, contending parties today have to register or file their complaint first to the chairperson of the *Lupong Tagapamayapa* (*lupon*) in their barangay. After filing the complaint, they are asked to choose which process they prefer to use in resolving their dispute: *lupon* or *tongtong*? Almost always, contending parties, regardless of their social status, choose the *tongtong* except in cases of boundary disputes where they prefer the BJS.

Traditionally and as it is observed now, the *tongtong* is opened through a prayer or *petik* led by an elder or one of the *Papangoan*. Offering a drop of *tapuey,* the traditional rice wine in the place, the elder chants the *petik* that asks the heavenly spirits to guide the conscience and the hearts of the contending parties so the truth may come out. Over the years, particularly after the introduction of Christianity in the community, this opening ritual has undergone some changes. In the past, the prayer was led by a senior member of the council of elders, who can either be a male or a female. Now, it is jointly led by a senior member of the council of elders and representatives of the various religious groups attending the *tongtong*. The *petik* now is carried out with an invocation of the traditional prayer by a senior elder, and a Christian prayer led by representatives of religious groups.

Traditionally, a drop of *tapuey* or traditional rice wine is offered to the spirits as an elder intones the opening *petik*. The wine offering remains in place but the kind of wine offered has changed. Because *tapuey* is rarely produced in Bakun now, it has been replaced with cassava wine or the commercial gin. In barangays where liquor is banned in public places, *coke* is used.

After the prayer, an elder starts the case presentation either by providing a background of the case or by immediately calling the complaining party to present its case. A complainant who cannot speak for him or herself is allowed to appoint a relative to explain the complaint. The other party is then called to argue, deny or admit the
complaint. Both parties can argue freely. Any of the elders mediating the case can speak out anytime there is a need to guide or direct the arguments. Observers may speak up but only after being recognized by any of the mediators (ILO 205, 44).

After both parties have presented their arguments, a mediator calls for a break so the council can discuss with representatives from both parties and arrive at a joint decision. Decisions are always unanimous. Once a decision is reached, the group is again convened and an elder announces the verdict. When both parties have accepted the decision, the next part is deciding on the penalty. This next phase is still participatory. Contending parties bargain until an agreeable term is reached. Only at this point can the process be put to rest (ibid.).

Traditionally, part of the *tongtong* is a ritual called *ibayos* or *tigian*. This ritual is performed when the alleged offender denies the charge against him or other persons are considered as suspects. It involves boiling some amount of water in a clay pot with some silver coins in it. As the water boils, each suspect is asked to put their bare hands into the pot and pick up the coins inside it. The one whose hands get scalded is regarded as the offender. Having been Christianized, the tribe has stopped performing this ritual as it is barbaric.

A closing *petik* is, thus, carried out. An elder chants a closing prayer that asks the spirits to restore harmonious community relations, which can only be done if contending parties remove all hard feelings in their hearts so that stability and prosperity reigns as they

resume normal lives. It is for this reason that the closing *petik* is considered a cleansing ritual (ILO 2005, 45).

3. Participants in Conflict Resolution

The *tongtong* process is consensus-based and participatory. The contending parties come to the venue with their families and relatives. Members of the council of elders, usually old men and women, also called the *Papangoan*, serve as arbiters or mediators in the resolution of disputes. The general public can observe and participate in the resolution of a case. Every elder (man or woman) who joins in the discussion is expected to help out in the interpretation of applicable customary laws of the tribe.

Currently, participation is no longer as big in the past when almost everyone in the community takes part in the resolution process. Nowadays, a *tongtong* is carried out even with only five (5) participants.

4. Venue of Conflict Resolution

In the past, the venue for *tongtong* is an open space where the hearing and resolution process is in full view of the main participants and the general public. With the advent of barangay halls or government structures, the *tongtong* is now held in these places. For barangays that do not have a government house, the *tongtong* continues to be held in an open space.

Also in the past, the *tongtong* is held at sunset. Now it is held during office hours when participation is limited to the contenders and the mediators. Children and other young ones, the bearers of the Kankanaey-Bago culture, no longer witness the conduct of this important aspect of their culture.

D. Interface with State Laws and Policies

1. Aspects Interfaced

During the early part of the BJS implementation, some of those appointed as members of the *lupon* were elders. These elders, however, felt uncomfortable with such designation because they were stripped of the voice of a moralist that they assume when they act as mediators in the *tongtong* process.

Conversely, *lupon* members participate in the *tongtong* as representatives of the BJS. Sometimes a *lupon* member presides over the *tongtong* and count the resolution process as an accomplishment of the *lupon*. This created confusion and discomfort between *lupon* members and members of the council of elders. The situation was addressed by instituting a process that is now being observed, that is, every complainant is required to register or file his/her case to the *lupon*. After which, the complainant is asked to choose between BJS and *tongtong* in resolving his/her case.

Of the complaints filed to the *lupon* in 2007, 50 percent was settled in the *tongtong*. The other 50 percent settled through the BJS consisted mainly of boundary dispute cases. Even the lone rape case in 2001 was successfully settled using *tongtong.* Some boundary dispute cases were first resolved through the *tongtong.* But with instigations or influences from certain parties, some complainants found the *tongtong* verdict unacceptable prompting them to elevate their case to the BJS.

Up to this day, conflicts resolved using *tongtong* remains undocumented. Many prefer this indigenous process primarily because of its oral nature. Documentation smears the reputation or affects the social standing of contending parties and the stigma that comes with it is passed on to the next of their kin. *Tongtong* proceedings are erased or cleansed through the *sabosab* ritual.

Two of the seven barangays, namely, Ampusongan and Dalipey, have reportedly interfaced the *tongtong* with the BJS and the Local Government Code. Invoking Section 412 of the Local Government Code, barangay Ampusongan created what it called the Indigenous Council of Elders in 1999 (ILO 2005, 46) and filed a resolution to the formal court asking it to officially recognize them as mediators and that any decision they reached using the *tongtong* process shall be considered as official and final. Such resolution was upheld by the municipal government. As a result, other barangays plan to follow the same action.

The Indigenous Council of Elders performs or observes the following rules, procedure, roles and responsibilities (ibid.):

a. Complainants file complaints to the office of the Punong Barangay and pay a P500 filing fee to the Barangay Treasurer;
b. The Barangay Councilor assigned in the *sitios* where the contenders reside is required to be present during the resolution of the dispute;
c. Transmit the attested copy of settlement to the Punong Barangay within 10 days so the latter can report the case to the Municipal Trial Court. The attested settlement shall have the same force and effect as settlement arrived at through the Katarungang Pambarangay procedures 10 days
d. after the Punong Barangay receives the attested copy of settlement;
e. If the case is not repudiated, the Punong Barangay forwards the case to the Municipal Trial Court with the attested settlement and agreement; Residents of barangays Ampusongan and Dalipey are reportedly more acculturated with mainstream society and thus, tend to look at *tongtong* as backward. They, however, do not totally resort to the formal courts primarily because they cannot afford the costs involved in filing cases in the court. On the part of the *lupon*, they find the BJS procedures, particularly documentation work, too complicated for them to follow as most of them are either elementary graduates or illiterate. They also find the *lupon* procedures too legalistic for the community members to understand. For these reasons, the two barangays decided to "marry" the *tontong* and the BJS (ibid.).

Interfacing the *tongtong* and the BJS allowed community members to continue to participate in resolving conflicts, particularly the willing moralists. Most important to them is that documentation of the settlement process remains optional. Parties to the agreement can choose not to have the settlement of their case documented so that no record or proof of the wrongdoing exists. As earlier discussed, any record of a wrongdoing is a stigma that will forever be attached to the family of the offender.

In the other five barangays, where no interface has taken place, a modification in the *tongtong* process is now in place. After each conflict is resolved, the offender is asked to sign an agreement promising not to repeat the offense. On the second time the offense is repeated, the offender is asked to sign once more to sign the same agreement. On the third time the offense happens, the case is brought to BJS or to the MTC.

2. Problems and Limitations of the Interface

Earlier attempts to interface certain aspects of the *tongtong* and the BJS -- that of appointing elders to the *lupon* and allowing a *lupon* member to preside over a *tongtong* process, resulted in discontent and confusion. The two systems, hence, was left to stand and operate as they should. Thus, came out the current practice of asking complainants to choose between *tongtong* and BJS as the process they want to be used in the resolution of their case.

In barangays Ampusongan and Dalipey, where an interface has occurred, the "marriage" of *tongtong* the BJS has served their constituents well. The only difficulty the *lupon* has to grapple with is the documentation requirement of the BJS. *Lupon* members find it hard to express their decisions in English and this limitation hinders them from articulating the very essence and substance of their decision.

3. Recommendations

To the leaders of BITO, the *tongtong* should officially be declared as the first step in conflict resolutions. It should not be offered as an option but a mandatory first-step in all conflict resolutions. It must cover all cases, from petty to serious offenses including murder and rape.

Fausto Maliones, BITO Secretary, however, expressed reservation on the use of *tongtong* in handling rape cases, especially those involving minors. To him, such cases must automatically be handled by the formal courts because of the severity of the offense. When asked whether Bakun has encountered such a case, he answered negatively.

For the *lupon* to be effective in performing its role and tasks, they also recommended that *lupon* members be made to undergo more in-depth training on the BJS process. They observed that *lupon* members who are not well-trained on the BJS process are sometimes not fair in their judgment and decisions. Lack of appropriate skills may obstruct the attainment of justice.

They also asked that the BJS process be made culture-based or culture-sensitive.

E. State of Indigenous Justice System

1. Strengths and Weaknesses

Until at present, the Kankanaey-Bago people continue to prefer the *tongtong* in obtaining justice. This strong preference for the *tongtong* is reflected in the kind of interface barangays Ampusongan and Dalipey have put in place. The interface has adopted more features or aspects of the *tongtong*. Documentation of the settlement process, which is even optional, is the only BJS feature that figure prominently in the interface.

The Kankanaey-Bago people continue to prefer *tongtong* over the BJS because it is:

a. *Speedy* – every case is usually resolved within 24 hours unlike the BJS, which requires several meetings before it is able to decide on a conflict;

b. *Inexpensive* – does not entail cost for travel, filing the complaint, lawyers and others.

c. *Impartial* – it is mediated by tribal elders who are highly respected by community members for their knowledge and wisdom on customary laws, and for their sound judgment.

d. *Undocumented* – community members abhor documentation of their case because it stains their reputation and they fear punishment of eternal suffering from the heavenly spirits. In the *tongtong*, the mistake is cleansed through rituals.

e. *Conscience-based* – mediators, through the opening *petik*, appeals on the conscience of the contending parties, that the guilty owns up to the offense. It does not rely on material evidences that the BJS considers as primary basis in resolving conflicts.

f. *Harmonizing* – the process involves negotiation or bargaining. It does not stop until conflicting parties agree on acceptable terms. Also, there is counseling to both parties at the end of the resolution process. Finally, it always ends in the restoration of harmonious community relations.

Aside from being speedy and inexpensive in administering justice, an important strength of the *tongtong* is that the settlement process is undocumented. As such, it does not hold any record of any person's offense or crime. To the offender, it does not smear his or her reputation, or affects his or her social standing. For practical purposes, absence of any police record facilitates securing clearances such as that from the National Bureau of Investigation (NBI) for employment or other purposes.

Its ultimate goal of restoring not only peace and harmony between conflicting parties but more importantly within the community is its main strength. It is principally for this reason that community leaders and members want to keep this tradition.

Bakun has been published in a national paper as having a zero-crime rate because of the *tongtong*. For this reason, the *tongtong* has gained a certain degree of recognition by forwarded to the formal courts, the decision is always maintained by the court.

As for its weakness, BITO leaders cited the oral nature of *tongtong*. According to them, keeping settlement of disputes undocumented will pose some difficulties in the future especially because children and other young ones no longer bear witness to its conduct. But when asked if they are willing to document the process now, BITO leaders gave a resounding "no" answer.

2. Challenges

Parties involved in conflicts of whatever form still prefer the use of the *tongtong* over the BJS. But with the changing time, BITO leaders cited two major challenges to the practice of the *tongtong*. They are the following: a) declining belief in or valuing of the process by the younger population; and b) increasing influence of the BJS in the community as the barangay leadership continues to be taken over by younger ones.

To counter such challenges, BITO leaders consider the following as essentials:
a. Revive and strengthen the traditional culture;
b. NCIP must strongly implement the culture-specific provisions of IPRA;
c. Inclusion of alternative dispute resolution mechanisms in law schools; and
d. Reinforce culture awareness-raising among younger generations.

MUNICIPALITIES OF BULDON & BARIRA, SHARIFF KABUNSUAN: The Iranun Conflict Resolution Process & Justice System

A. Description of the Study Site

The municipality of Buldon in the Province of Shariff Kabunsuan (formerly part of the province of Maguindanao) is a 4th class municipality. It has a population of 26,903 people (2000 census). It is politically subdivided into 15 barangays, namely: Barangays Ampuan, Aratuc, Cabayuan, Calaan (Pob.), Karim, Dinganen, Edcor (Gallego Edcor), Kulimpang, Mataya, Minabay, Nuyo, Oring, Pantawan, Piers, and Rumidas. [http://en.wikipedia.org/wiki/Buldon,_Shariff_Kabunsuan]

Around 7.4 kilometers from Buldon is the municipality of Barira, also of the same province and formerly part of the province of Maguindanao. It is a 5th class municipality and has a population of 18,296 people (2000 census). It is politically subdivided in to 14 barangays, as follows:Barangays Barira (Pob.), Bualan, Gadung, Korosoyan, Lamin, Liong, Lipa, Lipawan, Marang, Nabalawag, Panggao, Rominimbang, Togaig, and Minabay. [http://www.answers.com/topic/barira-shariff-kabunsuan]

1. The Iranun People

The Iranuns may be found, not only in Shariff Kabunsuan, but also in the provinces of Lanao del Norte, Lanao del Sur, North Cotabato, Sultan Kudarat, and Maguindanao. The Iranuns are closely related to the Maranaos and Maguindanaons. Descending from common ethnic origins, they share many similarities in their culture and language. [Philippine Missions Mobilization, http://www.cybermissions.org/pma/m_iranun.php]

In fact, due to the many similarities in their language, it is difficult to determine which is the mother tongue. [http://shorttext.com/vgxai] The Iranun was formerly part of the Maguindanao Sultanate. Thus, the Iranun culture received more influences from the Maguindanaon culture rather than from the Maranao culture. Despite the many similarities shared by the three tribes, the Iranuns have maintained a strong ethnic consciousness and continue to preserve their own ways of life. [Ibid.]

Although unable to form their own sultanate, the Iranuns have a high degree of sociopolitical organization. They follow the datu system of leadership, where the Iranun datu wielded power over his people. [Ibid.]

B. Concept of Justice

Both the municipalities of Buldon and Barira are predominantly Muslim. Only two (2) of the sixteen (16) barangays of Buldon, namely barangays Dinganen and Edcor, have a predominantly Christian population. As for Barira, all fourteen (14) barangays of the municipality are predominantly Muslim. Such being the case, the decisions made and the processes used by their conflict-resolving bodies are based on the Qur'an and hadiths/ahadith (i.e. the collection of traditions and sayings of the Prophet Muhammad. Although decisions and procedures are largely based on these sources of the Shari'a law,

customary laws (Adat) and traditions are also consulted and considered by the conflict resolving bodies. Thus, their concept of justice wherein peace and harmony in the community is achieved, though primarily shaped by their religious beliefs (e.g. forgiveness is considered a virtue in Islam), is also influenced by their traditional values, as well. For example, blood ties have a high premium in the Iranun culture, hence, such value finds its way in their administration of justice (e.g. "kokoman a kambata bata," or justice through blood relationship, where more effort is given towards reconciliation and/or amicable settlement when the disputants are found to be related with each other, so as to keep their blood ties from being broken).

C. Elements of Indigenous Justice System

Joint Ulama Municipal Peace and Order Council [JUMPOC]
Barira, Shariff Kabunsuan

Before 1996, under the administration of then Mayor Abubakar B. Tomawis, the Municipal Peace and Order Council (MPOC). One of its tasks was to conciliate between residents with disputes. Following the creation of the Task Force Kalilintad in 1995, by then Maguindanao Governor Zacaria Candao, the provincial government mandated the municipal governments to create a municipal level Task Force Kalilintad. Thus in 1996, the MPOC was dissolved and in its place the municipal Task Force Kalilintad composed of both religious and political leaders was formed.

Under the administration of Mayor Alexander D. Tomawis, the local justice system was further strengthened. A Sangguniang Bayan Resolution was adopted in 2003 creating the Barira Joint Municipal Peace and Order Council-Ulama Peace and Order Council (BJMPOC-UPOC), now referred to as the Joint Ulama Municipal Peace and Order Council or JUMPOC. The overall objective of the joint council is to propagate Islamic teachings, and consequently, peace. Conflict-resolution is part of its objective. Other tasks of the joint council include the conduct of Arabic lessons for the residents, and the preservation and promotion of the Iranun culture.

Buldon, Shariff Kabunsuan

Back in 1995, then Maguindanao Governor Zacaria Candao formed the Task Force Kalilintad as a body that will settle disputes and conflicts in the province of Maguindanao. Not long after, then incumbent Mayor Macarampat Manalao, formed the Buldon chapter of Task Force Kalilintad, with himself as Chairman. With the change of leadership in 2007, the Task Force has since been replaced by a Joint

Ulama Municipal Peace and Order Council (JUMPOC) similar to that of the municipality of Barira. Like the former Task Force Kalilintad in Buldon, the JUMPOC enjoys the full support of the local government unit, primarily through Mayor Fatima Ruth Aratuc- Tomawis.

1. Nature of Crimes/Offenses and Penalty System

The different crimes or offenses brought to the attention of the JUMPOC include the following:

1. illicit sexual intercourse (zina)
2. murder (kappa mono)
3. homicide
4. accident
5. fighting (kambubuno)
6. robbery
7. theft (kapaman khao)
8. cattle rustling
9. destruction of properties
10. land conflict

11. elopement (kaphalagoya)
12. withdrawal of marriage proposal by groom
13. separation
14. false accusation (tokasi)
15. gambling (kandarmet)
16. drug abuse (kandrug)
17. drinking liquor
18. child abuse
19. illegal recruitment

The penalties set for each of the offenses, as summarized in Table 1 (Annex A), are based on the customary law (e.g. "durog ago igma" for cases of theft and robbery wherein the rule states that penalty imposed should be three times the amount of the value stolen), or on the Shari'a law, or on both.

Cases which are brought before the conflict resolving body differ at each level. At the barangay level, cases that are usually heard concern the following: conflicts related to marriage, damages caused by domestic animals, conflicts between neighbors (usually arising from misunderstanding between children), debts between P1,000 and P5,000, and theft of agricultural produce and domestic animals. At the district level, cases usually involve: castle rustling, murder, and adultery. Lastly, at the municipal level, cases heard are usually rape, murder, illegal drugs, carnapping, and rido (i.e. conflict between families or clans).

2. Justice Administration – the Conflict Resolution Process

Justice administration by the conflict resolving bodies are non-adversarial in nature and aim at bringing parties together in order to reach an agreement or settlement. Although this framework at resolving conflicts is very much rooted in the Iranun customs and traditions, the processes utilized by the conflict resolving bodies in the two municipalities are also very much the same as those used in the Katarungang Pambarangay, namely, conciliation, mediation and arbitration. Most of the cases that reach the municipal level are arbitration cases while those brought at the barangay and district levels are more focused on conciliation and mediation. Logically so, since it is only when conciliation and mediation efforts at the lower level fail, meaning, the parties fail to reach an agreement as regards the conflict, that said cases are brought to the municipal level. This means that all conciliation and mediation efforts have been exhausted, such that focus must now be on arbitration at that level.

Similar to that of the Katarungang Pambarangay, the procedure is generally less confrontational. More often than not, parties are asked to present their side (whether as complainant or defendant) only when there is a need to clarifify certain points or allegations raised. Again, similar to the Katarungang Pambarangay, there are no lawyers intervening in the process and there is less adherance to technical rules of procedure. While there are no lawyers representing the parties, some of the parties choose to appear through their bona fide guardians and/or relatives.

There are many influences on the system of justice administration of the JUMPOC. Although largely based on Iranun customary laws and traditions, the local government unit and its system of governance is also a factor in the administration of justice by the JUMPOC. This is evident in the many similiarities between the Katarungang Pambarangay system and the conflict resolution process of the JUMPOC, as mentioned above. This may be explained by the fact that the JUMPOC was created through the initiative of the local government unit. Another undeniable source of influence is the Muslim faith which is central in the Iranun culture. The composition alone of the JUMPOC is evident of this fact, since a number of its

members are those learned in the teachings of Islam, being Ustadz and Alims. In the process of documenting their customary laws regarding offenses and its corresponding penalties, the Ulamas were cautious that such did not contradict with what was written in the Qur'an. One example of a procedure wherein such an influence is evident is the role of the Qur'an in determining truth in one party's claims. When a complainant (or even a respondent) has no witnesses and has to rely on his/her own word, said complainant will be asked to swear on the Qur'an. This is meant to ensure that the party would tell the truth as regards his/her allegations. However, where both parties have no witnesses but both are willing to swear on the Qur'an, the one with a more religious background will be the one allowed to swear on the Qur'an.

3. Jurisdiction

All kinds of cases, from minor cases (e.g.simple misunderstandings) to more serious ones (e.g. land disputes, marital issues, and criminal cases), can be taken cognizance by the JUMPOC, at whatever level. However, the municipal-level council will usually ask for the endorsement of the district (four adjacent barangays form a district) that has original jurisdiction over the case. The same is true for cases brought before the district, where an endorsement from the barangay level will also be required. But even if there is none (i.e., if a party goes directly to the higher level), the JUMPOC (whether municipal-level or district-level) can still assume jurisdiction over the case.

However, the jurisdiction of the JUMPOC is not exclusive in the sense that the parties can opt to go to the Lupong Tagapamayapa and subject their case to the Katarungang Pambarangay rules instead.

4. Procedure

In all cases, efforts at reaching an agreement or amicable settlement must first be made before it can be brought to the court. This is the role of the JUMPOC. In order to reach an amicable settlement, an investigation is first conducted to determine the person(s) responsible. Then the law with respect to such a case will be explained to him/her. If said person refuse to accept his responsibility, the case shall then be filed in court. In case both parties reach an agreement, the court shall not intervene.

When a crime has been committed, this is, more often than not, reported to the police. The police and/or the Mayor may refer the case to the JUMPOC. Once it has been ascertained that the parties are agreeable to have their case decided by the JUMPOC, the police will temporarily desist from filing its endorsement of the case in the prosecutor's office.

For its part, the JUMPOC prefers that criminal cases [e.g. murder (kapamono)] be first reported to the police before it is referred to the JUMPOC, so as to facilitate the arrest and detention of the suspects. They believe that said arrest and detention is for the protection of both the complainant and the suspect, as the same would prevent further violence (e.g. retaliation by the victims of their families, harassment by the suspect, etc.).

Cases of this nature are usually brought to the district level councils. If the case is not resolved, then it shall be elevated to the municipal level. Once a complaint, written or verbal, is received by the JUMPOC, the accused/respondent will be asked to appear before the council and to give his/ her statement. When there are no witnesses against the respondent/s, swearing on the Qur'an may be allowed. The taking of an oath on the Qur'an gives the assurance that the person making the oath is telling the truth. This is deeply rooted in the Islamic faith. Therefore, a believer of Islam will be extremely cautious in making that oath. Such that, if one of the parties refuses to take an oath on the Qur'an, the JUMPOC will then decide in favor of the person who took an oath.

If the parties are able to resolve the case in the council, the case is no longer filed with the prosecutor's office. If charges have already been filed, an affidavit of desistance is drawn and a motion to dismiss is filed by the prosecutor with the court. In the JUMPOC, the number of hearings per case is usually not less than 5. And the decisions are based on the Qur'an, ahadith, qiyas and ijma. When the decision is one that requires a party to pay a "kasalaan" (fine) or blood money, execution of said decision is guaranteed by ensuring that payment is made before the accused is released from custody. As the objective of justice is the attainment of peace within the community, in cases where the respondent is not able to pay the fine or blood money, some officials would even voluntarily help in raising the amount.

The municipal government gets 20% of the fine/blood money imposed by the JUMPOC. The amount collected by the council is placed in an account. Initial discussions as to possible uses for said fund are infrastructure projects such as: mosques, madrasah, water system, and other development projects.

The foregoing outlines the general procedure followed by the JUMPOC in handling criminal cases. However, there are certain cases which would require special procedures. Though not a complete listing, the following table enumerates the steps followed by the JUMPOC in handling certain cases.

CRIME / OFFENSE	PROCEDURE
ZINA [Arabic term for illicit sexual intercourse]	The parties involved will be placed in the custody of the elders, prior to conduct of the investigation. [*Matangan a hukuman so babay ago mama a mizina ka go kapangingizai.*]
FIGHTING [*Kambubuno*]	The parties involved will be given a chance to settle the dispute among themselves. If unresolved, the Punong Barangay will called to conciliate. If the conflict is still not settled, the Ulama Council will then arbitrate and decide as to the settlement of the dispute. [*Ma arigra o sukudan kiran, sa odi iran kagaga na mitapnay iran ko barangay chairman. Na o makukum o barangay chairman sa di siran mayon na kha endorse o barangay chairman ko district chairman of ulama council sa mitatapid iyanun so decision iyan ago so affidavit iran ambala.*]
THEFT [*Kapaman khao*]	The parties involved will be summoned by the JUMPOC. [So miyaman kao ago si piyankawan na katawag siran o walay hukoman.]
DESTRUCTION OF PROPERTIES	If it has come to the attention of any barangay official that the act of destroying the property was intentional,

proper action has to be made on said case. If the case has already been brought before the barangay, and still no settlement has been reached, it will be endorsed to the Ulama council. [*Aya dait na siiko katukawi o brgy official ko miya nga bibinasa a pitibaba na kab'gan sa action a mapya. Sa upama ka makukum sa barangay nago di makaayon so isa kiran na ma endorse kiran oto ko district hokuman a makasasakop kiran taman sa iraot sa municipal hall o mga ulama council upama ko bapen di khapasad ko district a masasakopon*.]

LAND CONFLICT

Procedure and solution would depend on the result of the negotiation, mediation and arbitration.

For example:
Witnesses will be presented. After hearing the witnesses, the parties involved in the dispute will take their oath (kadsapa). If only one of the parties is willing to take an oath, the land shall go to said party. If both parties take an oath, then the land shall be divided between them. [*Tuntain antain i pdtuntot ago anta i pdtuntotan. Makaturo su adel a saksi a dua ka tao. Amaika napangaden na mabenar i rkian so pdtuntotan. Uda a saksi na masapa si pdtuntotan (respondent) rkanian so lupa. Upama ka aden a mga pamulan ko lupa na kubaliwanan o pdtuntot amaika sa saka rkanin so lupa. Udi sapa so pdtuntotan ka tigian ya sapa si pdtuntot na nares bon. Amaika di mambo sapa si pdtuntot so den so kukuman sa epagator yan ron. Mapakay a baaden nian dua amaika di den a ped a ikatlo o pdtuntot.*]

Pending questions
- What boundaries do we recognize—natural boundaries? Govt-set boundaries?

- Penalties?

ELOPEMENT [KAPHALAGOYA]	□ Both parties must first be in the custody of the walay a kokoman/council before any action shall be taken. In case, they cannot be found, the respective parents/ guardian of both parties shall meet. The meeting shall be taken for the determination of the amount of money that shall be given by the parents/guardian of the man to the parents/guardian of the woman. Such amount shall be considered as the ma'hr/dower. However the property of the man's parents/guardian shall not be made the subject of ma'hr/dower. *[So babay ago mama a miphalagoya na matangan siran o mga Datu (walay a hokoman/manganagatoran) gobo mambitiara so awida akal. Orianian na odi siran katoon na tawagin o walay a kokoman so mga Kiwaris ko babay go so kaiwaris ko mama. Aya hadap na an siran maator sa makawing ka an mada so awid a akal ko zina. Dimapakay so kapagrag ko kiwaris ko babay sa tamok ko waris a mama taman ko mga pagari ingan.]*
MARRIAGE	□ Salaguni (Pamamanhikan) - Minimum of P2,000 for the diyalaga (or budget expense for the salaguni), except if parties agree otherwise. □ *Taalik* – Set schedules regarding talks or meeting on mahr (dowry) and when said dowry will be given. □ The kawing (nuptial) will be set by the family of the bride • Documentation on agreed dowry will be signed by 4 witnesses. □ Kawing (nuptials/wedding ceremony) SEPARATION □ Idda (Arabic term which means the couple/spouses will be given 40 days to 4 months as trial separation period, which shall also serve as a period for discernment for both)

GAMBLING / PAGSUSUGAL [Kandarmet]	□ Any person allegedly involved in gambling shall be required to appear before the walay a kokoman/council. The walay a kokoman/council may give a warning to said person. If in case he shall refuse to follow such order made by the council, penalty or fines maybe imposed upon him. [So taw a dindar'mt sa adn a ang'gan iyan na tawag'n ow walay o hokoman. So taw mambo a miadn sa dar'mtan na tawa'n bon ow walay a hokoman, orian nian ko katawag ron on walay a hokoman na dundaan siran. O di siran gom'nk dar'mt na masala siran.] □ The gambler will be given three warnings. If said warnings go unheeded, said gambler will then be penalized. [sa tao a maden sa dar'metan ago mga padar'met na warningan siran o walay a hokuman sa 3x sa saden sa dikeran gomenek na adena kasalaaniyan.]
DRUG ABUSE [kandrug]	□ Both the drug user and the drug pusher will be gven three warnings. [B'gan sa warning a makatlo (3x) so pusher/ user, identify]

Rituals on Conflict Resolution

When parties to the conflict are able to reach an agreement or amicable settlement, there are prayers and ceremonial gatherings to seal the agreement and celebrate th reconciliation. Some of the different gatherings common among the Iranun are the following:

1. *"Kapangangawid"*: payment of moral, physical, and material damages to the offended party;

2. *"Kapapamanikan"*: requires family members and close relatives of the offending party to go to the house of the offended party as a manifestation of acceptance of the guilt or submission to appease the offended party and relatives;

3. *"Kandori" or "Kanduli"*: thanksgiving with some food and drinks during the abovementioned occasions, i.e., "kapangangawid" and "kapapamanikan". Sometimes, then the cases are minor, the "kandori/kanduli" is held separately.

D. The Indigenous Justice System and its Interface with State Laws and Policies

1. Aspects Interfaced

The Joint Ulama Municipal Peace and Order Councils [JUMPOC] of the municipalities of Barira and Buldon present interesting examples as to how the indigenous justice systems can be interfaced with State laws and policies, particularly as regards the Katarungang Pambarangay.

Composition of the Council

The JUMPOC per se is not an indigenous structure. It was created through the initiative of the Chief Executives of the municipalities of Barira and Buldon. As such, both councils are composed of a mixture of the religious (e.g. ulama), traditional (e.g. sultan) and political leaders of the local government units (e.g. Mayor, Vice-Mayor, Punong Barangays).

The appointing power is the Mayor, and the trust reposed by him/her upon the appointee is important. Other qualifications of the appointees include the following: (1) have experience in conflict-resolution interventions; (2) he/she must have integrity; and for the ulamas, (3) they must be willing to work voluntarily.

Processes used and bases for decisions of the bodies

The JUMPOC recognizes the important role played by the barangay, as it requires that a conciliatory proceeding be first conducted at the barangay level, similar to that of the Katarungang Pambarangay, before elevating the case to the higher levels. Decisions, on the other hand, are based on Islamic teachings and traditional practices, for example, *"kokoman a kambata bata"* (justice through blood relationship) and "durog ago igma" (applied in determining penalties for theft and robbery cases).

For the municipalities of Barira and Buldon, it was not just a provision for space in the LGU processes for the indigenous systems, but an incorporation of the systems into the formal structures of the LGU. In the municipal level, the datus, elders or other similar leaders were incorporated into a conflict-resolving body that was given *de jure* or *de facto* authority to look into disputes between and among the residents. Aside from the trust and confidence of the mayor, the bodies are usually given resouces,whether in kind or in cash, necessary for its operations. The Barira JUMPOC, for example, has a permanent room in the municipal hall where the "hearings" are conducted, and members of the JUMPOC likewise get some kind of allowance, though not regularly, for transportation and other expenses.

The integration of the indigenous system into the formal structure of the local government is even a few steps advance of the situation contemplated in the Local Government Code where the council of datus or elders are merely given the permission to mediate according to their indigenous systems.

2. Strengths / Weaknesses, Problems and Limitations

The incorporation of the indigenous systems in the barangay and municipal structures and processes has generally resulted in a more peaceful community, as agreements are reached and cases are swiftly resolved. People from the community prefer to bring their disputes and cases before the JUMPOC rather than the formal legal system, for several reasons. First, cases that are filed in the regular courts takes a longer time before it is resolved, as compared to complaints brought before the local justice system which are resolved within weeks, or at most, within a year. Secondly, there is no need for lawyers in cases brought before the JUMPOC. This means, not only, less expenses for the parties involved, but also, more room for active participation in the process on their part. Lastly, the issue of accessibility of the courts. Going to the regular courts in Parang or in Cotabato City can be a difficult, costly and time-consuming ordeal. Both Barira and Buldon are far from these two

centers, and this is even made worse by the fact that road conditions are undesirable and public transportation is insufficient.

One weakness or limitation of the system is as regards the question of jurisdiction. For one, while the Katarungang Pambarangay limits its jurisdiction in criminal cases to those that are punishable by imprisonment for one year and/or a fine of Five Thousand Pesos (P5,000.00), in the JUMPOC, even graver cases like murder, rape and robbery are covered. Moreover, certain procedures in the indigenous or localized system may go against some procedural limits of the formal justice system. An example of this is the taking of an accused for safekeeping and custody. In most cases, said accused is taken into custody in order to provide him/her protection against retaliatory actions from the aggrieved party and/or his/her relatives while the case or dispute remains unresolved. However, the act of putting the accused in jail for the duration of the conciliation/mediation may raise to issue of whether or not such practice is a violation of human rights and of criminal laws and procedure.

3. Recommendations and Challenges Ahead

Unlike the JUMPOC in Barira, which has been in existence since 2003, the Buldon JUMPOC, which was formed only after the 2007 local elections, is still in the process of organizing its systems and procedures. Although relatively more established, the Barira JUMPOC is also in the process of strengthening its own systems and procedures. This is to address problems as regards the lack of documentation and filing system for cases bought before the bodies, and the lack of written internal rules of procedures.

As a result of the different workshops conducted, forms have been drafted. This will help facilitate the documentation of cases, from the time of filing to the final resolution of the case. Before documentation of cases brought before the councils usually consists solely of signed peace agreements or covenants between the parties. Now with the use of the drafted forms, the JUMPOC is encouraged to document even the proceedings during the actual mediation of the conflict. They have also drafted Internal Rules of Procedure (IRP). Thus, addressing the problem of documentation, specifically the issue of document filing and retrieval. The IRP would also help facilitate systematization of rules and procedures in the various levels of the JUMPOC.

The two councils also saw the need not only to enhance their conflict-resolution skills and to organize their rules of procedure and documentation system, but also to review their customary laws and come up with a uniform system as regards offenses and their respective penalties. Said process of review and documentation of the Iranun customary laws is still ongoing.

Another problem area of the members of this conflict resolving body is the lack of lawyers or people learned in law in their municipality. Although lawyers do not participate in the proceedings of the JUMPOC, these lawyers may be able to assist the JUMPOC in understanding the Philippine legal system. Because of this lack, they say that they have a hard time understanding, much more interpreting, the laws and how to reconcile the Islamic law and the Philippine laws.

Finally, is the issue of sustainability. While both the Barira and Buldon local chief executives are supportive of the JUMPOC, the question remains as to whether or not these conflict-resolving bodies will continue to enjoy the same support after the term of the present municipal Mayors. Thus, there is a need for the adoption of legal instruments that would rationalize the localized justice systems. Without these instruments or legal mandate, the continuity of the existence and operations of the conflict-resolving bodies that have incorporated the religious and traditional laws may be put into question.

Furthermore, formalizing the mandate will also address the issue of funding allocation for the operations of these bodies, which will then come on a more regulare basis and will not be dependent on the good graces of the incumbent mayors. It is worthy to note that even the Local Government Code states that the amount needed for the implementation of katarungang pambarangay may be included in the annual budget of the city or municipality (Section 417, MMAA No. 25). The katarungang pambarangay rules reiterates the same provision and adds further that the mayor shall include the amount in the executive budget which he shall submit to the Sangguniang Panglunsod or Sangguniang Bayan, as the case may be (Rule X, Section 5). The law is therefore not without any mandate for the inclusion of a budget for the localized justice systems in the annual appropriations of the municipal LGU.

On the interface with Philippine laws and policies

Philippine laws and policies can be invoked to justify and support the creation of the JUMPOC and the use of indigenous methods of conflict resolution. Foremost of these laws is the 1987 Constitution, as found in Article X, Sections 1, 15 – 21, on autonomous regions in Muslim Mindanao and the Cordilleras. This provides the bases for the enactment of the Organic Acts of the Autonomous Region in Muslim Mindanao or ARMM, Republic Act 6734 and Republic Act 9054.

Furthermore, the Constitution declares the following policies of the State:
- the recognition and promotion of the rights of indigenous cultural communities (Art. II, Section 22)
- the State shall undertake to recognize the rights of these communities to develop their cultures, traditions and institutions (Art XIV, Section 17) and
- ensure their economic, social and cultural well-being (Art. XII, Sec. 5).

The Organic Act (RA 9054) reiterates the policy of recognizing, protecting and promoting the beliefs, customs and traditions of indigenous peoples. It mandates the Regional Legislative Assembly (RLA) of the ARMM to adopt measures towards this end and to codify the laws of the Muslims ad the indigenous communities. The ARMM Regional Government as a whole is also mandated to "recognize, respect, protect, preserve, revive, develop, promote and enhance the culture, customs, traditions, beliefs, and practices of the people of the autonomous region.

As in the case of the Local Government Code (RA 7160), the Local Government Code of ARMM or Muslim Mindanao Autonomy Act. No. 25 (MMAA No. 25) also assures that local systems of dispute settlement would be recognized in barangays predominantly inhabited by indigenous cultural communities (Section 394). It also provides that with respect to the conciliation process, "the customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities" [Section 407(c)].

RA 8371 or the Indigenous Peoples' Rights Act (IPRA) also allows the indigenous peoples "to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights" (Section 15). It further mandates that "when disputes involve ICCs/ IPs, customary laws and practices shall be used to resolve the dispute" (Section 65). The provisions of the Organic Act, as regards the use of indigenous conflict resolution mechanisms, as well as the IPRA provisions cover both Islamized (i.e. Moro peoples) and non-Islamized indigenous peoples (e.g. Lumad). This may be seen from the definition of indigenous cultural communities and indigenous peoples under RA 8371 which provides: "refer to a group of people or homogenous societies identified by self-

ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains." [Section 3 (h)]

The inclusion of the Moro peoples in the definition is made more clear under RA 9054 which defines "indigenous cultural community" as follows: "refers to Filipino citizens residing in the autonomous region who are:

"(a) Tribal peoples. These are citizens whose social, cultural and economic conditions distinguish them from other sectors of the national community; and

"(b) Bangsa Moro people. These are citizens who are believers in Islam and who have retained some or all of their own social, economic, cultural, and political institutions." (Article X, Section 3)

The above national and regional laws show that the indigenous systems of conflict resolution of indigenous cultural communities are acceptable and can be used in areas that are predominantly inhabited by said types of communities. This policy is in keeping with the constitutional principle that the rights of indigenous peoples shall be recognized, protected and promoted. Truly, there is a mandate for providing a space for the indigenous systems.

CLAVERIA MISAMIS ORIENTAL and MIARAYON BUKIDNON:
The Higaonon and Talaandig Conflict Resolution Process & Justice System

A. The Study Site

This study describes the indigenous conflict resolution process of two tribes – the Higaonon tribe in Claveria, Misamis Oriental and the Talaandig tribe in Miarayon, Bukidnon.

1. The Higaonon and Talaandig Tribes

Members of the Higaonon tribe are found in the provinces of Bukidnon, Misamis Oriental and Agusan del Sur. In Agusan del Sur, they are referred to as Banwaons. They are culturally and linguistically related to the Manobo. [1] The subjects of this study are the Higaonons found in Claveria, Misamis Oriental.

Higaonon means "shrimps removed from the water," which describes their displacement from their coastal settlements to the hinterlands. Other accounts suggest that the term "higaonon" is a combination of three words: "higa," which means 'to live ' or to reside' or 'to lay in bed'; "gaon," which means 'mountain'; and "onon," which means 'people'. Thus, higaonon may be literally translated as "people living in the mountains".[2]

According to the key informants, the Higaonon tribe has eight River Clans, namely, Tagoloan River, Pulangi River, Agusan River, Gingoog River, Linugos River, Balatukan River, Odiongan River, and Cagayan de Oro River.

The Talaandig tribe is one of the indigenous peoples of Bukidnon. They are mostly found in the south central and western portions of the Bukidnon province although some splinter groups can also be found along the Agusan-Bukidnon border.

The term "talaandig" connotes people living along the slopes of the mountains. The bulk of the Talaandig population inhabits the slopes of Mt. Kitanglad in the municipality of Lantapan, and Mt. Kalatungan in the municipality of Talakag.

This study focused on four barngays situated in what the Talaandigs call as the Miarayon region, a valley situated between Mt. Kitanglad and Mt. Kalatungan. Majority of the inhabitants of the four barangays are members of the Talaandig-Kalatunganon tribe, a sub-tribe of the Talaandig which emphasizes their location in what they consider as sacred Mt. Kalatungan.

2. Ancestral Territory

The ancestral territory of the Higaonons in Claveria, Bukidnon covers an area of 14,872.4188, which comprises 6 barangays in Claveria and some barangays in Balingasag, Misamis Oriental. The tribe has been awarded in 2005 a Certificate of Ancestral Domain Title (CADT-T No. R10-BAL-1005-036). It was the first CADT ever issued in the province of Misamis Oriental. The issuance, however, of the said CADT caused a rift among the Higaonons because some members alleged they were never involved in the process of its issuance. The Talaandig-Kalatunganon tribe was issued a CADT on October 30, 2003. Their CADT encompasses a land area of 11, 105 hectares covering the barangays of Lapok, Miarayon, and part of barangays Lirongan and San Miguel.

3. Assimilation to Modernity

According to key informants, the Higaonon tribe in Claveria still adheres to their traditional beliefs and practices but its level of assimilation is already high especially among its younger members who are attending school or have access to television and the Internet. Except for some very remote areas, the barangays can be reached by habalhabal and jeepneys.

The opening of the road network going to the cities of Cagayan de Oro and Malaybalay increasingly exposed the Talaandigs to its "outside world." The road network gave its members greater access to the cities which offer college education, jobs, and other aspects of modern living. Likewise, it also gave outsiders easy access to the Talaandig community allowing traders and financiers to enter the community and transact business with tribe members, and religious groups to attract some tribe members to join them and condemn traditional beliefs and practices. But what can be considered a great push factor to the tribe's exposure to its outside world was the tribal uprising that happened in the 1970s and lasted for more than five years. This incident forced the majority of the tribe members to flee their community and move to neighboring places including the cities. Presently, the tribe continues to observe traditional beliefs and to practice rituals although there is a growing trend among younger members to increasingly prefer the modern ways of living.

B. Notion of Justice

The concept of justice is relative. It is perceived differently by every society. Justice, in whatever manner it is viewed, is embodied in a society's social norms and laws. Among the nonindustrialized societies, the behavior of individual members is regulated by norms and customary laws to which they are expected to conform and behave accordingly. Anyone who commits a breach of law is justly dealt with according to the prescribed law.[3]

According to another study[4], the lumads do not have a concept of rights. What they have is a concept of indemnity referred to as husay. When an offense is committed, there is always a corresponding payment. Payments, however, are highly negotiable and dependent on the skill of the datu in the art of compromise and negotiation. It is also important to note that those people who want to involve themselves in settling conflicts must also be willing to contribute to the payment of indemnity. In the lumad system, what is important is that the dispute is settled and social order is restored as soon as possible. Conflicts that lead to pangayaw or magahat (retaliation) can disrupt an entire community's economic subsistence.[5]

Fines or payment of indemnity is defined by the parties involved and not by a set of rigid rules and penalties. Indeed, it has been found that since time immemorial until at present, the Higaonon's and Talaandig's notion of justice is reciprocal or mutual. Meaning, it should be agreed upon by conflicting parties. Agreements are premised on their relationship with nature and *Magbabaya*.

The Higaonon

The Higaonons of Claveria adhere to their Sacred Law or Golden Rules (Bungkatol Ha Bulawan), which contains the "maayo nga batasan" or good attitudes that each tribe member must observe. In addtion to it is the "nangkatasa ha lana (a cup of oil). It is said that the bungkato ha bulawan and the nangkatasa ha lana are parables that speak about love, love of oneself and others.

In an unpublished study undertaken by the Resource Center for Empowerment and Development (RCED) and GTZ, [6] a datu explained that Bongkatul Ha Bulawan symbolizes compassion and generosity. It says that a person's heart is like a gold which neither fades nor changes; nor does it know how to cheat or take advantage of others. Nangka tasa ha

lana is also another parable which says that a person is like a cup of oil when it overflows, the persons has violated the law or offended others.

The Talaandig

Its concept of justice hinges on the concept of "gagaw" or good relations with one another. So if one is offended, the offender should appease the offended party to restore good relationship. Offended party does not only mean the individual directly offended but also the members of the extended family. This concept of justice is characterized more of a healing rather than punitive.

According to the informants, a conflict arises when a party has inflicted an injury to another party's bantog or dignity and honor. Bantog is higher than the physical body or a physical property; it is more spiritual. The Talaandig believes that every person has a bantog, which is connected with the bantog of the earth that is also connected to the creator, Magbabaya. Thus, if one intrudes another's territory, he/she inflicted an injury to another's dignity and honor. Justice then is achieved by performing an act or giving something to restore the dignity and honor of the offended.

Retribution can only happen in serious cases if not acted upon by the tribe. The informants enumerated some of the cases considered as serious like rape, murder or homicide, adultery, "taban" (stow-away) and encroachment into the territory by another tribe. The degree of the penalty varies depending on the seriousness of the offense. In the past, there were minimum penalties imposed for every offense. Presently, however, there is no strict rule followed in the imposition of penalties. Factors considered are the capacity of the offender to pay as well as the economic capacity of the datu to assume the fine if the offender is unable to produce the demand of the offended party.

C. Elements of Indigenous Justice System

Traditionally, the datu hears and settles all conflicts in the community. This role, however, has been narrowed with the imposition of state laws such as the enactment of the Local Government Code of 1991 (RA 7160), which limited the authority of the datu to administer husay by prescribing the cases that can be mediated at the barangay or tribal level. This situation is made worse by the loosening of the lumads' customary laws. According to Datu Macapundag (Mr. Sancho Solinawan), of Claveria, there are instances that he is not involved in the settlement of dispute between Higaonon members because the latter resorted the intervention of the barangay. Some datus, however, continue to administer husay if the conflict is referred to them. Among the offenses usually referred to the datu include murder, taban (elopement), theft, boundary dispute, and physical injury.

1. Nature of Crimes/Offenses and Penalty System

Higaonon Tribe

As earlier noted, the Higaonon has its Bongkatul ha bulawan and Nangkata tasa ha lana as guiding ethics in maintaining and observing good behavior to promote social order. A website (http://www.unahi.org/higaonon-tribe-history.htm) by UNAHI MINDANAW, Inc. or the United Association of Higaonon Tribes attempted to translate and summarize the Bungkatol Ha Bulawan as follows:

Pigtugonan Na Hadi Ag Lidason Kay Pamalihe - 'Makagaba'... Don't go against the law: It was a handed down law. It is very sacred. One can be cursed to misfortune or death.

Di Yo Ag Lidason Ang Pigtugonan... Don't disobey the sacred orders: Don't interpret it in your own mind, just go straight to the handed law. Don't shift the sacred teachings to the other road. It is very straight and not a crooked one.

Di Kaw Ag Labawa... Don't be an egotistic or self-centered person: Don't be on top of your pride. Your pride will kill you.

Di Kaw Ag Indiga… Don't compare yourself to others, for there is always someone better and lesser than you. But everyone is a creation loved by the Supreme Creator. Have dignity and honor of its own spirit. Comparing yourself to others, you will become bitter in the end.

Di Kaw Ag Sinaha... Don't be envious of others: If someone has a good fortune, it is because he or she is blessed. Jealousy breaks the orders of goodwill. It is destruction to the destiny of humanity, to the Great Creation of the world.

Magnayo-Nayo Kaw... Asking and Giving is the greatest gift of Creation. If someone needs food, give him or her food. If you don't have food and if you ask, someone will give you.

Magpahidang-Gaay Kaw... Love one another - for this is the right way to live. No man is an island. Everyone needs everyone, everyone needs everybody, everybody needs everyone, and everybody needs everybody.

Maglandang Kaw... Live in Peace, Walk in Peace. For in Peace there is Love. When there is Love there is Peace in your heart.

Magtutopong Kaw... Equality among Men: Remember children are little men as the elders are older men - both deserve respect and honor of their Creation. Women are Men too. The Respect of the Elders and children can be double to women for they are the makers of those Men.

Mag-Uyon-Uyon Kaw... Listen to everyone. Don't be loud or aggressive in your opinions and views for 'wisdom' is a gift. Blessed are the elders, for the Counsel of Years of their lives makes the edifice of teachings. We will listen to them as we listen to prophets of time. They might be a child who had wisdom of the old, or the old whose playing spirits is a child that cools the heart of a warrior, and most often are women, for women are the gift of Creation. Listen to them in their counsel of time.

It may be gleaned from the above that the *Bungakatol Ha Bulawan* does not contain specific offenses that are deemed punishable or the manner of settling conflicts. Nor does it fix the penalties for any of the offenses. At best, it only enumerates the general ethics that each Higaonon should abide.

The Higaonons have no formal classification of crimes or offenses. In general, however, are committed against life, property and honor. Offenses that have potential to disturb the peace of the community such as murder are always considered serious. Naturally, heavier penalties are imposed for serious crimes. Meaning, the family of the offended person can validly demand higher indemnity like a pig, rice, and money. But the same is negotiable. The demand may be lowered depending on how the offender and his family will plea for the lowering of the penalty, and whether it is accepted by the offended party. In the end, the penalty to be imposed is agreed both by the offended party and the offender. Hence, the role of the datu is very crucial. He ensures that the parties could reach a penalty acceptable to both parties.

There are cases when death may be imposed, which is especially true in the past. Interview with the informants, however, reveal that imposition of death is rarely done now. They could not, however, recall when they stopped imposing the penalty of death. It could be safely inferred, however, that cultural assimilation is the major contribution. In the case of

the Talaandig, there was a time in history where they experienced some sort of *'diaspora'* during an uprising by the Talaandigs against the military sometime in 1971-1975. They returned to their homeland only after President Marcos declared Miarayon as a lumad reservation area. In the case of the Higaonon, on the other hand, the influx of migrants could have heavily influenced them.

For instance, Datu Macapundag no longer handles serious criminal cases since the parties involved in these kind of cases are already referred to the formal judicial system. There is another penalty, which constitute the banishing of the person from the community, much like the ***destierro*** under the Revised Penal Code, in order to protect the community from his incorrigible nature of repeatedly committing an offense.

The Talaandig

In the same study[7] made by Dr. Erlinda M. Burton and Ma. Easterluna S. Canoy on the concept of justice among the indigenous communities of Northeastern Mindanao, conflicts among the Talaandigs are settled through the batasan (custom law), which is executed under two general laws, namely: Lagitip ha Batasan and Saungagen ha Batasan. Said study reveals that Lagitip ha Batasan emphasizes the payment of a large amount of goods as a requisite for the resolution of conflict. On the other hand, the Saungangen ha Batasan demands a lower penalty.

It is said that the Lagitip ha Batasan was formulated by the early datus to restrict a marriage between an ordinary member of the tribe with the family member of the datu. At present, however, said law serves as basis for settling other cases.

2. Justice Administration – the Conflict Resolution Process

Higaonon Tribe

The process of conflict resolution may be described as follows: The offended party informs the datu or any elder of the offense committed against him/her. He/She then asks for the intervention of datu to make the offended party pay for the offense committed. Sometimes, however, it is the offender who first seeks the intervention of the datu or the respected elder for the settlement of the conflict. When the parties belong to different tribes, the intervention of the datu of either of the parties becomes even more necessary.

The datu plays the role of the mediator. He ensures that both parties talk and reach a mutually acceptable resolution. The datu, therefore, is someone who is wise and creative in mediating a conflict. He is always impartial and patient in listening to both parties. Not all disputes, however, are settled by the datu. Minor offenses may be settled through the intervention and mediation of a respected elder who possesses knowledge on the tribe's customary laws as well as skills on mediation and conciliation. There are times when the datu himself reaches out to the conflicting parties and make them talk and resolve their conflict.

After any of the conflicting parties has asked for the intervention of the datu, the latter then asks the alimaong (warrior) to summon the offender (or the offended) and relay the message that the other party of the conflict intends to settle the conflict. In other instances, the summons is made by the datu himself or any of his trusted person and not necessarily by an alimaong.

When both parties face the datu (or elder), a ritual called pangapog is performed. The pangapog is aimed at calling the spirits to seek their guidance in making the conflict resolution succeed. After the pangapog, the formal process of conflict resolution starts. The

settlement may be characterized as a process of dialogue. It has been learned that in all instances, a mutually acceptable resolution is eventually reached, especially if the parties are both lumads.

As had been earlier noted, the indemnity that is demanded is negotiable. In one case, a military person who was drunk hit a Higaonon with a blow, which resulted to physical injury of the latter. Datu Macapundag was asked to settle the conflict. A sum of P30,000.00 was demanded from the offender. Since he cannot produce the amount, he negotiated for the lowering of the indemnity. In the end, the indemnity was reduced to only P1,000.00.

If an offender denies the charge against him, the datu performs a magbala, to test whether the offender is telling the truth or not. The magbala takes different forms. One form is to let the person hold an ember. When he gets burn, he is lying. Otherwise, he is telling the truth. Another form is called the sabyog (swing) where a thing is hang. If it moves, the person is said to be lying.

The resolution of the conflict is usually reached in one sitting. However, no period is fixed. It may span for only an hour, several hours, a day, or even a week until the parties have reached an agreement. If for instance a conflict is finally settled but the indemnity demanded (example, payment of pig or money) is not yet fulfilled because the offender cannot immediately produce it, he remains in the tulugan, where the conflict resolution is held, until such time that the indemnity is finally delivered. In this case, the datu (or elder) of the offender ensures that the indemnity be produced and delivered so the offender can leave the tulugan.

When a conflict is finally resolved, a ritual (singampo pasalamat) is performed to thank the spirits for their guidance and presence during the process of conflict resolution. The ritual is also performed to seal the agreement and bind the parties to the agreement. Also, once the conflict is finally resolved, there is no more appeal. Neither will it be repudiated because the agreement is reached through the process of dialogue where both parties openly and honestly discussed, without deceit or manipulation.

In instances when crimes and other serious offenses are committed against another tribe (like murder), the tampuda hu balagon is performed before the conflict escalates into a lido (clan war), or to put an end to an existing lido. Tampuda literally means kasabutan or pact. It is an agreement between two tribes. The ritual entails the cutting of the vine of discord. It is, however, practiced in various ways by different tribes.[8]

Mediation through tampuda is usually attended by several datus from both the offended party and offender. The datus do not act as lawyers or defense but as counsel. They all help in making the parties reach a peaceful resolution of conflict. Together they do the pangapog, which is usually in the form of a chorus with each datu making his own invocation. The unpublished study of RCED and GTZ cited above offers more elaborate detail of the tampuda.

Talaandig Tribe

The mediating datus pray to Magbabaya to ask for guidance and invite the spirits of the "Laas" or ancestors to provide wisdom in resolving the conflict. After the prayer each military person who was drunk hit a Higaonon with a blow, which resulted to physical injury of the latter. Datu Macapundag was asked to settle the conflict. A sum of P30,000.00 was demanded from the offender. Since he cannot produce the amount, he negotiated for the lowering of the indemnity. In the end, the indemnity was reduced to only P1,000.00.

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Talaandig Tribe

The mediating datus pray to Magbabaya to ask for guidance and invite the spirits of the "Laas" or ancestors to provide wisdom in resolving the conflict. After the prayer each party and their witnesses will be given time to give their testimonies but no confrontation is allowed. Probing techniques are frequently employed by the datus to check the consistency of the testimonies. Along the process, a datu narrates the history of the tribe particularly the basis of the "batasan" or customary law to point out the standard attitude to which the members of the tribe shall abide. After evaluating the facts, the datus then promulgate a decision and the corresponding penalty.

The datus then ask both parties if they are agreeable with the decision. If no objection is raised, the decision becomes final. Usually the penalty is a cow or carabao which the family of the victim will stub to death, this called "bangon". This is done to symbolize the redirection of their hatred to the animal and end their anger to that of the offender. The Talaandig term for this is "Limaswon," which means to erase the controversy or conflict. Other livestock are also being offered to show repentance on the side of the offender and to restore the "Bantog" of the victim's family. A "Pandingding" (offering) is also demanded by the Datu who administered the Husay as way of respect. The Talaandig tribe believes that the "Husay" is a sacred process so that everyone involved should respect and abide by the

outcome of the process. Anyone who will violate the settlement agreed after the "Husay" will be liable to the tribe and will suffer "tungayaw" or punishment. The "Tungayaw", according to the informants, will either be made by the tribe or it will come as a curse against the violator.

Minor offenses like slight physical injury and oral defamation need not have the long rituals made in cases like murder. The process of the Husay will only involve the narration of the complaint and the admission of guilt. After such admission, a chicken will be slaughtered and let the blood flow into the soil. This symbolizes that the hatred caused by the conflict flowed with the blood into the soil and the conflict ends. "Layog" or rape is the most serious crime with a penalty of death. But the tribe has not encountered this in recent years. In resolving a case like murder, each party has to have a Datu to act as representative.

Usually, the Datu used wine, chicken, coins and piece of cloth in administering a "Husay". The coins wrap with a cloth or "Lugbak" represent the submission of the person to the sacred process of the husay. The wine serves as an offering for the spirits and the chicken as the sacrifice to which the offense will be transferred.

3. Participants in Conflict Resolution

Higaonon Tribe

The process of conflict resolution is held in public (family members and the community in general) especially for crimes or offenses that affect the general welfare of the community. For very minor offenses, however, only the parties or their representatives are present. A representative is usually a datu or a respected elder of a person's family or community. At any rate, the process of conflict resolution is always done at the tulugan, or place where any collective activities of the community is performed. There is no gender discrimination. Both men and women can participate in the process.

Talaandig Tribe

There is no restriction as to the membership of women in the tribal council as well as to be designated as "Palaghusay" (mediator), but the Talaandig of Miarayon can not recall of having a woman "palaghusay". Women can only be seen to mediate for conflicts within the family. Parties to the hearing though are not limited to men; women and children can speak during the Husay.

4. Venue of Conflict Resolution

The venue of resolving conflicts depends on the nature of the conflict. Ordinarily, it is done in the house of the Datu or, with the enactment of the Katarungang Pambarangay law, in the barangay hall. This is true for the Talaandigs and Higaonons. This is both true for Talaandigs and Higaonons. But cases like boundary dispute are being heard at the site of the dispute. Hearing or Husay are being administered privately and only the parties involved (including families and witnesses) are allowed to participate. But the rituals after the settlement are held in public especially the "Tampura" in resolving "Lido" or clan war. This is intentionally done to declare to the community the end of the conflict and to remind the parties not to violate the settlement because it is being witnessed by the entire community.

D. Interface with State Laws and Policies

1. Aspects Interfaced

In the Higaonon tribe, there is no apparent interface in barangays Rizal and Tipolohon in Claveria. In barangay Minalwang, however, there is some sort of interface of the lumad system with the Katarungang Pambarangay but it is not formally translated through an ordinance or resolution. It just happens that the Punong Barangay is himself the datu of the

tribe and majority of the population are Higaonons. In this barangay, conflict resolution is carried out using the lumad system but the agreements are reduced into writing the amicable settlements reached by the disputing parties) are put into writing as required by the local government code.[9]

But in Talaandig tribe, some modifications in the administration of justice are highly observable. For one, the venue of the "Husay" is frequently held at the barangay hall instead of the "tulugan" or tribal center or in the house of the Datu. Some Palaghusay also adopted the process of the Katarungang Pambarangay which requires a written settlement agreement. These modifications can be attributed to the changes in roles and functions of the datus. Some datus have been elected as Barangay Captain or Barangay Council Member or appointed as member of the Lupong Tagapamayapa. The Palaghusay of Barangay San Miguel, for instance, was a barangay council member and presently appointed as member of the Lupon. If a conflict is referred to him, he will first ask the parties which process they prefer to use in resolving their conflict. If the parties prefer the Katarungang Pambarangay, they will undergo the process as provided in the law. If they choose the traditional system, they will be asked to follow the customary law.

In Barangay Lapok, the Palaghusay is invited to the barangay whenever there is a conflict to be resolved. He serves as resource person on the customary law and clarifies questions about the "Batasan". The dispute resolution process is held inside the barangay hall with the presence of the Lupon Tagapamayapa but using customary law. This blending of processes in the short term is beneficial to the barangay government as to the adherence to the agreement. The agreement reached is stronger because of the "sacredness" of the process.

2. Problems and Limitations of the Interface

One downside of this set-up is the limitations set forth in the Katarungang Pambarangay Law.[10] Conflicts traditionally mediated by the Datu are being endorsed to the courts. This set-up also undermines the authority of the Datu over the tribe relegating him as subordinate to the barangay government. The Datu also gradually lost his independence and later his authority will be subsumed in the barangay.

3. Recommendations

a. Educate barangay officials, particularly non-IPs, on the lumad system of conflict resolution, pertinent laws as well as policy gaps for the full recognition of the lumad system;

b. Strengthen the implementation of IPRA, especially as regards the strengthening the authority of the tribal council or the council of elders especially in areas where the lumads are gradually loosening their cultural grip.

c. Recognize and respect outcomes of conflicts resolved or heard before the datu. This requires some amendments on the Katarungan Pambarangay particularly on the process of referring unresolved conflicts before the datu to the barangay. Or at the very least, while there is no amendment yet, the barangay should advice the conflicting lumads to bring their dispute before the datu;

d. NCIP should actively assist Indigenous Peoples uphold their customary laws. In particular, NCIP should help lumads organize their council of elders especially in the light of reports that some persons claim to be datu;

e. Preserve and strengthen the oral nature of the lumads' customary law especially now that the younger generations are no longer rooted to their culture and tradition. Some studies (like that made by Dr. Burton, Choices of Response to Inter- Kin Group in Northern Mindanao) suggest the codification of customary laws.

However, codification faces threat of making customary laws and indigenous conflict resolution processes rigid instead of being flexible as is traditionally practiced. Nevertheless, it is for the lumads to decide on the matter. But among the Talaandigs, there is a general feeling of apprehension because the codification could mire the sanctity of their culture. As regards the Higaonon, however, they have already reduced into writing their Bungkatol ha Bulawan, which they recognize. But as noted above, the bungkatol ha bulawan is only a form of prescribed ethics and do not spell out the more specific offenses and the processes involved in conflict resolution.

E. State of Indigenous Justice System

1. Strengths and Weaknesses

It is observed that the IP system of conflict resolution among the Higaonon and Talaandig is basically the same. They both share the idea of justice as not purely to indemnify the person of a harm done to him, but also to heal the discord created between the parties. Social harmony through mutual understanding is the paramount aim of their conflict resolution process.

Their justice system is collective. In serious offenses, the entire community may be involved. Hence, justice may be seen as a collective concern rather than a mere private affair. Another distinctive character of IP justice system is the performance of ritual before and after the process of conflict resolution. Justice for them, therefore, is anchored deeply on their religious beliefs. One factor why the lumad faithfully observe the agreement they reach is their belief of punishment for sinning or wrongdoing, like violation of the terms of agreement.

Also, conflicts resolved in the lumad system are lasting and more sustainable. This is so, because as had been noted, the parties voluntarily submit themselves to the process and participate in said process with honesty and good faith. Consequently, whatever the resolution is agreed, the parties are naturally bent at complying and observing the same. And in cases where the conflict is between tribes, the agreement or settlement made is transmitted from one generation to another, so as to remind the future generation of the pact agreed by their forefathers.

2. Challenges

In Claveria, the informants observed that Observance of the lumad system of conflict resolution largely depends on the population of lumad in a certain community. In areas where majority of the population belong to the Higaonon, the lumad system is actively observed. In areas, however, where they are a minority, resolution of conflict is resorted to the barangay. In general, it may be said that the lumad system of conflict resolution is slowly losing ground. It is observed that less number of cases are being referred to before the datu or elder member of the tribal group.

There is also an imminent danger that the indigenous justice system, and even the whole culture and tradition of the Higaonon may all be forgotten and erased from the memory of the succeeding generation. One reason, according to the informants, is that the younger generation of the Higaonon is no longer interested in learning their customary laws. Media (computer games and television) also erode the interest of the younger generation to learn from the elders. Lesser time is spent for the old to share and pass on their knowledge to the young. Also, local politics somehow mired the social relations of the Higaonon. Loyalty of a member of the Higaonon could at times be tainted especially during barangay elections.

In Miarayon, the informants also observed that there is an increasing trend of assimilation especially with the younger generation may pose a serious threat against the preservation and observance of their customary laws. Their young generation is said to be gradually losing their interest in learning their customary laws and are more inclined to the things promoted by the media. The attendance of the youth during tribal gathering and rituals is decreasing. The entry of multinational plantations and other business interest is equally threatening they don not only caused assimilation but also divisiveness among the Lumads. The entry of asparagus plantation, for instance, caused the division of other splinter group in barangay Lirongan.

Another alarming trend observed in three (3) other barangays is the filing of complaint directly before the Barangay Captain, bypassing the Datu. Many community folks are already availing remedies under the formal governance structure instead of the Datu. This caused the filing of actions to the courts instead of amicably settle the conflict among and within the community. The informants, alarmed with this trend, proposed that a referral system be established in the community. That before the conflict is raised in the barangay, especially if the parties involved are both Lumad, the Datu should first officiate a husay. Another thing is the recognition on the part of the government that the

Indigenous dispute resolution process is a proven process that predates the establishment of the formal government structure. This phenomenon is also shared among the Higaonon in Claveria. Religion also plays a major role in the decreasing adherence with customary laws. The informants pointed out that some religious sects considered the traditional beliefs as against the Christian teaching and therefore the ones practicing it are doomed to be burned in hell. A significant number of the Talaandig people are now beginning to abandon their traditional beliefs because of their religion.

CORON, PALAWAN:
The Kalamian-Tagbanua Conflict Resolution Process & Justice System

A. The Study Site

The study focuses on the Tagbanua in Coron, Palawan - Barangays Banuang Daan, Cabugao, Buenavista, Tara, Malawig, Bulalacao, Marcilla, Borac, Turda.

Coron is one of the four municipalities in the Calamianes Group of Islands, the northernmost municipality of Palawan. It has a total land area of 94,952.60 hectares and has 63 islands and islets and approximately a dozen is permanently inhabited (Municipal Profile). The municipality is rich in natural resources and is endowed with natural landscape that makes it as one of the prime tourist destinations in northern Palawan and in the province.

The total number of household of the municipality based on BDP-PRA data for 2006 is 7,989, with a total population of 39,433. It consists of 23 barangays, including but not limited to the following are Tagbanua barangays: Banuang Daan, Cabugao, Buenavista, Tara, Malawig, Bulalacao, Marcilla, Borac, Turda, Decabobo, Decalachao, and Lajala (Municipal Profile). The nine indigenous communities: Banuang Daan, Cabugao, Buenavista, Tara, Malawig, Bulalacao, Marcilla, Borac, Turda are members of the Saragpunta, a federation of Tagbanua associations. Saragpunta, a name that was taken from the word, saragpun, which means "let us gather", was formed in 1997.

1. The Kalamian-Tagbanua People

The Kalamian-Tagbanua of the northern group of islands of Palawan is distinguished from the Tagbanua of mainland Palawan, who are upland forest dwellers, as subsisting on sea and forest resources. Their way of life way revolves around luyang (caves), awuyuk (lakes), talu (corals), teeb (sea-waters) and geba (forest). They forage kabuan, kurut and kapari, and other wild yams as well as samong (shell), balatan (sea slugs) and giant clams such as let-let, manlet, and taklobo offered by the shallow seabed. Their most important source of cash during amihan (northeasterly winds) is the production of swiftlet or balinsasayaw nest (Callocalia troglodytes). They obtain luray (edible bird's nest) after an arduous, vertical climb to the caves nestling on the jagged cliffs. Historical data shows that the Tagbanua may have been trading edible bird's nest with the Chinese as far back as the 10th to 12th century AD.

The different Tagbanua groups trace their roots in Coron Island, which is found across the bigger mainland of Busuanga. When the Moro raiders struck Coron Island around the middle of 1700, Tagbanua families fled to the nearby islands of Bulalacao, Tara, Culion and in the outskirts of mainland Busuanga. In time, the Tagbanua have decided to stay in their new found territories.

Until the last two decades, the Tagbanua are still thought to be firmly committed to their traditional culture. With the unrelenting incursion into, and expropriation of, their territories

in the last two (2) decades, the Kalamian-Tagbanua have lost much of their ancestral islands to migrants and developers. For example, a Tagbanua family once inhabited Dimakya Island in the northern part of Busuanga Island until an intermediary purchased it for a few thousand pesos and sold it to resort developers. Dimakya Island is now the site of Club Paradise, a world class resort. In Barangay Buenavista in Coron, a Manila-based fishing company spuriously acquired a vast area where it will build a shipbuilding facility. Elsewhere in Calamianes, rich families and corporations enter into lease agreements with the government to develop areas that the Kalamian-Tagbanua have been occupying beyond memory can recall.

The rapid changes that occurred in the Tagbanua's life sphere have goaded them to embrace the wider social culture. Today the Kalamian-Tagbanua of Coron Municipality are dispersed in the Barangays of Cabugao, Banuang Daan, Lajala, Malawig, Buenavista and Tara where they are still in dominant numbers. There are also significant concentrations of Tagbanua families in Barangays Borac, Marcilla, Turda, Decabobo, and Decalachao.

2. Ancestral Territory

In 1993 Barangays Tara, Malawig, Turda, Buenavista, Bulalacao, Banuang Daan and Cabugao filed a consolidated application for CADC/CADT. The application for CADC was filed pursuant to Department Administrative Order No. 2 of the Department of Environment and Natural Resources (DENR). In 1997, the Provincial Special Task Force on Ancestral Domain (PSTFAD) validated the claim of the Kalamian-Tagbanua. The CADC application was endorsed by the PSTFAD to the Department of Environment and Natural Resources (DENR) in 1998. It recommended the processing of Coron Island, (where barangays Banuang Daan and Cabugao belong) only and excluded the other barangays in the endorsement. The rest of the claims are still pending and the Tagbanuas are still fighting for their ownership right until now. To date, only Coron Island claim where Barangays Banuang Daan and Cabugao belong was awarded CADC (R04-CADC- 134) and CADT. Other ancestral territories of the Tagbanuas are in the municipalities of Busuanga, Culion and Linapacan.

3. Assimilation to Modernity

The influx of non-Tagbanuas became extensive from the year 1965 to the 1990's (BDPPRA 2006), particularly in the area of potential source of living. Migrants mostly came from the Visayas and Luzon region including the provinces of Cebu, Bohol, Lucena, Quezon Province, Batangas, Cavite, Iloilo, Mindoro.

In fact, there are Tagbanua communities, including the barangays of Bulalacao, Marcilla and Borac where majority of barangay officials are migrants. Migrants introduced trade in the form of "buy and sell" among the Tagbanua. The advent of new technologies likewise reached the Tagbanua communities. Transistor radios (tuned in to DZRH and Mindoro radio stations), televisions (GMA7) and cellular phones are the primary and leading technologies that are being used by the Tagbanua to communicate and become updated with the current events. Tagbanua members studying high school and college in Coron town have access to public internet shops.

Up until the seventies, most Tagbanua communities practiced "traditional religion". When Christian missionaries (mostly Conservative Baptist) visited their ancestral domain in the year 1960s, majority of the Tagbanua embraced Christianity. At present, there are four (4) dominant religious groups to which the Tagbanua are affiliated – the Roman Catholic, "Ang Dating Daan", Seventh Day Adventist and Baptist. Only a few of the Tagbanua continue to practice their "traditional" religion.

According to Tagbanua leaders, while there is relatively high number of Tagbanua children who completed elementary grade, very few have been able to reach much less complete college education. The Department of Education (DepEd) also introduced Alternative Learning System-Basic Literacy Program (ALS-BLP), a non-formal education program which is being implemented in collaboration with the Project Development Institute (PDI) and the local government unit of Coron. DepEd ALS-BLP data of enrollees in the School Year 2007-2008 show that there are 100 enrollees in Barangay Tara; 75 in Turda; and 14 in Buenavista. Tertiary and most secondary schools are located in Coron town proper.

Besides education, they have roads, barangay halls, health centers, waiting sheds, water system, and generator sets for electricity. Other infrastructure projects were provided by non-government organizations who are based or have project areas in the Calamianes area such as community organizing/empowerment and livelihood, including the Project Development Institute (PDI), Environmental Legal Assistance Center (ELAC), Philippine Association for Intercultural Development (PAFID), Foundation for the Philippine Environment (FPE).

B. Concept of Justice, Retribution and Penalty

The Tagbanua's concept of justice is inextricably linked with retribution, punishment, and reward. Its essential element is speed. Here lies the tension between the prevailing notion of justice in contemporary society and that of the Tagbanua's. The Tagbanua find difficulty in comprehending the fact that a patent breach of customs could drag on for as much as 10 years without having a guarantee that the offender will be penalized at all.

Cover-ups and political patronage are absent in the Tagbanua justice system. It is often the case when the family members of offenders are the ones who willfully surrender them to mame'epet. Neither familial ties nor political positions get in the away of serving justice. The case of the Barangay Captain of Cabugao and three (3) of its Barangay Councilors is illuminating. In October 1998, the Tagbanua court indicted their own Barangay officials for unlawfully issuing a cutting permit to illegal loggers. The mame'epet subsequently found them guilty. In no time, the mame'epet penalized the offenders by making them squat for an hour with a bamboo pole filled with grated coconut resting at the back of their knees, making them attractive to ants.

Afterwards, the mame'epet lashed each of them 21 times by a rattan cane. For the Tagbanua, justice is as straight forward as submitting the offender to the tribal elders who shall then weigh the merits of the case based on the offender's personal history and gravity of offense and thereupon hands down a verdict and metes out the penalty—sometimes in a span of one day.

The Tagbanua society values kinship and unqualified reverence to the wisdom of its tribal elders. For this reason, a recalcitrant offender who refuses to acquiesce to the decision of the elders is ostracized in the community. The case of a Tagbanua family who sold his landholding in Barangay Buenavista to a ship-building company despite the contrary opinion of tribal elders is very revealing. Banished from the village, family members decided to transfer to Tara. But the villagers of Tara did not waste time in showing their revulsion to the deeds of the concerned
family members. Finding no sympathetic neighbor, the forlorn father decided to transfer to a desolated island where he died a miserable lonely death.

C. Elements of Indigenous Justice System

1. Nature of Crimes/Offenses and Penalty System

Time-honored cultural norms are at the base of the Tagbanua justice system. They have a complex oral tradition on marriage, inheritance, and resource-use all aimed at ensuring the survival of the tribe. Certain areas are called panya'in or sacred, hence, harvesting resources in these areas are proscribed. In passing through panya'in areas the Tagbanua use only a particular language that is understood by spirits—a language that is completely different from tinagbanua. They believe that offenders will fall ill and will have to seek the intervention of babalian or shaman for recovery.

Other infractions merit different sets of penalties. Nangimatay (murder) and limbo (rape) represent grave felonies. According to tribal elders, nangimatay and limbo were very rare, and when they were committed, the offenders are meted out with capital punishment. The offender's neck was tied with a rock and he was made to jump into the sea. Nowadays, crimes of this nature are submitted to the formal legal system, because the mame'epet or tribal elders are fearful that they themselves could be liable for crime should they impose their traditional penalties. Panya or incest is considered a serious breach of cultural taboo which warrants public humiliation. For the Pala'wan and the Tagbanua of the southern mainland Palawan, incest is called sumbang and the offending parties are beheaded and their corpses were made to rot, while the whole village dessert the area where they were slain.

If, after thorough evaluation of the case, the offender is found guilty as charged the mame'epet set the stage for either panglao or bordon. Panglao is a form of corporal punishment where the offender is mortified in front of fellow villagers by undergoing an ordeal. Tribal villages in Coron practice different forms of panglao. In Banuang Daan and Cabugao, the offender is made to squat with a two-foot bamboo pole resting at the back of his knees to attract ants. A more benign but no less humiliating form of panglao is practiced in other villages such as Malawig, Buenavista and Tara. Here, the offender's feet are separated by a wooden clamp and is made to squat for several hours.

Bordon is another form of punishment where the offender is lashed with rattan cane. The number of lashes varies depending on the severity of the offense. The mame'epet who executes bordon to a male offender is made to stand with his feet close together to see to it that the caning will not be hard enough to disable the subject. For female offenders, the form of caning is even gentler because the mame-epet is required to be in a prone position while whipping. Even so, the respondents for this study revealed that seldom do they experience women subjected to caning.

Moreover, children below 18 years of age are exempted from this form of punishment. If the mame'epet fails to administer bordon properly—such as when the caning is too lenient or too cruel — he too will be caned. When the whipping is completed, the mame'epet will exclaim, 'perdon!' signifying that the offender has atoned for his sins.

The mame'epet reserves the harshest form of humiliation for panya or incest, which the Tagbanua define as having sexual relationship with someone who is within the third degree of affinity or consanguinity. Those who breach this cultural taboo are forcibly made to suffer the indignity of eating in public with pigs, dogs and chickens in a common feeding bowl—dirt, foul-smelling farrow and all. Afterwards, the mame'epet releases a toy boat with human-like candles and meat into the sea and a written note which says, "inde yamo magdason tung yamen yame ay ugaling ayep" (Do not follow us because we behave like animals). According to the tribal villagers, this act signifies their separation from humans and their union with animals. For the Tagbanua, such a ritual has a cathartic effect to the

couple because their marriage is consummated after they have been penalized. In recent memory, there were couples from Malawig and Tara who were penalized this way.

2. Justice Administration – the Conflict Resolution Process

Pagkeresen is what amounts to a courtroom proceeding in our contemporary society sans the pomp and legalese. The closest English equivalents of the term are conversation, discussion, or talk. In the Tagbanua context, pagkeresen is a rite of solidarity and a complex ritual of establishing guilt and finding the appurtenant penalty. The central characters in a pagkeresen ceremony are the mame'epet or tribal elders. Dalabajan et. al. (2008) describes pagkeresen this way:

In keresenan, knowledgeable members of the tribal community, usually the mame'epet or tribal elders, engage in a convivial conversation — over a cup of local coffee and some betel, areca nut and lime — to thresh out issues affecting the community and to find a solution acceptable to all. From a functionalist perspective, pagkeresen plays a role in fostering solidarity, group cohesion, and in easing tension and preventing conflicts.

3. Participants in Conflict Resolution

A party to a conflict may bring a dispute to the attention of the mam'epet. However, there are also instances when third parties lodge their complaints. Present during the pagkeresen proceeding are the mame'epet, and the families of both the complaining and complained parties. Witnesses are also summoned to shed light on the issue. In cases of land disputes, the mame'epet calls upon the presence of tribal elders who have the depth of knowledge regarding the history of the property in question.

4. Venue of Conflict Resolution

The mame'epet hold the proceedings in the village center usually in the barangay hall or in a house in which the contending parties mutually agreed to meet. In sensitive cases such as incest and adultery, the mame'epet meet the parties in some secluded place to preserve the secrecy of the proceedings.

D. Interface with State Laws and Policies

1. Aspects Interfaced

An interesting dimension in the adoption of traditional penalties is its potential overlaps with the Barangay Justice System (BJS). For areas where the Tagbanua are predominant in numbers (e.g. Cabugao, Banuang Daan, and Tara), this is easily resolved, as the village leaders did, by appointing the mame'epet to the lupong tagapamayapa. However, it may seem problematic in areas where the increasing number of non-IP's exert their influence. A tribal leader in Tara simplistically answers this dilemma: sue them in court.

But the issue is far more complex than this. It has something to do with demarcating the line that separates the jurisdictions of the BJS and the Tagbanua's system of sanction. As one area of jurisdiction expands, the other one constricts until it reaches the vanishing point.

2. Problems and Limitations of the Interface

The primary goal of the formal justice system is to ensure that the offenders are properly arrested, brought to justice, and, through speedy and impartial process, penalized accordingly. Having served his sentence, he is provided adequate support to make him once again a productive member of the community. In many ways, the Tagbanua justice system serves this purpose. More than that, the persistence of the Tagbanua's sanction system, despite the impregnation of the wider social culture, has held the Tagbanua society together by keeping its tribal members well rooted in their cultural norms and time-honored

traditions. Put another way, traditional penalty system keeps the tribe on an even keel to make sure that the defining characteristics of being a Tagbanua does not sink into oblivion.

On balance, the traditional penal system reinforces the formal justice system by acquiring jurisdictions over cases which could have easily added up to the pile of cases languishing in courts. For this reason, it can also be argued that the traditional penalty system widens access to speedy justice.

However, there are also situations whereby the legally accepted rules collide with the informal justice system. For example, the Philippine Forestry Code (Presidential Decree 705 as amended) puts a blanket ban on kaingin unless done in a titled property. The law does not make any distinction between kaingin as slash-and-burn farming and kaingin as swidden agriculture, which is what is being practiced by the Tagbanua of Coron. There is a rich cornucopia of evidence which conclude that swidden agriculture is the only viable form of agriculture in the tropics where the soils are infertile and low in plant nutrients. In the absence of any other modes of producing crops in tribal villages, the Tagbanua populace not only considers kaingin as legally acceptable but a matter of economic survival. Hence, the mame'epet would have difficulty seeing kaingin as a legal infraction. It is noted, however, that there are certain customary practices which have now been discarded in response to national prohibitions. One example is the use of tubli (a concoction made from poisonous bark of trees) in fishing. Another example is the hunting of marine turtles and dugong, which are endangered species. The use of noxious substances in fishing and hunting of rare and endangered species are punishable acts under the Philippine Fisheries Code or RA 8550.

Another source of friction is the congruency of traditional sanctions to existing laws. Sec 15 of IPRA Law states that the IPs have the rights to use their own customary laws and justice systems provided that they are in accord with national and international legal systems. Clarifying Sec. 72 of IPRA, its Implementing Rules and Regulations (IRR) states that:

3. Penalties
Section 1. Imposable Penalties in Accordance With Customary Law. The ICC/IP community whose rights have been violated may penalize any violator in accordance with their customary law, except:

a) Where the penalty is cruel, degrading or inhuman; or
b) Where the penalty is death or excessive fine

Does panglao or bordon or having the offender to eat with animals in a common food bowl constitute cruel, degrading or inhuman acts?

An interesting dimension in the adoption of traditional penalties is its potential overlaps with the Barangay Justice System. For areas where the Tagbanua are predominant in numbers (e.g. Cabugao, Banuang Daan, and Tara), this is easily resolved, as the village leaders did, by appointing the mame'epet to the lupong tagapamayapa. However, it
may seem problematic in areas where the increasing number of non-IP's exerts their influence. A tribal leader in Tara simplistically answers this dilemma: sue them in court. But the issue is far more complex than this. It has something to do with demarcating the line that separates the jurisdictions of the BJS and the Tagbanua's system of sanction. As one area of jurisdiction expands, the other one constricts until it reaches the vanishing point.

3. Recommendations

For sure, there is value in retaining the time-honored tradition of the Kalamian-Tagbanua with respect to traditional sanctions. As discussed in this paper, the Tagbanua justice system plays a functional role of maintaining cultural homeostasis—that is to say that the penalties act as an effective control to regulate social behavior. In relation to the formal justice system, the traditional penalty system helps in resolving disputes and therefore easing court dockets. But, how could the Tagbanua tradition persist in the face of the legal and institutional issues stated above? The more difficult question which relates to the current efforts to increase access of the poor to justice and speeding up the administration of justice is this: What are the conditions that will render the Tagbanua penalty system more effective? The following steps can be contemplated:

a. Undertake a more in-depth anthropological research aimed at reconstructing and decoding the Tagbanua tribal laws and penalties. As indicated, there is a dearth of information in regard to the customary laws observed by the Kalamian-Tagbanua. The primary goal of the research investigation is to document the customary laws with the view of finding a common set of laws which will be applicable to all the Kalamian- Tagbanua tribal villages.

b. Define the respective jurisdictional boundaries between BJS and the Tagbanua justice system, on one hand; and the respective functions of the mame-epet in regard to subsequent court proceedings, on the other hand. There are some cases whereby the litigants find difficulty in distinguishing what sort of cases are supposed to fall under the jurisdiction of mame-epet and what cases should be acquired by the lupon. In fact, there have been documented cases when the lupon refuses to honor the decision of the mameepet, and vice versa. We submit that the BJS and the pagkeresen are mutually reinforcing and as such their respective jurisdictions should be clear.

c. Define the parameters for ensuring that the traditional penalties are in compliance with national laws and international safeguards. This will ensure that panglao, bordon and similar penalties are humane and therefore imposable.

d. Enhancing the participation of women members in mame'epet proceedings. It has been observed that the mame'epet are predominantly male. It is not clear yet what is the reason for this. During the interviews conducted for this study, the informants indicated the special role that women play in the Kalamian-Tagbanua society. Moreover, they also expressed their desire to expand the representation of female members to the mame'epet.

e. Establish legal protocols which will demonstrate that offenses have underwent tribal hearing before the case was filed in court. After defining the legal boundaries of tribal justice system, a system similar to BJS's certificate to file action should be installed. This is one of the most important means to decongest court dockets.

f. Conduct extensive information campaigns aimed at four (4) levels, namely: i) indigenous communities; ii) law enforcement agencies; iii) Municipal and Barangay LGUs; and, iv) the Courts. Such information dissemination drive will inform critical stakeholders about the nature, scope of powers and limitations of the tribal justice system and its functional relationships with other legal systems such as the BJS, the Court, and administrative and other quasi-legal bodies.

g. Pilot-test and evaluate cases involving the use of Tagbanua penalty system, and determine their consistency and validity in relation to tribal and national laws. The systematic evaluation of the tribal system will be primarily aimed at putting in place

additional safeguards (such as appeals system, documentation, etc...) to make sure that the system fully complies with the "due process" requirements.

h. Encourage the Supreme Court to issue a Memorandum Circular adopting the Tagbanua system and similar IP legal systems. Unarguably, the tribal justice system needs a legal garb to enjoin all the subjects to embrace the concept. An SC circular will therefore fully legitimize the application of the tribal system.

LAKE SEBU, SOUTH COTABATO:
The T'boli and Ubo Conflict Resolution Process & Justice System

A. The Study Site

Lake Sebu is a municipality in the province of South Cotabato nestled on mountain ranges -- Daguma and Talihik mountain ranges along the eastern portion, Mt. Busa in the southeastern side, Pitot Kalabao Peak along the central part and Mt. Talili in the eastern area. It is famous for its captivating and placid lakes, charming falls, cool climate and indigenous peoples – mainly the
T'boli, Ubo and the controversial Tasaday. Because of its cool climate, it is also known as the summer capital of South Cotabato.

Lake Sebu is also the name of the biggest of the 3 lakes found in the municipality. It is considered an important watershed supplying irrigation in neighboring towns in the province and in the nearby province of Sultan Kudarat. The other 2 smaller lakes are Lake Lahit and Lake Seloton.

The municipality, which is approximately an hour away from Koronadal, the capital town of the province, and some 6 hours away from Cotabato City, the government center of Region XII, is composed of 19 barangays. Fifteen (15) of the barangays are inhabited by the T'bolis, 3 by the Ubos and 1 by the Tasadays. In the Poblacion or town center, a small population of Ilonggos, Bicolanos and Ilocanos is found. These settlers form part of the municipality's traders, teachers and other professionals providing services to the T'bolis and Ubos. Communities surrounding the lakes engage in Tilapia aquaculture making the town also famous for this freshwater fish grown inside large fish cages floating on the lake. Communities found in the hills and mountains thrive on agriculture. They produce rice, corn and banana.

1. The T'boli and Ubo Tribes

The T'boli and the Ubo peoples are the original inhabitants of Lake Sebu. The T'bolis, better known for its t'nalak cloth and weavers, comprise the majority group in the municipality numbering to 37,000 in 2006. They are spread across 15 barangays. They speak a Malayo-Polynesian language called the T'boli. They are farmers, producing upland rice and corn. Some are engaged in fishing, t'nalak weaving and brass casting.

The Ubos are much lesser in number. Although they have co-existed with the T'bolis since time immemorial, they occupy only 3 barangays found in the western and southeastern portions of the municipality. In 2006, their number was noted at close to 8,000, which is only about one-third of the T'boli population. They are mainly corn farmers and rattan cutters. They look and dress like the T'bolis except for a little variation in the color of the dresses and accessories worn by women. They also speak almost the same language as the T'bolis.

Because of similarities in physical appearance, language and many cultural practices, distinguishing the T'boli from the Ubo can be tricky. In the past and even up to these days,

the Ubos are distinguished as warriors or fierce fighters while the T'bolis are characterized as their opposite -- peace-loving. They used to be almost equal in number.

But during the reign of the PANAMIN in the 70s, when the T'bolis were the center of attention and support of the government, many Ubos "defected" to the T'boli. Feeling excluded from development, many Ubos chose to identify themselves as T'bolis to acquire the same benefits the T'bolis were getting from the government as well as from private groups. The "defection" of many Ubos to the T'boli tribe, according to tribal leaders, caused the drastic decline in their number.

Both tribes maintain their traditional political organization alongside with formal political structures. The T'bolis, however, hold local government posts and principally run the municipal government. With increasing influence from mainstream politics and modern culture, both tribes face the challenges of keeping their culture alive and pursuing their aspirations as indigenous peoples.

2. Ancestral Territory

The T'boli and Ubo communities in Lake Sebu were pilot areas for the delineation of ancestral domains under DENR DAO2, series of 1993. They have been issued a Certificate of Ancestral Domain Claim (CADC) on July 20, 1995 covering more than 80,000 hectares. Their application, however, for the conversion of CADC to CADT remains problematic (ILO 2007, 81-82).

3. Level of Assimilation to Modernity

Increasingly, since the time the government advertised Lake Sebu to the world as a tourist attraction because of its cool climate, charming lakes and falls, and its indigenous peoples, the T'bolis and Ubos had been exposed to the world outside their culture and milieu. Local and foreign tourists as well as lowland migrants who settled in the town center brought to them some aspects of the modern culture.

Modern culture via formal education, exposure to new information and technology as well as modern politics continue to advance into their life. More and more T'boli and Ubo children gain access to formal school with each of the 19 barangays having an elementary school. With 6 high schools located in the town center and other strategic areas in the municipality and a college run by the Santa Cruz Mission, a church-based development institution, many young T'bolis and Ubos are able to pursue secondary education and college education. Families that have the means send their children to any of the colleges and universities in neighboring towns and cities.

A good access road from key cities to Lake Sebu and electrification of many barangays, which allow for ownership of radio and television, facilitate exposure or access of T'bolis and Ubos to new information and modern technologies.

B. Concept of Justice, Retribution and Penalty

The T'boli and Ubo peoples equate justice with peace and harmony not only between conflicting parties but more importantly within the whole tribe. Both tribes consider a crime committed by offenders a crime against the offended only. In various ways, however, conflicts cause distractions not only to the respective family of conflicting parties but also to neighbors, relatives,
friends and observers distressing relationships and creating disharmony in the community. To everyone else in the community, it is an injustice to be disturbed by a conflict produced not of their own doing but by two or several persons only.

Hence, it is important for both tribes to painstakingly and immediately settle every conflict that arises between or among their members to prevent escalation of conflict and abort impending violence. An unsettled conflict, particularly adultery and murder, leads to retaliations and continuous reprisals between families of conflicting parties. In the past, reprisals extend to subsequent family generations of conflicting parties. For as long as warring families seek vengeance against each other, everyone else in the community is subjected to terror, anxiety and distress disrupting overall peace and harmony in the community.

Therefore, the first step to restoring peace and harmony in the community and rendering justice to everyone affected by a conflict is establishing the offense or crime and the offender(s). Traditionally, offenders are determined through a ritual that involves dipping the hands of all crime suspects to a pot of boiling water. The one whose hands get scalded is declared as guilty of the crime.

Penalty is imposed on the offender as compensation for the trouble or disturbance caused on the offended. Traditionally, offenders are penalized either 1) by being asked to pay the offended an agreed amount of "minor" and/or "major" possessions; and 2) by being sentenced to death. "Minor" possessions include personal or family assets or heirlooms such as gong, sword, earrings, necklaces and others. "Major" possessions include land parcels and animals such as horse, carabao and cattle. But death as the highest form of penalty imposed for serious crimes such as murder and adultery had been long abolished.

The offended party decides on the number and/or type of minor and/or major assets that will form the penalty but offenders can bargain until both parties reach a compromise. When an offender fails to fulfill the agreement, the datu in command or in-charge of the offender is obliged to help meet the agreed terms to avoid retaliations that may lead to violence and further disruptions in the community. In return, the offender is obliged to render services to the household of the datu over a defined period of time or, as the case may be, for a lifetime.

C. Elements of Indigenous Justice System

1. Nature of Crimes/Offenses and Penalty System

Currently, both in T'boli and Ubo communities, the most common offenses or crimes settled in the tribal court are adultery, land dispute, robbery/theft, non-payment of debts, murder, and physical injuries.

a. Adultery – if a female spouse is the offender, penalty includes return of the dowry and payment of 5 horses or cows to the husband. If the offender is a male spouse and a separation results from his offense, the wife keeps the dowry and husband pays his wife one (1) carabao as penalty.

b. Murder - considered a very serious crime, customary law imposes death to the offender. But with the abolition of death penalty, tribal leaders carefully settle this kind of conflict to avoid retaliation from the offended party and cause extended reprisals from both parties. Series of negotiations are held to ensure settlement and once settlement is achieved, conflict resolution is sealed with a "friendship pact" that guarantees nonreprisal from both parties. A feast is held to celebrate and signal the restoration of peace and harmony between conflicting parties.

c. Robbery/Theft - in the Ubo tribe, during the first offense, the offender is advised not to repeat the offense. If offender repeats the offense, he/she is imprisoned. On the third time, the offender is sold as slave. Among the T'bolis, particularly in barangay Poblacion, the case is forwarded to the Lupon if offender repeatedly commits this offense.

d. Land-grabbing – usually involves a Bisaya or Ilonggo as offender. Tribe members prefer the use of customary law in the resolution of this case. There are cases, however, that reach the formal courts. They are those that failed to be settled in the tribal court because the offender is not satisfied with the decision of the tribal court.

e. Rape - always settled in the tribal court. Penalties include asking the offender to marry the offended woman and to give a bigger dowry (e.g., 10 carabaos or 20 horses). In the past, the family of the offended woman executes the offender once he fails to fulfill the penalty,. In the Ubo tribe, rape is rare as women are not allowed to walk alone even during daytime.

f. Non-payment of debt and slight physical injury - settled amicably between parties. For non-payment of debt, the debtor is simply asked to pay what he/she owes the complainant. For slight physical injuries, the injured party determines the penalty.

2. Justice Administration – the conflict resolution process

The whole process of resolving a conflict in the T'boli and Ubo tribes is called iskukom. Then and now, datu or tribal chieftains serve as mediator in conflict resolution. Traditionally, conflicting parties each choose a datu that will represent or act as spokesperson during settlement. The 2 spokespersons meet with the tribal council to discuss the case and schedule meetings for mediation.
After a conflict is resolved, a ritual is held to finally seal the process and signal the restoration of peace and harmony in the community.

With the barangay system in place, conflict resolutions now start at the sitio level, with the sitio leader as mediator. If resolution fails in this level, the case is elevated to the barangay-level datu. If resolution is not yet achieved in this second level, the case is raised to the municipal-level datu where final resolution is delivered.

If a case involves a non-tribe member either as complainant or defendant, the complainant decides where to bring the case. When a complainant is a tribe member, the use of iskukom and application of customary law is always preferred. Conversely, a complainant who is a non-tribe member almost always brings the case to the formal court. When the IPRA law was enforced, certain cases filed to the formal courts were returned to the tribal court for settlement. Formal courts recognize the settlement outcome for as long as the process was properly documented and a report was submitted to them. For their part, both tribes have complied with the documentation and reporting requirements of the state courts. Cases involving parties from 2 different barangays are resolved at the municipal-level tribal council.

3. Participants in Conflict Resolution Process

Until at present, the iskukom remains consultative and communal. As practiced in the past, participation in conflict resolutions are not limited to litigants and their respective family. Others in the community can observe and participate in the mediation process.

4. Venue of Conflict Resolution Process

Settlement of conflicts has always been held in the house of the chieftain.

D. Interface with State Laws and Policies

1. Aspects Interfaced

Lake Sebu is a place dominated and governed by indigenous peoples. Migrant lowlanders such as the Bicolanos, Ilonggos and Ilocanos comprise a very small minority and they can only be found in the town center. The T'boli, which comprises the greater majority and which form the bulk of the educated and professionals, occupy the elected and appointed positions in the municipal government. In the barangays, T'bolis and Ubos occupy the various posts in the barangay council and in the Lupon. Yet no significant interface has taken place. Both the iskukom and the BJS operate independently of each other.

In both tribes, almost all conflicts involving tribe members continue to be settled using customary law and iskukom. Only conflicts involving migrant lowlanders reach the formal courts. But these are rare occasions. What can be considered an interface is the adoption of the recording and reporting requirements of the BJS by the iskukom. After each settlement, the tribal council submits a report to the Lupon. The Lupon simply approves and files the report.

2. Problems and Limitations of the Interface

Both tribes appear to be contented with the limited interface that has taken place between their indigenous justice system and the BJS. For as long as a conflict does not reach the higher formal courts (i.e., MTC, RTC, etc.), tribal leaders (both tribal council and Lupon) are confident in their capacities to settle conflicts within their jurisdictions. But being aware of the IPRA law and their rights as indigenous peoples, they are bent on pursuing their rights and invoking the specific IPRA provisions on use of customary law in conflict resolutions.

3. Recommendations

To both tribes, the types of conflict they find extremely challenging are those pertaining to land disputes within their ancestral domain. From their experience, they find it easier to apply customary law when disputed land is untitled. For titled lands, however, they have no option but to resort to the formal courts which they find biased against indigenous peoples like them. For this reason, both tribes recommend for the inclusion of customary law in the formal justice system – from the Lupon to the higher formal courts.

In line with this recommendation is the recognition of the tribal council as a body with equal status and authority as the barangay council. As such, members of the tribal council must also be remunerated. Because of its positive experience with recording and reporting of conflict resolutions and their outcome, both tribes also recommend their formal adoption in indigenous conflict resolutions processes. Documentations serve well when one of the litigants brings the case to state courts. They present proof that the case has been judiciously processed and resolved using customary law.

To promote recognition and respect of customary laws by the general public, the T'boli and Ubo tribes find it imperative that formal schools include their curriculum a subject on customary law in particular and the indigenous peoples and their culture in general.

E. State of Indigenous Justice System

1. Strengths and Weaknesses

The indigenous justice system of the T'boli and Ubo remains intact and continues to be favored by all tribe members. Both tribes feel that the IPRA law serves to strengthen their customary law and indigenous justice system.

2. Challenges

As earlier discussed, both tribes experience difficulty resolving land disputes within their ancestral domain that involve settlers or non-tribe members. Their customary law does not have any provision on this subject. It is, therefore, important they be issued their CADT so they can exercise autonomy in managing and resolving conflicts within the confines of their ancestral domain.

Another immense challenge they currently face is the incessant cultural disintegration brought about by their continuous assimilation to mainstream culture. In the past and at present, the T'boli and Ubo peoples are endlessly receiving massive education and other development support both from government and private agencies. Present generation of these peoples are detaching from their cultural norms as they increasingly get exposed to new information via the formal schools and various communication channels.

New information influences current thinking and aspirations of tribal children and youth. Tribal leaders recognize that if they will not do anything to counter this phenomenon, there is a poor chance to promote customary law and other important aspects of their culture.

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MARAGUSAN VA, MARAGUSAN, COMPOSTELA VALLEY
The Mandaya/ Mansaka Conflict Resolution Process & Justice System

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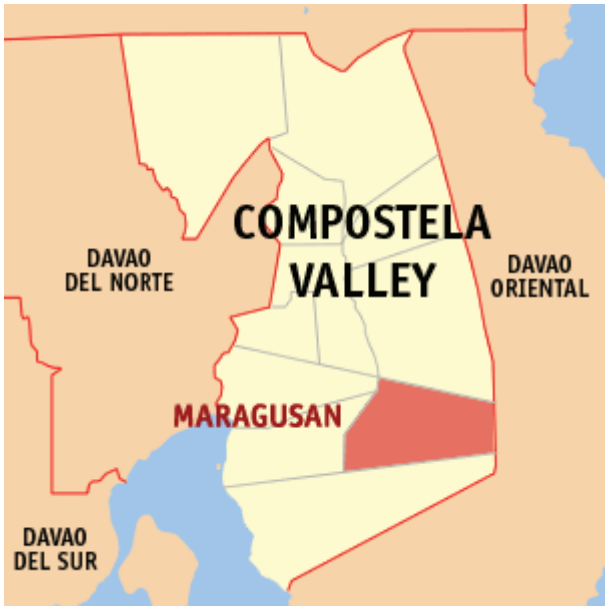
Introduction



This study was conducted in two areas involving Mandaya and Mansaka tribes in the Municipality of Maragusan, Compostela Valley Province. The two (2) sites were purposively chosen in order to obtain a comparative study of the dynamics of the tribe's customary practicesas influenced by the degree of their acculturation and assimilation into mainstream society. Each site is, in itself, a distinct cultural setting; the Caragan Valley where the Mandaya have always been, and the Maragusan Valley, where the Mansakas live. On one hand, the Mandaya ancestral territory is literally isolated from the poblacion area, thus, acculturation and assimilation are markedly limited. On the other hand, the Mansakas have already fully assimilated the mainstream lowland ways of life. This is mainly because their ancestral territories are near the very center of the municipality's poblacion area. Most Mansaka settlements have access to regular transportation and are open to channels of culture and influence such as media, academic and religious institutions.

A. DESCRIPTION OF THE STUDY SITE

1. Brief Ethnography

The tribal name "Mandaya" is derived from the Mandaya word "man" meaning "first", and "daya" meaning "upstream" or "upper portion of a river". The name therefore means "the first people upstream". The term refers to a number of groups found along the mountain ranges of Davao Oriental; it also refers to their customs, language, and beliefs.

The Mandaya are also found in the municipalities of Compostela and New Bataan in Compostela Valley Province as well as other areas all over the entire Davao Oriental Province. The term "Mansaka" is derived from the word "man" which in Manaka also means "first" and "saka" meaning "to ascend". The coined word means "the first people to ascend the mountains or go upstream". The Mansaka ancestral territory is located along the Agusan River that flows down stream from Maragusan to Monkayo and Hijo River in Tagum City. The tribe also occupies the upland areas of the Municipalities of Pantukan, Mabini, Maco, Mawab and Nabunturan, all within the Province of Compostela Valley. Scholars have identified five principal groups of Mandaya: the Manwaga or those who live in the forested mountain areas; the Pagsupan or those who make a living in the swampy banks of the Tagum and Hijo rivers; the Managusan or those who live near the water; and the Divavaogan who are found in the southern and western parts of the Compostela (Bagani 1980:30; Cole 1913:165).

2. Ancestral Territory

The ancestral territory of the Mandaya tribe includes the barangays of Bahi, Langawisan and part of Cagan, a series of congruent barangays which comprise what is locally referred to as Caragan Valley. The territory was formally registered as CADT No. RXI – 0204- 02 and was awarded in 2004. Meanwhile, the CADT for the Mansaka ancestral territory in Maragusan Valley is still being processed for awarding. The community covered by the case study in Caragan Valley comprises two barangays with about 12 settlements: Barangay Bahi and Langawisan. The study site in Maragusan Valley is comprised of seven (7) barangays: Tupas, Talian, Lahi, New Albay, Coronobe, Tigbao and Mapawa.. Although occupied by two distinct tribes, all the study areas are within the administrative jurisdiction of the Municipality of Maragusan in the province of Compostela Valley. The more remote community is the Caragan Valley which is situated in the eastern part of the municipality which can be reached only through foot trails that
traverse the thick forest cover. The Mansakas in Maragusan Valley are found adjacent to the main poblacion area.

3. Level of Assimilation

1. Migration patterns in the ancestral domains of Mandaya and Mansaka show that a substantial number of lowland settlers, particularly in the Mansakas' domain, have taken possession of ancestral lands and occupy positions in institutions of state governance. As shown in the table below, Mansakas only comprise 3% of the entire population of the site while the Mandayas in Caragan Valley account for 99% of the entire population. This demographic situation naturally imply that the level of acculturation among the
Mansakas in Maragusan Valley is a great deal higher than that of the Mandayas in Caragan Valley.

Area	Total No. of Population	Number of IP Population	%
Caragan Valley	2723	2700	99%
Maragusan Valley	43214	1264	3%
Total	45937	3964	9%

Source: Barangay Census 2006

2. Migration of lowland settlers is not the only exponent of acculturation in the ancestral domains. Other promoters are the introduction of various channels of culture and learning as schools, media and religion. Even if Mandayas are dominant in Caragan Valley in terms of demography, they are not spared from the influence of religion. In fact, some of the elders have become preachers or pastors of evangelical churches or lay workers of Catholic chapels in the area.

3. Urbanization with its development framework and concurrent cash economy has likewise brought about paradigm shifts and changes in the dynamics of cultural practices of the tribe. The newer, cash-based individualistic concept and treatment of property rights have pulled away some members of the tribe from traditional communal concepts. This is especially true for the Mansakas due to their proximity in the poblacion center. Seen in this context, the administration of IP customary justice faces a lot of contradictions and difficulties. It is evident that among the Mansakas, the incursion of a development framework which commodifies everything has brought a breakdown of community adherence to customary practices. At the same time, in varying levels, acculturation has altered the tribe's customary and collective notion of justice and its traditional access. As

shown in the map, Maragusan Valley used to be the ancestral home of the Mansakas but with migration and urbanization, the tribe has lost its ownership and occupancy of most of the lowlands and productive lands. This changed landscape has shattered the customary ways of life of the Mansakas. Thus, as compared to the Mandayas, institutionalized interface of Mansaka traditional justice systems with mainstream justice may be problematic since these systems are no longer intact or strictly adhered to. For the Mandayas who are isolated by the natural features of their domain from the center of urbanization, such institutionalized interface will probably be a more meaningful though potentially controversial undertaking.

B. NOTION OF JUSTICE: Concept of Justice , Retribution and Penalty

Mandaya and Mansaka Justice Systems are somewhat similar and have been practiced since time memorial. These are still currently adhered to by the community particularly in the Caragan Valley. For both peoples, justice is anchored on the protection of one's dignity and alleviating the injury caused to the victims and their families. Crimes are not strictly defined as specific violations of certain rules and laws. Rather, they are judged based on threats to or infringements on the life, property and dignity of any member of the community. Moreover, the ideological and institutional foundation of the justice system among the Mandayas/ Mansakas is not to penalize offenders but to strengthen community relationships and to instill good values and norms. For instance, in both tribes, a case or dispute is considered resolved upon the conduct of a final ritual where both contending parties are asked to step on both ends of a rattan
(approximately one meter long); the Mangkatadong (Tribal Leader) then cuts the pole in half,

This ceremonial rite signifies the end of the dispute and the beginning of the restoration of social relations which may have been destroyed by the conflict. Henceforth, the ends of the poles are kept by the parties involved to remind them that the transgression has been brought to the elders, the appropriate fines have been paid, the conflict has been resolved and the relationship restored.

C. ELEMENTS OF INDIGENOUS JUSTICE SYSTEM

1. Nature of Crimes, Offenses and Penalty System

Offenses or crimes in Mandaya/ Mansaka society are categorized as either minor or major. Minor offenses are crimes committed against property or possessions of any individual in the community. Included among minor crimes is the malicious touching of any part of a woman's body. Major offenses are crimes committed against life and dignity. In other words, for both tribes, crimes against property is never considered a major crime. This is based on their common philosophy that things can be paid for.

Crimes can only be considered grave when they are committed against life, honor and the ancestral domain because these are beyond price.

Below is a list of some common crimes/ offenses that are still being resolved under customary mechanisms:

MINOR OFFENSES	MAJOR OFFENSES
• Theft	• Rape
• Encroaching on another's territory such as hunting grounds, shifting cultivation areas	• Killing a person
	• Having an affair with married person
• Touching any part of a woman's body	• Incest; having an affair with any

Offenses with corresponding sanctions are categorized into those that are minor and those that are more serious or major. Minor offenses are sanctioned by handing over of things or possessions of the offending party to the aggrieved party. This is called the *"bun'all."* Major offenses have a whole range of more serious sanctions that would include execution. For both tribes, this process is referred to as *"dalikop."*

In the context of the Mandaya/ Mansaka justice system there are no fixed sanctions. At all times, the penalties imposed are defined based on a case-specific situation. The Limpong ng Mangkatadongs (Council of Elders) who administers the settlement and judgment processes are only mediators or arbitrators of justice. The extent of sanctions to be imposed is articulated first by the victims and their families The Limpong then communicates the demands of the victim to the family of the offender through a designated negotiator called "pilipiti". In cases where the family of the offending party can not afford to comply with all the demands made, the Limpong ng Mangkatadong actually contributes to fully pay off the demand. This assumption of responsibility by the Limpong ng Mangkatadong affirms the community's view of collective responsibility.

The practice has been carried out since time immemorial to strengthen kinship and ensure cohesion among members of the tribe. The execution of an offender who has committed a crime considered heinous by the
Mandaya/ Mansaka communities is considered the highest form of restitution for crimes committed against life and dignity. Interestingly, the execution of an offender and all other sanctions are not viewed as a punishment for an offense/ crime committed. The handing down of such sanction is viewed within the traditional worldview of "giving back what is wrongfully taken". Under this principle, the family of the offender/s has to give its consent to give as restitution for a wrongfully taken life, the life of a member of
the family who seriously committed an offense. However, the family of the offender has recourse in the administration of Mandaya/Mnsaka traditional justice through an appeal mechanism that exists to seek a reversal of judgment. This can be granted but only through the following circumstances:

1. When the offender shows sincere remorse for the crime/s committed; and
2. When the offender, upon evaluation and judgment of the Limpong ng Mangkatadong, shows a possibility for transformation;

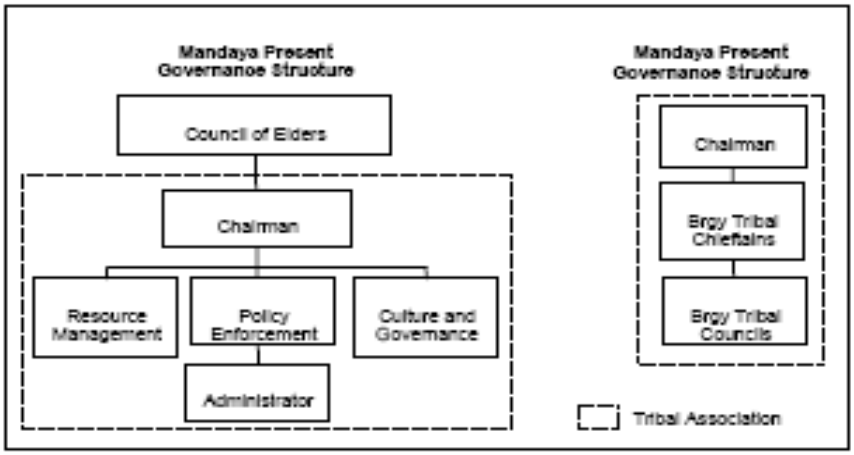
Reversing an execution judgement is not seen as a move to lower the sanction for a particular serious crime. Rather, it happens only as shown above -when a person is willing to begin life anew by undergoing a process of remorse and transformation. In the eyes of the Limpong, this, in a sense, allows the offender to give back what he has taken.

2. Process and Structure of Justice Administration

All settlements/ small villages of Mandaya/ Mansaka community are governed by a Mangkatadong (elder). Mangkatadongs of all settlements in the ancestral territory convene to constitute the Limpong ng Mangkatadong (Council of Elders). Minor offenses are within the exclusive jurisdiction of the Mangkatadong of the settlement where they are committed. Major offenses are brought to the Limpong ng Mangkatadong for resolution and for the imposition of sanctions. administration, it is necessary to understand the dynamics of their self-governance mechanisms. Ancestral territories of both tribes are governed by the Limpong ng Mangkatadong (Council of Elders). A member of the tribe can be chosen as part of the Council if he/ she has possesses the following qualities:

- Direct lineage to any of the major clans of the tribe.
- Humility and an understanding of the needs of the members of the tribe.
- Impartiality in decision-making.
- Self-control (not impulsive)
- Consultative at all times in whatever decision he/ she might take.
- Honest, endowed with integrity
- Fearful of the Supreme Being and law abiding.
- Aspiring earnestly for the general welfare of the tribe which includes protection of the dignity and rights of the women, youth and elders of the tribe.

The Limpong ng Mangkatadong is not only tasked to ensure the general administration and protection of the ancestral domain. They are also the arbiters and mediators of justice. How does this traditional governance mechanism perform in the present context of their ancestral domains? The flowchart below illustrates the present governance set up of the Mandayas and Mansakas.



The flowchart above shows the distinctive dynamic between the Mandaya and Mansaka's present governance set up. While the Mandayas have maintained the traditional mandate and authority of the elders even in their present day context, the Mansakas' current established governance structure fails to link the past and the present, the traditional and the contemporary.

The Mandayas' structure, though a hybrid of traditional and contemporary frameworks, clearly emphasizes the supremacy of customary laws where over-all supervision and decision-making are within the exclusive jurisdiction of the elders (Limpong ng Mangkatadong). Both the Mandayas and Mansakas have adopted the formation of the community association as a governance mechanism within their ancestral domains. But the Mandayas have consciously integrated traditional structures to pursue their customary laws

and practices in administering their domain. What is common in both governance mechanisms of the Mandaya and Mansaka is the adoption of community associations pursuant to existing state laws and regulations that would provide the "legal" and corporate personality of their tribes. The changing patterns of governance structure among the Mansakas have inadvertently weakened their traditional institutions of justice administration and they have so far been unable to bridge this gap. have inadvertently weakened their traditional institutions of justice administration and they have so far been unable to bridge this gap.

CONFLICT RESOLUTION PROCESSES

a. Minor Offenses

STAGES	ACTIONS TAKEN
Victim reports/ expresses complaint to the Mangkatadong of the village where the crime was committed	• The Mangkatadong listens to the victim who narrates how the crime was committed and articulates to what extent the offense was committed. • The Mangkatadong asks the victim what his/ her demands are for restitution. The demands are then evaluated by the Mangkatadong.
Affirmation of the offense/s committed	• Families of both the victim and the offender/s meet and are given a chance to give their side of the conflict. • The Mangkatadong hears the position of both sides • The offender/s admit the offense/s committed • The family of the offending party agrees to give from their possessions if demanded by the victim
Conduct of investigation to determine guilt	• If, no admission is made by the offending party, the Mangkatadong initiates an investigation and places alleged offender under surveillance (busa'll)
Passing of Final Judgment	• In the presence of both the families of the victim and offender/s, the Mangkatadong announces his judgment. This is considered by all as final. • If the offender is found guilty, the Mangkatadong imposes a higher sanction than what would have been imposed on somebody who immediately admits to the offenses
Preliminary Negotiation	• After final negotiation on the extent to which demands of the aggrieved party can be met, the Mangkatadong witnesses the awarding of the sums or possessions to be given as restitution. • In cases where the family of the offender/s cannot give sufficient properties/ possessions to satisfy the demands made by the aggrieved party, the mangkatadong shoulders the difference through a process called "balukas"

	• In this case, the offender shall render voluntary service to the Mangkatadong without any compensation;
Awarding of Sums or Possessions to Satisfy the Demand for Restitution by the Victim	• After final negotiation on the extent to which demands of the aggrieved party can be met, the Mangkatadong witnesses the awarding of the sums or possessions to be given as restitution. • In cases where the family of the offender/s cannot give sufficient properties/ possessions to satisfy the demands made by the aggrieved party, the mangkatadong shoulders the difference through a process called "balukas" • In this case, the offender shall render voluntary service to the Mangkatadong without any compensation

b. Major Offenses

Conduct of investigation to determine guilt	• If no admission is made, the Limpong ng Mangkatadong releases the person in custody; initiates an investigation and places the alleged offender under surveillance (busa'll) • No specified duration is given for the custodial period. The suspect is released after exhausting all remedies and attempts to get a confession
Passing of Final Judgment	• In the presence of the families of both the victim and offender/s, the Limpong announce their final judgment based on the result of the investigation conducted • The suspect is allowed to be present only when the sanction is payment of any possession or properties to the victim called "buna'll" • If, upon judgment, the suspect is to be executed for the crime/s committed, only the family of the offender is allowed to listen to the deliberations of the Limpong; the offender is excluded from the discussions
Preliminary Negotiation	• The Mangkatadong asks a negotiator *(pilipite*) to talk to both the family of the victim and the the family of the offender/s regarding demands for restitution for the offense/s committed • The negotiator reports the result of the preliminary negotiation
Appeal to the Final Judgment	• The Family of the suspect sentenced to execution (dalikop) can make an appeal for the lesser sanction which is "buna'll" – done by the giving of properties and possessions to the victim
Awarding the Demands for	• After negotiations on the final amount of the demand, the Mangkatadong witnesses the awarding of the "buna'll".

Restitution to the Victim	• In cases where the family of the offender/s cannot comply fully with the amount, the Limpong ng Mangkatadong contributes and shoulders the remaining balance through a process called "balukas" • In this case, the offender shall render voluntary service to the Mangkatadong without any compensation
Judgment for Execution	• When the sentence of Execution is imposed, such sentence is kept secret to the community. Members of the Limpong ng Mangkatadong and their family who know of the decision are prohibited to divulge this information. Disclosure of any information regarding this judgment is also sanctioned by execution. • A member of the Limpong given the task to implement the execution, together with the "secret executioners" of the tribe, bring the offender to the designated place of execution in secret while ensuring that the community does not notice that the sentence is being carried out.

One important characteristic of the Mandaya/ Mansaka justice system is the collective participation of the entire community, including the families of the offenders and the victims or the aggrieved, in the entire settlement process.

Nature of Offenses/ Crimes	Infringement of or injury to one's life, dignity and possessions
Arbiters/ Mediators of Justice	Limpong ng Mangkatadong (Council of Elders)
Participation	Families of the victims and offenders and the community leaders (Matikadong) and the Council of Elders (Limpong ng Mangkatadong)
Venue	No fixed physical venue; but most of the time a house of any member of the council of elders; Except for minor offenses, the entire proceedings is close to the general public

D. INTERFACE WITH STATE LAWS AND POLICIES

1. Aspects Interfaced

Interfacing the traditional justice system with the state's legal system has not been as difficult for the Mandayas in the Caragan Valley as it has been for the Mansakas in Maragusan Valley. In fact, in Caragan Valley (Mandaya), the Barangay Justice System in place is fully interfaced with the Mandaya's traditional or customary practices. To illustrate, all disputes brought to the barangays for settlement and resolutions are supposed to be laid before the Lupong Tagapamayapa. In Caragan Valley, when this is done, the dispute is referred to the Limpong ng Mangkatadong whose members are one and the same as the

members of the Lupong Tagapamayapa. . Evidently, in this case, the Limpong are well able to employ their traditional disputes processes and mechanisms.

Moreover, the Barangay Captains of the two areas are both Mangkatadong and are considered by the community members as part of the Limpong. Hence, whether the dispute is brought to the Lupong Tagapagkasundo, the persons with mandate to act on the dispute serve concurrently on both bodies both as appointees under the provisions of the Local Government Code and as respected leaders with the tribal mandate for the administration of justice.

The prevalent use of traditional mediation/ dispute resolution processes in the context of the Barangay justice system principally stems from the community's familiarity with the customary practices. This is a natural tendency, considering the fact that residents of the area are dominantly IP (Mandaya). The elders view the primacy of traditional processes not as an interface of two mechanisms but as a recognition of the tribe's collective rights to self-governance and cultural integrity.

However, the situation is different among the Mansakas in Maragusan Valley, where their ancestral territories are currently dominated by lowland settlers. The legal structures and systems in place are mostly state-defined and state-mandated. As a result, Mansakas customary justice administration practices are weakening compared to the Mandayas who still have substantial command over their ancestral domain. In fact, even among Mansakas, there are those who prefer to refer disputes to the Lupong Tagapamayapa of the barangay or regular courts although there are still a few members of the Mansaka community who would still adhere to their customary practices of conflict and dispute resolution.

A sample case that shows a certain degree of interface between the traditional justice system and mainstream procedures was narrated by the elders of the Mandayas in Caragan Valley.

In 2004, two Mandaya residents, Pedro and Juan (real names withheld upon the request of the respondents) of Barangay Langgawisan in Caragan Valley went to the forest to hunt. While aiming his
bukakang (improvised shotgun) at a wild boar, Pedro accidentally shot Juan who at that moment was after
another wild boar. Instantly, Juan died of the gun shot wound in his chest. Fearing for his life and possible
retaliation from Juan's relatives, Pedro surrendered to the police station in the poblacion area. However, the police did not receive any complaint and they released Pedro from detention after twenty four hours.

Upon his release, the police station radioed the Barangay Captain of Langgawisan to inform them of the incident. After the body of Juan was recovered, his family asked for the intervention of the Barangay Captain to settle the case. Immediately, the Barangay Captain referred the case to the Limpong ng Mangkatadong for settlement. Through the Mandaya's traditional disputes resolution mechanisms, the case was settled with the family of Pedro giving over some of their possessions, including Pedro's hunting ground, to the family of Juan.

In the case of the Mansakas in Maragusan Valley, the Casagda Clan filed a complaint to the National Commission on Indigenous Peoples (NCIP) against the Local Government Unit of the Municipality of Maragusan for alleged fraudulent acquisition of their ancestral land. The land in question is presently the site of the government center of the LGU. The NCIP Provincial Officer referred it back to the Tribal Council of the Mansakas for settlement in

accordance to their customary laws and practices. Subsequently, the Tribal Council convened their Limpong ng Mangkatadong to mediate the settlement of the case lodged by the Casagda Clan. Following their customary processes, representatives of the Casagda Clan and the Local Chief Executive of the Municipality met to discuss the terms of the settlement. After several negotiations, the LGU through the Local Chief Executive agreed to pay the amount of one-million pesos as retribution to the aggrieved clan. The terms of settlement were transmitted to the Commission on Audit (COA) for their concurrence to ensure that the payment to be made is in accordance with the government's procurement policies and guidelines. The COA on their side, seek the legal opinion of NCIP if such process of settlement has enough legal basis. The NCIP in response, communicated to the COA that the settlement pursued in accordance to the customary laws and justice system of the Manskas is valid pursuant to the Rules on Pleadings passed by NCIP Commissioner en banc. However, thereafter, the completion of the settlement process was disrupted by 2007 Local Election.

Unfortunately, the former Mayor lost in the election. When the Casagda Clan made a follow up regarding the implementation of the settlement terms, the newly elected Mayor, wanted to review the terms and brought it back to the Sangguniang Bayan for concrete actions. Currently, the Casagda Case against the Local government Unit remains unresolved.

2. Problems and Limitations

While it was so easy for the Mandayas in Caragan Valley to interface their traditional justice system in the Barangay Justice System, but such interfacing initiatives posed some limitations within the legal framework of the Barangay Justice System as articulated by the Local Government Code. The Limpong ng Mangkatadong as a traditional structure of the Mandayas for disputes resolution, where in the case of Caragan Valley is likewise adhered by the Barangay to assume functions of Lupong Tagapamayapa to amicably settle disputes brought to them for resolution were restrained to act fully according to their customary functions and authority. Pursuant to the provisions on the Katarungang Pambarangay, the Lupon's authority only valid in mediating cases with lower penalties under the Revised Penal Code. Their collective authority only covers cases whose corresponding penalty of imprisonment is below one (1) year and fine of not more than five-thousand pesos. This statutory authority undermines the customary power of the Limpong, which, traditionally can act on cases similarly considered heinous under existing state laws and jurisprudence.

Another limitation is the lack of clear interfacing guidelines even within the Barangay level. Barangays Bahi and Langgawisan are just newly established local government units. Understandably, the concern Barangay Officials who are all Mandaya themselves and members of the tribe opted to adopt the traditional disputes mechanisms since their worldviews were shaped by such customary practice. The initiative of the concerned Barangay Officials was not carefully undertaken within the legal framework of the Local Government Code to avoid any legal impediments. In fact, when asked, they were not aware of the details of the guidelines regarding the institutionalization of the Lupong Tagapamayapa. Though in general, there was a laudable effort to adopt traditional disputes mechanisms in the Katarungang Pambarangay but clearly there was no judicious harmonization of the legal authority of the Lupon with that of the customary powers of the Limpong. This situation might create a lot of trouble in the future.

In the case of the Mansakas who employed their customary processes in mediating disputes over ancestral land allegedly taken by the Local Government from their possession, showed at the very start a positive gesture and chances of interfacing the whole indigenous justice system in the mainstream structures and bureaucracies.

However, such initiative was only limited on the political will of the then municipal mayor. When the former mayor lost in the election, the whole process has to start again with the new chief executive showed several doubts regarding the mode and instrument used in the settlement process.

3. Recommendations from the Respondents

During the focus group discussion, the following recommendations were raised.

1. Constitute the Lupong Tagapamayapa to involve other residents of the Barangay who are not traditionally part of the Limpong ng Mangkatadong. Representatives of the Limpong shall be identified to sit in the Lupon to ensure that the mediation process is held in consonance to the traditional system of the Mandayas.

2. All minor offenses described under the traditional system of the Mandayas except encroachment to one's hunting ground, farmlands, etc. and cases enumerated by the Local Government Code that can be handled by the Lupon shall be exclusively resolved strictly in accordance to the guidelines of the Katarungang Pambarangay following the traditional processes of the Mandayas.

3. On the part of the Mansakas, they wanted to pursue the implementation of the settlement agreement as retribution to the Casagda Clan for the ancestral land arbitrarily taken from them even if this would mean going into the legal process under the administration of the Supreme Court.

E. STATE OF INDIGENOUS JUSTICE SYSTEM

1. Strengths and Weaknesses

1. For both Caragan and Maragusan Valley, the presence of their elders or Mangkatadong who customarily handle the justice administration of their tribes is in fact a major strength of the indigenous justice system. Tribal elders as arbiters and administrators of justice in the tribal communities are significant factors for the strengthening and harmonizing indigenous justice system in the mainstream state defined judicial system.

2. As discussed in the previous sections, the seemingly intact culture of the Mandayas in Caragan Valley which in effect retained traditional structures and institutions for justice administration notably provide another strength. Rate of observance to indigenous justice system is overwhelmingly high among the Mandaya Tribes, in fact, no cases in the community were resolved outside of their traditional and customary processes.

However, the weakening of cultures among the Mansakas in the Maragusan Valley is a major weakness on their part. Indigenous justice system is not only about criminal procedures, mediation process and ethno-jurisprudence. Above all, it speaks of the distinct culture and a way of life of a particular indigenous cultural communities.

2. Challenges and Prospects of Indigenous Justice System

The study conducted implies that the chances and possibilities for integration and adoption of traditional justice systems in the mainstream society vary from community to community. Many identified challenges indicate that integration will be an uphill struggle. Still, no matter how difficult, this challenge should prove imperative once viewed through the perspective that it is incumbent to recognize IPs rights over ancestral domains. Shown in the map below is the extent of CADTs that have been awarded in the Compostela Valley Province. These CADTs encompass a substantial geographic area particularly in the Province of Compostela Valley where there is general recognition of ancestral territories pursuant to the Indigenous Peoples Rights Act (IPRA).

As part of this recognition, the IPs are granted the right to self-govern their domains and in relation to this, enhance customary laws and practices, including justice administration. This inspiring context could prove to be a strong rallying point for the eventual recognition and adoption of traditional justice system as another mechanism of accessing social justice.

At present, CADT holders in the area including the Mandayas in Caragan Valley have already formulated and firmed up their Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). Incorporated in this plan are the community rules of the tribe. These rules articulate the community's collective wisdom and how they are institutionalizing their customary laws and traditional justice system. As the Mandaya of Caragan Valley have stated:

"All customary laws adhered to by the tribe shall remain to be enforced including the conduct of traditional justice administration. All cases detrimental to the rights and integrity of the ancestral domain shall be settled by the Mangkatadong only. However, Barangay Officials are allowed to participate or observe the whole settlement processes in accordance to the customary practice of the tribe ".

The Mandayas and Mansaka of New Bataan in the adjacent ancestral territory express a similar policy as reflected in their ADSDPP.

"All complaints and disputes shall be settled by the Council of Leaders in accordance to their customary
laws and traditional justice systems including imposition of sanctions and penalties ".

Meanwhile, the Mansakas of Maragusan Valley are now in the process of firming up their ADSDPP, a process which includes the formulation of community rules in consonance to their customary laws and practices.

3. Analysis, Conclusions and Findings

1. The indigenous peoples customary laws and customary practices in justice administration are weakened when they lose control over their ancestral territories. The level of control as indicator of empowerment would mean the ability of the IP community to decide and set the direction of the way their communal resources are managed, utilized, conserved and protected. Resources in this context include not only the community's material resources but also the cultural resources ensure the total well being of the tribe. These cultural resources include the tribe's cultural practices, belief systems, traditions and cultural heritage; they are elements that give life to traditional justice administration. In another words, in the case of the two valleys, as it is with all IPs throughout the country, the Mandaya and Mansakas notion of justice is rooted on the collective worldview and culture; it is an expression of their ways of life as a distinct people.

Levi-Strauss noted, indigenous culture is not 'static,' its operational paradigm is, nevertheless, formulated on a continuity of exchange between and among kin groups that places the imperative of preserving and creating balance between and among those groups above all other imperatives . Seen in this framework, Mandaya/ Mansaka culture is indeed dynamic and it continues to change over time as a result of direct interaction with the internal and external environment. Consequently, cultural practices in justice administration change as members of the two communities interact with the outside environment. For instance, the traditional practice of immersing one's hand in a boiling water to determine guilt is no longer consistently employed .

New knowledge gained from lowland and mainstream society has impacted on the communities allowing the integration of material and testimonial evidences into the

traditional processes called "busa'll". As noted in the study, it is apparent that the traditional system and customary practices in justice administration of Mandayas in Caragan Valley is still very much alive and consistently adhered to by the community due to their substantial control over their ancestral domain. In comparison, for reasons that emanate from their loss of control over their territories, the Mansakas in Maragusan Valley are no longer able to seek recourse in this traditional system. For the Mandayas of Caragan Valley, community institutions that support and strengthen the traditional justice system are still intact and functional; the same cannot be said of the other valley.

2. The Mandaya framework of justice administration, though interfaced with the Barangay Justice System, continues to show distinct and contrasting parameters. As illustrated above, in contrast to the state's treatment of "parties" that focus on the individuals in a dispute, the tribe's processes not only incorporates but necessitates the participation of collective group which may include the clans. This means that even if an offense is committed by a an individual member of the clan against the member of another clan, it is always the entire clans of the conflicting parties who are at the forefront of the settlement process. The demand for restitution for the crimes or offenses committed is deliberated on, articulated and agreed upon by the clan members. Samuel C. Damren in his study on "Restorative Justice, Prison and the Native Sense of Justice (2002)" makes an affirmative statement in relation to this:

As a result, in contrast to the popular understanding of crimes committed by individuals in state society, the question of whether an individual kinsman in native culture has committed a wrong depends not only on the act itself, but on the relationship at the time of the particular act between and among the variously affected kin groups, and the extent to which the act in question creates an imbalance in, or interferes with, the overall dynamics of kin group symmetry. It is for this reason that, unlike the prohibitions of criminal law in state-based society, the so-called 'wrongs' and 'remedies' of native culture are situation-specific (Kluckhohn 1959).

To illustrate, Damren classified the distinct key elements of native justice as shown in the matrix below. These key elements also show how the perspective of the Mandaya/ Mansaka's traditional justice system contrasts with that of state-based mechanisms.

	INDIGENOUS PATTERN	STATE-BASED PATTERN
CRIME	Injury to victims and their families as seen in the context of the welfare of the community	Violation of state laws
PARTIES	Victims Offenders Community, Government (Mangkatadong)	Victims Offenders Government
GOAL	Repair damage and reestablish/ restore right relationship	Reduce future law breaking through penalty, rehabilitation, Deter future crimes Curtail capacity for or likelihood of crime

As noted in a study conducted by Minority Rights Group International on customary laws of IPs in Asia (including the Philippines), in the case of dispute resolution, since the parties from rural indigenous communities must face each other in their small community after the dispute is settled, efforts are almost always made to produce two winners instead of a winner and a loser. No efforts are spared to try to reconcile those in dispute. Further, the same concern of properly rehabilitating those in dispute also prompts the judges or arbitrators to reconcile the guilty party, if there is clearly a 'guilty' party, not only with a victim, if there is one, but with the community .

Despite its contrasting framework on justice, there remains the possibility of integrating or interfacing Mandaya/ Mansaka conflict and dispute resolution processes with the mainstream system and its institutions of justice. In the case of a relatively intact community however, this would be contingent on the community's acceptance of structures and procedures to be set in place by the state or what it may deem as an external party. The institutionalized interface or integration of the traditional and distinct framework, particularly with its collective notion of justice, should be carefully studied.

Corollary to this, there should be extreme caution in defining what interface mechanisms are appropriate and sensitive to communities who are already undergoing or will be undergoing challenging transitions in their landscape and culture.

3. In the case of Caragan Valley, the Barangay is able to effortlessly recognize and utilize the traditional Mandaya justice mechanisms within the framework of state laws. However, a close examination will show that while the Local Government Code (RA 7160) establishes and gives a mandate for conflict resolution to the Katarungang Pambarangay, some actions undertaken in the Caraga context may in fact overstep the jurisdiction of this local body. Under section 399, paragraph (f), Book III of the Local Government Code, in Barangays where majority of the inhabitants are members of indigenous cultural communities, culturally determined initiatives of the Barangay Officials are allowed as long as this is done without prejudice to the applicable provisions of the Code. In essence, within the legal context of the RA 7160, the extent and scope of cases being brought to the barangay and resolved within the traditional justice mechanisms run contrary to its provisions since, in practice, many of the cases resolved are beyond the scope and authority of Katarungang Pambarangay.

SECTION 408. Subject Matter for Amicable Settlement; Exception Thereto. - The lupon of each Barangay
shall have authority to bring together the parties actually residing in the same city or municipality for
amicable settlement of all disputes except:

(a) Where one party is the government, or any subdivision or instrumentality thereof;
(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos
(Php5,000.00);
(d) Offenses where there is no private offended party;
(e) Where the dispute involves real properties located in different cities or municipalities unless the parties
thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(f) Disputes involving parties who actually reside in Barangays of different cities or municipalities, except
where such Barangay units adjoin each other and the parties thereto agree to submit their differences to
amicable settlement by an appropriate lupon;
(g) Such other classes of disputes which the President may determine in the interest of justice or upon the
recommendation of the secretary of Justice.

The provisions mentioned above limit the scope of authority of the Katarungang Pambarangay. Therefore, if used as an interface mechanism for the integration of traditional justice administration mechanisms, it would ipso facto greatly limit the authority of the traditional conflict resolution body. While the Local Government Code recognizes IP traditional mechanisms, it does not sanction the scope and jurisdiction authorized by customary law. As presented in the previous sections, based on customary law, the authority and jurisdiction of Mandaya/Mansaka justice system includes even those which are classified under existing state laws as heinous crimes. Technically, these are no longer within the exclusive jurisdiction of the Katarungang Pambarangay.

4. When governance mechanisms of the indigenous peoples are supplanted by nontraditional structures and frameworks, traditional mechanisms for conflict/ dispute resolution lose their significance in the community. The Mansakas in Maragusan Valley who have been integrated in mainstream society have not only been culturally assimilated. They have also been drawn to the mainstream governance mechanisms.

Presently, they have set up governance structures that inadvertently disregard their customary practices such as their traditional administration of justice. New leadership formations have emerged based on new criteria and factors; elders or Mangkatadongs are unconsciously ignored in this contemporary governance structure. The introduction of various channels of culture and the influx of new institutions for knowledge building has cut the handing down of customary practices from generation to generation. Thus, in Maragusan Valley where the people of tribe already live "modern" lives, it has become necessary to link the tribe to their cultural past and to encourage the active participation of the elders (mangkatadong) in the community.

This would address the information and knowledge gap created among the new generations of recognized leaders when oral traditions were set aside. It would be a futile effort to strengthen and harmonize IPs traditional justice administration where traditional culture has broken down. Traditional justice cannot be interfaced with mainstream justice when it has already been dispense with. Primary in such an endeavor would be rebuilding culture which would entail as a first task, the recognition of the elders of the tribe in an earnest initiative of revival, cultural reorientation and reeducation. In summary, the cultural development and the cultural integrity of the tribe are a precondition for the strengthening and even the existence of cultural practices in justice administration. Where the culture is no longer intact, the traditional justice system cannot hold sway over the community. However, where the culture has remained vibrant, the traditional justice system will remain relevant and the elders will respected and listened to. These findings are clearly seen and affirmed within the context and the dynamics of interactions between elders and the new breed of leaders of the Mandayas in Caragan Valley.

5. The Mandaya/ Mansaka's traditional and customary practices of justice administration are not only a time immemorial mechanism of the tribe to ensure the harmonious co-existence of the different clans or to resolve disputes among kin groups within their traditional society; these have been instituted within the community since time immemorial to ensure

sustained access of all kin groups to justice. Under this traditional mechanism, practiced even before the existence of the state , to address all demands for restitution within the community, jurisdiction is assumed even over cases that would be subjected to criminal procedure. At the same time, while such jurisdiction is assumed, penalties may diverge greatly from what state law provides. Imprisonment, for example, may comprise the sentence meted out by a regular court but this is a nonexistent phenomenon within the province of traditional justice systems. While the adoption of these native principles of dispute resolution by the modern criminal justice system offers, in many instances, an appropriate sentencing alternative, these principles were not regarded by indigenous peoples as an alternative to imprisonment for in native culture there were no prisons .

6. In areas where traditional justice system is still functional and adhered to by the community as an effective tool for fair access to justice, it would be inappropriate to initiate a new, state-defined framework of alternative dispute resolution. During the conduct of the focus group discussion among community elders, the elders strongly expressed the position that their customary practices of justice administration is not only an institution of justice, it is elemental to the very essence of their identity as a distinct people and a central aspect of their cultural integrity. Through the enactment of Indigenous Peoples Rights Act (IPRA), the state declares its respect and recognition of indigenous cultural integrity as a fundamental right. Cultural integrity shall refer to the holistic and integrated adherence of a particular ICC/IP community to their customs, religious beliefs, traditions, indigenous knowledge systems and practices and their right to assert their character and identity as peoples . Enforcement of customary law is an exercise of self governance and a manifestation of the peoples' struggle for self determination.

This scenario indicates that if improperly handled, any effort to harmonize and integrate traditional justice system to the mainstream and dominant state justice system would create and necessitate numerous and profound legal and cultural contradictions.

RECOMMENDATIONS

1. Benchmark the integration of IPs traditional justice system into mainstream and dominant state criminal justice system in areas where the traditional system is functional and the adherence of the community, even non-IPs, is considerably strong. Presently, the assimilation IPs into mainstream and lowland society have created varying levels of adherence to traditional justice practice. Judge Aurora P. Navarette-Recina, Chairperson of the Commission on Human Rights expressed a similar recommendation during the WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE saying that "full recognition of the applicability of customary laws within the ancestral domains should be accorded, with the option of the communities to codify or not to codify their respective
customary laws .

2. Expand applicability of traditional justice system beyond ADR framework and firm up policy measures granting judicial authority to the indigenous peoples. Sabah is an interesting example of an autonomous state where legal, procedural and judicial autonomy is respected at the basic levels, and the judicial authority at mid-levels is shared between indigenous chiefs and head people with state judicial officers. In addition, the superior national courts retain the highest authority for appeals and revisions. All courts apply customary law, unless codified laws supersede it. The Native Courts Enactment of 1992 provides for a detailed system of courts . In addition, during the Experts Seminar on Indigenous Peoples and Administration of Justice convened by the UN Social and Economic Council, the participants made a similar recommendation that States should recognize indigenous peoples' own systems of justice and

develop mechanisms to allow these systems to function effectively in cooperation with the official national systems. These mechanisms should be based on constructive arrangements with the peoples concerned.

3. Issuance by National Commission on Indigenous Peoples (NCIP) of an Administrative Order/ Circular outlining mechanisms for the institutionalization of the IPs traditional justice system. While current Rules on Pleadings mandate the primacy of customary laws in upholding disputes among ICCs/ IPs , at the moment there are no clear mechanisms for institutionalization. To exacerbate matters, this provision is not known among the members of IP communities. The absence of such mechanisms continues to add to the pervasive neglect and disrespect of IP customary laws and cultural practices in justice administration. And, for as long as this inequity persists, society continues to place in jeopardy the IPs rights to self-governance, cultural integrity and own access to what offenders and the aggrieved collectively define as justice.

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NEGROS OCCIDENTAL

The Karul-anon, Marikudo and Bukidnon Conflict Resolution Process & Justice System

A. The Study Site

The city of Kabankalan in the province of Negros Occidental is touted as the gateway to southern Negros. It is 91 kilometers or some 3 hours drive away from Bacolod City, the capital of Negros Occidental and 126 kilometers or some 4 to 5 hours away from Dumaguete City, the capital of Negros Oriental.

Historically, the city was inhabited by indigenous peoples belonging to the Ati group and Indonesian groups who migrated to the place earlier than the Malays from Borneo. They were scattered along the Hilabangan River stretching from the mountain ranges down to the settlement of the lowlanders in the municipality of Ilog, one of the early settlement areas in the province.

The city now is divided into 32 barangays, one of which is the historic barangay Carol-an also known as the Carol-an Valley. This place is home to the Karul-anon, the descendants of Mangyabog, the chieftain who fought fiercely against the Spanish military forces in an encounter in the 1850s. That fateful encounter between Mangyabog's and Spanish forces, according to written historical account, led to a mass suicide by Mangyabog's soldiers after Mangyabog himself was killed by a bullet from one of the Spanish soldiers. Aside from the Karul-anon, other indigenous groups inhabiting the city are the Marikudo, Bukidnon and Maghat. They are found in other barangays of the city.

1. The Karul-anon, Marikudo and Bukidnon Etho-linguistic Groups

Karul-anon

Aside from barangay Carol-an, the Karul-anons are also found in 2 other barangays: barangay Inabhang, also in Kabanakalan City and barangay Upper Carol-an, municipality of Ayungon, also of Negros Occidental. In barangay Carol-an, the population of the Karul-anon in 2004 was noted at more than 7,000 individuals or 761 households comprising 55 percent of the total household population.

They are descendants of Mangyabog who doubt the account of the Spanish friars, who claimed to be eyewitnesses of the event, that Mangyabog was killed by a bullet from one of the Spanish soldiers and that his army altogether committed suicide to escape capture by the Spanish force. To them, as what they gathered from their ancestors, Mangyabong was not killed and there was no mass suicide. Certain details of the supposed mass suicide such as the number of Mangyabog's army, which supposedly reached 300, were to them not plausible. During that time, they argued, it was impossible for Mangyabong to possess an army of 300 men since there were not too many members of the tribe then.

They call their dialect "karul-ano." They have their own set of beliefs and practices. The term "karul-an" means river but it was derived from the word "karul" which refer to the sound of moving stones when the Hilabangan River rises and runs wild. At present, Karul-

anons thrive on cultivating and selling corn, peanuts, vegetables and root crops. Carol-an Valley is considered as the food basket of the city because it produces the largest amount of vegetables, fruits, livestock, poultry and other agricultural products. Its agricultural products reach as far as Negros Oriental and Bacolod City as well as neighboring municipalities in Occidental Negros.

Marikudo

The Marikudos are a small group of Ati people inhabiting sitio Isabela of barangay Kamang-kamang, another barangay of Kabankalan City. They are descendants of the Ati tribe in neighboring Panay Island. They obtained their name from Datu Marikudo, an Ati chieftain in Panay, known to have bartered the lowlands of Panay to a Bornean datu for a piece of a golden hat, a long golden necklace and other assorted valuable items (History of Iloilo City 2008). They were uprooted from another place in Negros island and were resettled to the place they now occupy during the PANAMIN period.

Members of this group are generally short, lean and dark, and possess short, curly hair. They have their own dialect that is now vanishing because of the tribe's exposure to lowland, mainstream culture. As an effort to save the dying dialect, the remaining few elders of the tribe organize informal sessions to teach young children the dialect. Marikudos are mainly rice and sugarcane farmers.

Bukidnon

This group can be found in a reservation site covered by the area occupied by the Negros State College of Agriculture (NSCA) located in barangay Kamingawan. It is also called "bukidnon" because they live in "bukid," which means mountain. The Kabankalanons, those residing in what is now the city proper, used to refer to them as "buki," a shortened version of "bukid."

Their ancestors settled in the area they now occupy before it was proclaimed a reservation site. Yet today they are considered by NSCA officials as squatters if not settlers because they supposedly have no documents or any certification to prove they are the original inhabitants of the place.

The Bukidnons are descendants of the Maghats, the same ancestors of the Karul-anons, who were called "rebels" by the Spaniards for being ferocious warriors and for being defiant to the Spanish rule. Thus, they consider themselves as "brothers" of the Karulanons. Most of them possess Malayan features but some possess the Ati built, hair and skin tone as a result of intermarriage with members of the Ati group.

Present-day Bukidnons, whose number now reaches 3,000 individuals or 500 households, remember their ancestors speaking a distinct dialect, practicing a particular writing style and observing a unique calendar system. All these have disappeared through the years while other aspects of their culture are facing extinction. In short, current members of the tribe have blended themselves to the Ilonggo culture, the dominant culture in the Negros island. They converse in the Ilonggo language and many were unaware of their cultural roots until they were threatened of eviction by authorities of the NSCA. Until after members started organizing themselves to oppose the eviction and fight for their rights as indigenous peoples did they realize how their identity as a tribe have eroded through the years.

Currently, men are engaged in farming (sugarcane, corn and mungo) while most women have ventured into small business enterprises.

2. Ancestral Territory

The Karul-anons were issued a Certificate of Ancestral Domain Claim (CADC) on June 3, 1998, only a year after the enactment of IPRA. The Certificate of Ancestral Domain Title (CADT) was granted on January 28, 2004. The title covers an area of 3,981.2501 hectares located within barangay Carol-an, Kabankalan City and barangay Upper Carol-an, Ayungon.

With initial assistance from the United Nations Development Program (UNDP), through a project called Empowerment of Indigenous People's Governance and Sustainable Development of Ancestral Domains (EIPGSDAD), the Karul-anons started to formulate its Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) and are now about to finish the second phase of the formulation process. The Marikudo and Bukidnon are only about to apply for titling of their respective ancestral domains.

3. Assimilation to Modernity

Karul-anon

Literacy is high among this group. According to its leaders, approximately 90-95 percent of the group's population has attended formal school. Not only have many attended or reached elementary and high school, some also reached or finished college and became professionals. A few are working as overseas contract workers. At present, there are 2 public elementary schools, 1 public high school and nine (9) Day Care centers in the valley. Several religious groups are present in the valley. The biggest groups are the East Baptist Fellowship (9 churches) and the Adventist (4 churches).

The barangay is reached by electricity allowing residents to own radio and television, their major sources of news and other information. Cellular phone service remains limited because of poor signal transmissions by service providers. The road from the city proper going to the valley is uphill and rough but it is passable by motorized vehicles, mainly the "habal-habal" or single motorbikes.

Marikudo

Literacy among members of this group is lower than the Karul-anon. In this group, many reached if not finished elementary and high school but none went to college. There is only 1 school in the place, a primary school which offers grades 1 and 2 only. Young children attending grades 3 to 6 are sent to the elementary school located in the barangay proper.

There are 3 major religions in the community: the Roman Catholic, which boasts of the biggest membership, East Baptist Fellowship and Born Again Christian. The road condition going to the community is very poor. Tricycles are the only mode of transportation going in and out of the place. The community is not yet serviced by electricity. Radio is the residents' main source of news and other information.

Literacy rate is high among members of this group. The reservation site has 3 elementary schools. Thus, a great majority (90 percent) of its population finished elementary school. Many have also finished high school and even college because of its close proximity to NSCA. One has obtained both a master's and a PhD degree.

There are 4 major religious groups in the site: Roman Catholic, the biggest group, Adventist, Fundamental Fellowship and UCCP.

The site is highly accessible; it is only half-kilometer from the highway. It is reached by electricity. Many own a radio and a television.

B. Concept of Justice, Retribution and Penalty

Karul-anon

For this group, offenses or crimes can be committed against an individual or against the whole tribe. Crimes against an individual include stealing personal possessions or properties and inflicting physical harm or injury on an individual while crimes against the tribe cover acts that violate or break any of the provisions of their customary law. To illustrate, a tribe member who stole banana fruits from the lot of another member has committed theft against the individual who owns the lot while a tribe member who stole banana fruits from a designated communal lot has committed an offense against the whole tribe.

In conflict resolutions, justice for this group is achieved when contending parties get a sense of satisfaction over the final outcome. Contending parties obtain a sense of satisfaction when they find the decisions (establishment of the guilty party or the offender) and agreements (penalties) reached by the resolution process acceptable to them.

Satisfaction over decisions or outcomes, however, can only be obtained if right in the beginning of the process contending parties do no cast any doubt on the wisdom and abilities of the mediators to fairly resolve conflicts. For a resolution process to be successful, therefore, it is important that contending parties respect and trust the mediators, the elders and tribal chieftain. Only when this condition is present can contending parties willingly accept the outcome and get that sense of satisfaction or contentment.

Marikudo

This group considers all offenses committed by tribe members as crimes against the wholetribe. All offenses or crimes, whether petty or serious, create disturbance to the whole tribebecause they disrupt harmonious community relations, and many are involved in theresolution process.

Justice for this group is "matarong" or what is right. What is right for the group is that anaccused be proven guilty or not, that anyone found guilty of an offense or crime, whether oldor young, deserves punishment or penalty because he or she has created disturbance in thecommunity, and that both the offender and the offended be treated with utmost respect during and after resolution of the conflict. Only when these conditions are met can peace and harmony be restored in the community and justice for all members of the tribe can be finally
achieved.

For as long as conflicts are resolved using customary law and indigenous conflict resolution process, Marikudos are always satisfied with the outcome and restoration of peace and harmony in the community is achieved. They only experience dissatisfaction, hence, injustice when conflicts involving any of them are brought to the formal courts which they find discriminating against them.

Bukidnon

Like the Marikudos, the Bukidnons also associate justice with right judgment, one that is fair or acceptable to conflicting parties and one that does not favor any of the parties. For this reason, it is important that elders and tribal leaders mediating conflicts be knowledgeable of the tribe's customary laws and that they are not corruptible. To this group, an offense or crime can be committed against another individual or against the whole tribe. Rape, for example, is a crime against the whole tribe because it is an act demonstrating complete disrespect to all tribal women. But touching any of a female's private part(s) is considered only a crime against the person.

C. Elements of Indigenous Justice System
1. Nature of Crimes/Offenses and Penalty System

Karul-anon:
At present, the top 4 offenses or crimes resolved in the tribe are the following:
1. Family conflict – involves uttering or hurling of offensive remarks between family members that result in misunderstanding or conflict. For this type of offense, no penalty imposed on the offender(s). Mediators simply ask conflicting family members to settle their misunderstanding and reconcile.

2. Land dispute – pertains to disagreements on boundary limits of private lots. Conflicting parties for this type of conflict are not penalized. This conflict is settled by equally dividing the portion of land under dispute between conflicting parties.

3."Oral defamation" – refers to uttering or hurling of slanderous remarks by a person who is under the influence of alcohol. This offense is penalized but only after it is thrice committed by the offender. During the first and second time the offense is committed, the offender is simply asked to sign an agreement promising not to repeat the offense. On the third time the offense is committed, the offender is asked to clean the community by cutting grasses or pulling weeds for a minimum of 1 day to a maximum of 3 days, depending on the extent or degree of offense felt by the offended party.

4. Theft – usually involves taking banana fruits or any other fruits and vegetables from someone else's backyard or farm lot without asking permission. Instead of complaining to authorities, the owner usually asks the taker or the "thief" to get more if what he/she took is insufficient for his/her needs. This type of offense is very common but it neither reaches the tribal council nor the *Lupon* because Karulanons, who consider themselves "givers" or generous, prefer to immediately forgive the supposed offender.

The Karul-anons are a peace-loving people, too. As far as they can recall, there have been no killings between or among them. What they had in the past were tribal wars with the aggressive and fiery Maghats who often attacked them and left them with no choice but to retaliate and defend the tribe. Tribal wars stopped only after the two tribes entered into an agreement through a "sandugo" or a blood compact that they will no longer engage in a war against each other.

Sometime between 1987 and 1988, a case of arson involving migrant lowlanders that resulted in deaths took place in the barangay. Because of the severity of the case, it was immediately brought to the formal courts.

Marikudo
The 5 most common offenses in this tribe are drunkenness, gambling, curfew violation, theft and destruction of crops.

1. Drunkenness – penalty imposed on the offender is planting at least 3 banana shoots in a designated area but only after an offender has thrice committed this type of offense. On the first and second time, the offender is simply reprimanded and advised not to repeat the offense. On the third time, the offender is asked to plant 3 banana trees which are for everyone in the community to partake.

2. Curfew violation – nightly curfew set at 9 o'clock in the evening had been observed since 1967 to screen or monitor persons who get in and out of the community. A violator, usually a male, is penalized by being asked to patrol all by himself the whole community for 3 consecutive nights.

3. Gambling – on the first and second time this type of offense is committed, the offender is simply reprimanded and advised to rectify. On the third time, the offender is penalized by being asked to clean (weed, cut grasses, sweep) some 10 meters of road sides as a form of community service.

4. Theft – usually involves stealing a domestic animal from its owner. The offender is first asked to return the animal they took or pay in cash the equivalent amount of the animal. If the offender cannot immediately return or pay the cash equivalent, he/she is asked to sign an agreement promising to pay or return the animal on a particular date.

5. Destruction of crops made by animals (goat or carabao) -- penalty imposed on the owner of the animal(s) that caused the destruction is payment of the destroyed crops immediately pay the offended, the animal is placed under the custody of the tribal chief of security until payment of the penalty is settled.

Bukidnon
The top 5 offenses or crimes in this group are the following:

1. Theft – taking an item, usually an animal like hen or rooster, without the consent of the owner. As a penalty, the offender is asked to eat the feathers and innards of the stolen fowl.

2. Physical injuries – includes inflicting pain or injury on others and throwing stones to a neighbor's house. Penalty is harsh. Initially, the offender and the offended are asked to engage in a fist fight. If the offender loses, the offender gets vindicated, hence, the case is considered resolved and closed. But if the offender wins, he is beaten by a group of tribal men.

3. Non-payment of debt – offender is asked to pay the debt twice its original amount on an agreed date. If offender fails to pay on the due date, he/she is again penalized by being asked to double-up the unpaid amount.

4. Destruction of crops by animals – owner of the animal (goat or carabao) is penalized by paying the offended in kind or cash. If payment is in kind, the equivalent payment for 50 corn plants destroyed is 50 corncobs. If payment is in cash, the amount is agreed upon by the two parties involved.

In the past, cases of murder were not formally mediated by the tribal council. It was a practice in the tribe that the family of the victim seeks justice by killing the murderer. Thus, if a murderer does not want to get killed, he immediately leaves the community. But this is no longer practiced as there are no more cases of murder.

2. Justice Administration – the Conflict Resolution Process

Karul-anon:
In the past, an offended person or party seeks out a "maayong tao" (a man or woman of wisdom) nearest to his/her place to file a complaint and seek mediation. Depending on the nature and degree of the case, the elder may seek out the help of other elders in the area and/or from neighboring areas or independently attend to the investigation and settlement of the case. Usually, case resolution is always achieved at this level. It no longer reaches the tribal chieftain.

Carol-an Valley is a barangay totally inhabited and ruled by Karul-anons. Even with the introduction of the barangay system and the Barangay Justice System (BJS), the tribe's

observance of its customary law and practice of indigenous conflict resolution system was not disturbed. It merged the traditional and the formal conflict resolution systems. Presently, the same people occupy the traditional and formal leadership posts – the tribal chieftain holds the barangay captain post and the tribal council members occupy the barangay council and *Lupon* positions. Tribal council members are also now referred to as "Purok President." They continue to act as mediators in settlement of conflicts.

In resolving conflicts, the tribe adopted the documentation and reporting aspects of the BJS. Contending parties, however, may choose not to have the conflict resolution process recorded and reported.

Marikudo

In traditional Ati practice, a complainant goes to an "ibo" or an elder respected for his knowledge and wisdom on customary law. The "ibo," who can either be a male or a female, facilitates settlement of all tribal conflicts and hands down the final judgment.

Current practice requires conflicting parties to go to the chief of the tribal peacekeeping force for settlement of disputes. The peacekeeping body, now headed by the tribe's oldest member, runs the mediation sessions in consultation with the remaining few tribal elders. After judgment is finally delivered and acceptable penalty has been reached by both parties, the resolution process is closed and sealed with a simple handshake between contending parties signifying pure intention to restore good relations between them. As contending parties come to terms with each other again, peace and harmony once more reign in the community. All conflicts between tribe members continue to be settled through its indigenous justice system. None has ever reached the *Lupon*.

Bukidnon

In terms of number, Bukidnons dominate the barangay. They comprise three-fourths of the total barangay population but they are ruled by migrant lowlanders occupying all positions in the barangay council. Until they were threatened to be ejected from the reservation site by the NSCA a few years ago, they were unaware that they are being marginalized as a tribal group with its own culture and aspirations. Their traditional political system is no longer in place and they no longer observe many of their cultural practices. The present generation of Bukidnons grew up within the confines and authority of the barangay system. Except for the few remaining elders, younger ones know very little or nothing of the tribe's customary law and other cultural beliefs and practices. All conflicts between tribe members are, hence, brought to the *Lupon* for settlement.

Efforts to revive cultural beliefs and practices are underway since the formation of the Bukidnon Tribe Organization (BTO) a year ago. A new chieftain has been installed and now leads BTO in reaching and documenting all Bukidnon households. BTO leaders have also started to interview the remaining few elders about customary law and conflict resolution process.

Traditionally, as gathered by BTO leaders from their elders, conflicts within a family are settled by the father. Only inter-family conflicts are brought to the attention of the tribal chieftain. The chieftain pursues an investigation by talking privately to each party. If after the initial investigation involved parties remain furious and unrelenting, the chieftain sets another date for mediation and settlement. If the accused denies the offense, he/she is subjected to a ritual that involves dipping of hands in a pot of boiling water. The accused is declared guilty if his/her hands get scalded. Otherwise, he/she is cleared of the charges. If the accused admits to the offense, contending parties begin to

negotiate for penalty. They do not stop negotiating until they reach a term acceptable to both of them.

3. Participants in Conflict Resolution Process

Karul-anon:
The mediation process is open to all interested tribe members. Other elders come to the session, participate in the discussion and give advices. Everyone is allowed to participate power. So far, only conflicts involving a non-member of the tribe as a contending partyreach the *Lupon*.

There are 2 members of the tribe presently sitting as members of the *Lupon* members buttribal leaders claim this does not have any bearing on or implication to the tribe because they work very hard to settle conflicts within their means.

Bukidnon
Still in the early stage of "re-organizing" the tribe, this group is still in the process of reviving its customary law and restoring its indigenous conflict resolution process. All conflicts between tribe members are thus brought to the *Lupon* for settlement. Like the Marikudo and other indigenous peoples groups, Bukidnons find the BJS discriminating against them.

2. Problems and Limitations of Interface
Of the 3 tribes, only the Karul-anon has gone through an interface. Because of the kind of interface it has adopted, it has not encountered any problem so far. It even considers the interface, particularly the practice of recording and reporting a case that has been settled by the *Lupon* cum tribal council, an additional strength for its continued use of customary law and traditional mediation process. It regards case recording and reporting a welcome change in conflict resolutions because it has paved the way for a systematic documentation of the tribe's customary law.

3. Recommendations
Because of the level of comfort the Karul-anon has achieved in the kind of interface it has set in place, it encourages other tribes to explore ways to bring their customary laws at par with the BJS. But to the Marikudo and Bukidnon, which have not attained any form or level of interface, they recommend that customary law and the BJS operate
independently of each other, and that customary law be mandated as the first option for tribe members so they be will spared from discrimination.

4. State of Indigenous Justice System

1. Strengths and Weaknesses
Karul-anon
The customary law is already effective as traditionally and currently observed. It was made stronger and more effective with its integration with the BJS.

Marikudo
Aside from all the practical reasons the use of customary law and indigenous conflict resolution process offer, this group believes that its greatest strength is its capacity to make conflicting parties and the whole tribe happy and contented after every conflict is resolved. As successful resolution of conflicts using customary law brings back peace and harmony in the tribe, the tribe wants to keep its hold on the practice.

Bukidnon
More than the practicalities (inexpensive, swift, etc.) offered by its indigenous justice system, the oral nature of customary law is what this group considers as the greatest strength of its indigenous justice system. Now that BTO is in its initial bid to revive its customary law and restore its indigenous conflict resolution system, its leaders who grew up being integrated in the lowland culture find it helpful that few surviving tribal elders have stored in their memory knowledge and wisdom on the various aspects of theBukidnon culture.

2. Challenges

Karul-anon:
Completion of its ADSDPP is what this group considers as a challenge in its effort to strengthen its indigenous justice system. In the ADSDPP, a part will be dedicated to a full documentation of its indigenous justice system and other aspects of the Karul-anon culture.

Marikudo
Strengthening its indigenous justice system is what this group considers as a major challenge. Being surrounded by lowlanders, being discriminated by them, and with lowland culture continuously seeping into its domain, raising the cultural consciousness of its youth and showing them that justice is highly attainable under its indigenous justice system is what this group regards as first step in facing such challenge.

Bukidnon
The greatest challenge it now faces is documentation of its customary law and mobilizing all Bukidnons to work hand in hand for the reclamation of its ancestral domain. Slowly, however, BTO leaders are able to piece together some aspects of its customary law and share them with members during regular meetings.

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OCCIDENTAL MINDORO:
The Mangyan Conflict Resolution Process & Justice System

A. The Study Site

The island of Mindoro, the seventh largest island in the Philippines located south of the Luzon island, is home to the Mangyan group of indigenous people. It is divided into two (2) provinces: Oriental Mindoro in the east and Occidental Mindoro in the west. In the western province of Occidental Mindoro, which is composed of 11 municipalities, the Mangyans can be found in nine (9) municipalities, namely, Abra de Ilog, Calintaan, Magsaysay, Mamburao, Paluan, Rizal, Sablayan, San Jose and Santa Cruz. Mangyan (Manguianes in Spanish and in Old Tagalog) is the collective name for the eight (8) indigenous groups found in the whole Mindoro island.

They are considered as the original inhabitants of the island. In the whole island, their number comprises 10 percent of the total population. In the province of Occidental Mindoro, the provincial government has yet to come up with an official population count of the Mangyans. Unofficial estimates peg the Mangyan population at about two (2) percent of the total provincial population. Unofficial count in 2000, however, places the Mangyan population in the province at 25,223, which is roughly seven (7) percent of the total provincial population (380,250).

1. The Mangyans of Occidental Mindoro

Of the eight (8) Mangyan tribal groups, only seven (7) can be found in Occidental Mindoro. They are Alangan, Buhid, Gubatnon, Hanunoo, Iraya, Tau-buid and Ratagnon. Each group has its own language and set of beliefs and practices but which overlap in certain aspects. Because of similarities in language and customs, leaders of the Hanunuo, Gubatnon and Ratagnon tribes have decided to organize into one group and agreed to becollectively referred to as Hagura (a label containing the first syllable of the name of each of the three tribes).

Alangan

This group, whose name was derived from the name of a river and mountain slopes called Alangan Valley, can be found in central Occidental Mindoro, specifically in the municipalities of Sablayan and Santa Cruz. Recent unofficial population count places their number at 1,787.

Buhid
Known as pot makers where the Alangan and Hanununo used to buy their cooking pots, this group occupies the highland of the municipalities of Calintaan, Sablayan, San Jose and Rizal. Their number, according to unofficial population record, is 4,352. Together with the Hanunuo, it possesses a pre-Hispanic syllabic writing system. The group name literally means mountain dwellers.

Gubatnon
This group is one of the two that has the smallest population. Its number totals to only 412. Its members inhabit the southern municipality of Magsaysay.

Hanunuo
This group which numbers to 3,562 is the other group that possesses a pre-Hispanic writing system called Surat Mangyan, which is now taught in Mangyan schools. Its members inhabit the mountainous part of the municipality of San Jose, the commercial and trade center of the province.

Iraya
This group is the biggest in number – 12, 291. Its members can be found in the northern municipalities of Abra de Ilog, Paluan, Mamburao and Santa Cruz.

Tao-Buhid
Known as pipe smokers, this group numbers 2,697 and can be found in central Occidental Mindoro, in the municipalities of Calintaan and Sablayan.

Ratagnon
The Ratagnons, who are found in the southernmost municipality of Magsaysay, have the smallest in number. Unofficial statistics placed their number at 121. The language they speak is similar to the Cuyunon language, the language spoken by the inhabitants of Cuyo Island in Northern Palawan.

2. Ancestral Territory
Each tribe, except for the Ratagnon tribe, has long filed an application for ancestral domain title to the provincial office of National Commission on the Indigenous Peoples (NCIP). The Ratagnon tribe still awaits delineation of its ancestral domain by the NCIP. The location and land area of ancestral domain claimed by each tribe is summarized in the following table (NCIP 2008):

Ethno-linguistic Group	LOCATION (Municipality)	LAND AREA OF CLAIMED ANCESTRAL DOMAIN (has)
HAGURA (Hanunuo, Gubatnon, Ratagnon)	San Jose, Magsaysay	18,616.31
Buhid	Sablayan, Calintaan, Rizal, San Jose	94,202.00
Tao-Buhid	Calintaan, Sablayan	59,624.00
Alangan	Sta. Cruz, Sablayan	98,109.00
Iraya	Paluan, Abra de Ilog, Mamburao, Sta. Cruz	130,000.00

3. Assimilation to Modernity

The Mangyans are considered as the original inhabitants of the whole island of Mindoro but mainstream society continues to disregard their existence. The provincial government of Occidental Mindoro is only mapping out a development plan for the Mangyans and is only about to come up with an official, consolidated statistics on them.

But estimates made by leaders and representatives of the Alangan, Gubatnon and Tao-Buhid tribes during a focus group discussion held for this study revealed their state of assimilation to mainstream society.

Elderly Mangyans are illiterate. Some if not most adult Mangyans are functionally literate or are able to limitedly read, write and compute. Younger Mangyans increasingly attend formal education either in government-run schools or in PAMANAKA, a special school for the Mangyans jointly managed by PASAKAMI and Mangyan Mission. Among the Tao-Buhid, most children attend elementary school, 20 students attend high school but none has gone to college. The Alangans have most of their children attending elementary school but only a few go to high school and college. The Gubatnons have almost all of their children attending elementary school, have more high school students and have managed to send five (5) to college and finished a degree in education.

Most elderly Mangyans maintain their traditional religious beliefs and practices but many have affiliated with the Roman Catholic and other religious groups such as the Baptist, Evangelical and Protestant. FGD participants recognized that the entry of various religions in their communities altered some of their cultural beliefs and practices including those pertaining to conflict resolutions and justice administration. Murder as a penalty, for instance, has been abolished because of the influence of Christianity. Certain religious groups consider all traditional rituals as expression of paganism and hence, forbid their conduct.

The Mangyans continue to have no electricity in their communities. They have no television and very few households own a radio. Among the Gubatnon, for instance, only four households own a radio and none among the Alangan owns a radio. Their main source of news and information are those members frequenting the barangay or town center to sell farm produce and buy some goods on certain days of the week. The Gubatnon, who live nearer the urban centers, is more updated on current events because it has members frequenting the town center almost everyday.

All three tribes have been exposed to various types of development projects that include community organizing, livelihood, health, education/literacy and reforestation. Community organizing efforts of the Mangyan Mission, a church-based local organization, have resulted to the formation of eight tribal organizations and a federation of these eight organizations. Aside from Mangyan Mission, other nongovernment organizations that implemented projects in their communities include Kalahi Sidds, Plan International and World Vision.

B. Concept of Justice, Retribution and Penalty

The Mangyans equate justice with concepts like peace, harmony, contentment, order and common good. To them, justice can only reign when there is peace and harmony in the community. Peace and harmony can only be achieved if everyone is pleased or contented with their relationship with family members, neighbors, relatives and leaders. If there is contentment among all tribal members, there is order and stability in the community, and only when order and stability are in place can peace and harmony finally reign.

Peace and harmony is disrupted when discontents arise out of conflicts or disagreements between or among tribal members. Conflicts usually result in altercations, fights or deaths which upset order and stability not only within and between the families of conflicting parties but also within the whole community as conflicts may create noise and commotion, destroy properties, inflict pain and arouse fear. For this reason, tribal leaders exert enormous efforts to settle conflicts in the shortest time possible so justice can be delivered for the common good of everyone and for order, stability, peace and harmony to once again reign in the community. To the Mangyans, justice is achieved at various stages of the conflict resolution process. It is initially achieved when the process and outcome of the settlement is acceptable to the conflicting parties. During mediation and settlement, it is important that both parties are properly represented by their respective family, that the father, mother and siblings of each party are present. At this stage, it is an injustice to any of the conflicting parties if settlement was conducted without the presence of family said members. Absence of family members in during mediation is a ground for appeal.

During mediation and settlement, there is initial justice when conflicting parties feel contented and pleased with the outcome -- when the offense and the offender(s) have been properly established and conflicting parties have negotiated and agreed on an acceptable penalty. Penalties are determined based on the weight or severity of the offense. To the Mangyans, returning what has been taken from the offended party, in the case of theft, does not in any way cover penalty or part of the penalty. It is a requirement for the offender. Traditionally, penalties are expressed in terms of material goods, usually food items or valuable properties such as beaded accessories and antique plates and other eating utensils. With the commercialization of their beaded accessories and the extinction of antique plates, penalties are limited to farm produce or their cash equivalent. But as a final penalty to seal the process and the agreements reached by the two parties, the families of both parties are asked by the mediators to prepare and share foods to the community.

To the conflicting parties, complete justice is achieved only after the offender has finally complied with the agreed upon penalty and their names and all those who were involved in

the offense have been cleared through a ritual. It is an injustice if their names are not cleared and their reputations are cleansed.
Only when complete justice is achieved by conflicting parties can contentment, order and stability be restored, and peace and harmony can reign once more for the common good of everyone in the tribe.

C. Elements of Indigenous Justice System

1. Nature of Crimes/Offenses and Penalty System

Anhtropologist Antoon Postma who is known to have extensively studied the culture of the Hanunuo tribe in Oriental Mindoro came up with a four-volume publication entitled Kulturang Mangyan in 2005. In the fourth volume, he wrote about the Hanunuo's justice system and listed 164 offenses or crimes punishable under the tribe's customary law. Such offenses cover all sorts of behavior that pertain to conduct of relationship with family members, relatives, neighbors and tribal leaders. They range from petty to serious ones like rape and murder.

All three tribes confirmed Postma's listing. Presently, however, the most common offenses handled by each tribe's council of elders for mediation and settlement include theft, cutting another family's banana plants, courtship-related problems (e.g. elopement, not honoring one's promise to marry, etc.), and marital problems such as adultery and stealing another man's wife. They added land grabbing by non-Manyans (the Tagalos or what they call as damuong) and dispute over their ancestral domain as present-day problems not covered by their customary law. Any dispute arising from choosing sitio leaders is another case that was non-existent in the past.

Penalty system is similar to all three tribes. Penalties vary depending on the severity of the offense. Simple ones such as slight physical injury, theft and elopement are penalized with whipping of the offender with a wooden stick or pole in full view of the tribe. In the Alangan tribe, a penalty for simple offenses is twisting a finger or some fingers of the offender long and strong enough for the person to scream in pain and promise not to commit the same offense again. For adultery or wife-grabbing, some payments in the form of property like carabao or its equivalent cash are asked from the offender(s).

In the past, death was a penalty for serious crimes like murder. All three tribes have abolished it because of the influence of Christianity and formal education. The Tao-buhid has replaced it with imprisonment, the Alangan with pangaw or cursing for a serious ailment for the offender and the Gubatnon, with 25 whippings using uway (the branch of a local plant).

2. Justice Administration – the Conflict Resolution Process

In all tribes, the process used to start with the complainant approaching an elder to report the offense and to seek resolution. The elder confers with members of the council of elders and calls for an investigation of the complaint. A date is set for hearing and settlement, and the involved parties are, hence, notified. During actual settlement, certain rituals are performed such as the opening prayer, which asked for guidance from the heavenly spirits for a peaceful resolution of the conflict, and a closing prayer, which thank the heavenly spirits for having achieved a peaceful resolution.

Both parties are asked to explain their side. If the alleged offender denies the offense, a *tigian* is called. *Tigian* is a traditional way of determining whether an accused is guilty or not. Administered by a senior elder possessing some magical or shamanistic power, the ritual involves boiling water in a clay pot and asking each suspect to dip his/her hands into the pot of boiling water. Anyone whose hands get scalded when dipped into the boiling

water is declared as guilty of the offense. In some instances, the water in the clay pot boils vigorously just as the hands of the guilty person approach the pot. A suspect not guilty of the offense does not get a scald or is not hurt at all. In most instances, conflict resolutions do not reach the point of performing the ritual. The accused would rather confess to the crime rather than get his/her hands injured and suffer embarrassment as the ritual is performed in full view of the tribe.

Once the accused has owned up to the offense or a suspect has been established as guilty through the tigian, discussion of and negotiation for penalty begins. The elders serve as mediators and advisers.

If the case is not resolved at this level because the conflicting parties fail to reach an agreement, it is raised to the tagahatol, the datu or the tribal chieftain, where final resolution rests. Once final resolution is reached, the datu and council of elders summon the conflicting parties, hand down the final resolution and give advice on how to restore kindness and harmony between them. Final resolution is sealed with a feast as thanksgiving to the heavenly spirits and celebration of the peaceful resolution.

After the offender has complied with the negotiated penalty, another ritual is performed for the clearing of names and cleansing of reputation of all parties involved in the conflict. With the barangay system in place, a change in the process of resolving conflicts has occurred. Following the barangay structure of having subdivisions sitios and with each sitio having a designated leader, conflict resolution nowadays begins with the sitio leader. Instead of seeking out an elder, complainants directly go to their sitio leader. The sito leader examines the complaint, embarks on an investigation, brings together conflicting parties to explain their side and argue on the case, establishes the offender and mediates the negotiation for the penalty. If the conflict is not resolved at this level, it is raised to the level of the council of elders and a tigian is performed. If the conflict remains unresolved at this point, it goes up to the datu for final resolution.

Mediators ensure that resolution of all conflicts is speedy. Depending on the nature and severity of conflict, resolution is achieved within a minimum of half-day to a maximum of three days.

3. Participants in Conflict Resolution

Aside from the conflicting persons and the elders acting as mediators, other people permitted to participate or witness the actual settlement of conflicts varies from one tribe to another. The Tao-Buhid confines hearing and settlement of conflicts to conflicting parties and mediators. Community members are neither allowed to participate nor witness the proceeding. The Alangan also disbars community members not involved in the conflict to participate or observe but it allows family members of conflicting parties to take part in the negotiations. The Gubatnon opens the proceeding to everyone in the tribe.

4. Venue of Conflict Resolution

In the Tao-Buhid tribe, where settlement process is limited only to conflicting parties and mediators, actual hearings and negotiations are thus held in a closed venue or a house designated by mediators. In the Alangan tribe, mediation is held in any house agreed upon by the litigants and mediators. In the Gubatnon tribe, mediation is held in the designated "government" house of the tribe.

D. Interface with State Laws and Policies

1. Aspects Interfaced

The Tao-Buhid has followed and adopted the documentation requirement of the Barangay Justice System (BJS). For its leaders, documentation of conflict resolution proceedings will help form a repository of knowledge that will be passed on to the next generations of Mangyans. The Alangan and Gubatnon tribes have not adopted this BJS requirement or any other aspect of the BJS. They, however, expressed openness to adopting the documentation requirement since they both have an indigenous writing system.

No aspect of the indigenous conflict resolution system of the three (3) tribes has been interfaced with the BJS. None has also been integrated with the court system.

2. Problems and Limitations of Interface

With very limited literacy among elders and even adult members of the tribe, documenting the settlement proceeding in English is one big problem the Tao-buhid encounters in its effort to interface it in its traditional way of resolving conflicts.

Presently, the tribe manages to put a documentation system in place because one of its leaders has been elected to the Barangay Council and serves as member of the Lupong Tagapamayapa. Having acquired a certain level of literacy, this leader has learned the intricacies of documenting a settlement proceeding. But even with a tribal leader serving as barangay councilor and member of the lupon, the Tao-Buhid finds the BJS and the whole formal court system very discriminating to them. The Alangan and Gubatnon expressed the same sentiment. Whenever they bring a land dispute problem to the BJS or to the Municipal Trial Court, they experience discrimination and feel that their rights as indigenous peoples are not recognized. They feel the formal courts favors their opponents, the Tagalogs.

3. Recommendations

It is the dream of every Mangyan tribe that its indigenous justice system be recognized and respected by government, that they be given full autonomy to resolve conflicts involving tribal members. The ultimate goal of its indigenous justice system after all is the restoration of peace and harmony in the community. Moreover, each tribe has the capacity and the willingness to resolve all types of conflict within their respective tribe except for murder cases which they have not encountered at all.

E. State of Indigenous Justice System

1. Strengths and Weaknesses

Up to the present, all tribes settle all conflicts through its indigenous conflict resolution system because their members prefer it over the BJS or the formal courts. Only cases that involve land or boundary dispute or those involving lowlanders (squatting, land occupation) that cannot be settled by tribal mediators are forwarded to the BJS or to the Municipal Trial Court (MTC).

They prefer their own system over the BJS for the following reasons:

a. Conflicting parties are always contented with the outcome or resolution reached by tribal mediators. They find final resolutions always fair to everyone as the resolution process is negotiated by conflicting parties and mediated by elders who the community respects for their wisdom and ability to arrive at fair decisions.

b. It has no documentation requirements although the three tribes expressed the need to document tribal conflict resolution proceedings for future reference.

c. It is swift. It takes only half of a day or a maximum of three (3) days to come up with resolutions unlike the BJS or the state justice system which takes years before a case is resolved.

d. It does not entail any expense except those pertaining to food served during the feast held after the final resolution, if ever they spend at all. Even if they spend for the occasion, they do not consider it a burden as the feast is shared with tribal members and signals the restoration of peace and harmony in the community.

e. It does not impose severe penalties – they neither kill nor injure the offender.

f. Its ultimate goal is to restore peace and harmony in the community or tribe.

Most importantly, their indigenous justice system is still intact. It has not been significantly altered. Moreover, they still have elders and tribal leaders who have the capacity to facilitate the mediation process and render justice acceptable or favorable to conflicting parties.

If there is any weakness at the moment, it is the growing disinterest of some elders in performing their duty or function as mediators. Some elders have lost faith or confidence in their ability as mediators because younger Mangyans who have gained some formal education or have been exposed to lowland or urban living have started to look down on them because they are illiterate and are not updated on the modern ways of living. On their customary law and justice system, they realized they cannot use them settling boundary disputes with lowlanders and in their claim for ancestral domain.

2. Challenges

One of the greatest challenges commonly faced by all tribes is the attitude of young members toward their customary law and tribal justice system, and toward their culture in general. Many of their youth are losing interest in their culture and tribal leaders are alarmed with this. At the moment, they consider the conduct of consciousness-raising activities among their youth as a way to enlighten them and instill in them the importance of their culture in their claim for ancestral domain and struggle for right to self-determination.

UPI, MAGUINDANAO:

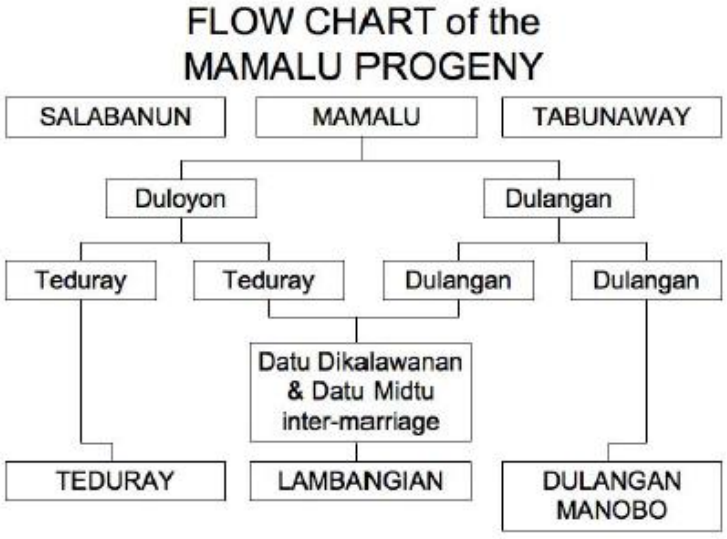
The Teduray-Lambangian Conflict Resolution Process & Justice System

A. Description of the Study Site

The Municipality Upi is a third class municipality in the province of Shariff Kabunsan (formerly part of the Province of Maguindanao). Upi has a population of 51,141 people (2000 census). The municipality is politically subdivided into 23 barangays, namely: Barangays Bantek, Bayabas, Blensong, Borongotan, Bugabungan, Bungcog, Darugao, Ganasi, Kabakaba, Kibleg, Kibucay, Kiga, Kinitaan, Mirab, Nangi, Nuro (Poblacion), Ranao Pilayan, Rempes, Renede, Renti, Rifao, Sefegefen, and Tinungkaan.

1. The Teduray – Lambangian Peoples

The Teduray and the Maguindanaon peoples share a common history. Until the coming of Islam in the country, the Maguindanaons and the Tedurays were one and the same people believed to have come from two brothers, Mamalu and Tabunaway. According to oral history, when Shariff Kabunsuan came to Mindanao in order to teach Islam, of the two brothers, only Tabunaway embraced the Islamic faith. The older of the two brothers, Mamalu, refused to be converted. As a result, the brothers went their separate ways with their respective followers. Mamalu went to settle in the mountain area while Tabunaway remained living near the lowland and the delta of the big river now known as the Rio Grande de Mindanao. This occurred around 1300 AD. From Mamalu came the Teduray and Dulangan Manobo and from Tabunaway came the Maguindanaon. [Mamalo Descendants Organization (MDO) CADC Petition, 1996]



[source: TLADMADC, Genealogical Surveys: Teduray, Dulangan Manobo and Lambangian (August 2005)]

The Lambangian, for its part, traces its roots to the war between the Teduray and Dulangan Manobo peoples more than a hundred years ago. It was said that the war started after the Tedurays abducted several Dulangan Manobo who were experts in collecting honey bees. The captive Dulangan Manobos were sold to the Maguindanaons and served as slaves in the latter's honey bee farms. The war lasted for at least ten years and ended only after the Tedurays and Dulangan Manobos agreed to end the conflict and made a pact to live in peaceful relations with each other. This pact was sealed with the marriage of young couples from the two tribes. The marriage was concluded with a ritual and a prayer calling all the offspring of the newly-wed couples as Lambangian. It was also said during the ritual that should there be any violation of the pact, the Lambangian shall be killed signifying the nullification of the agreement. Fortunately, since then, no war between the Tedurays and the Dulangan Manobos ever took place as
the two tribes continued in peaceful co-existence. [Ibid.]

2. Ancestral Territory

The Teduray and Lambangian peoples, together with the Dulangan Manobos, have been in peaceful, public, adverse and continuous possession and ownership of their ancestral domain since time immemorial. This embraces the municipalities of Upi, South Upi and the southern portions of the municipalities of Datu Odin Sinsuat, Talayan, Guindulungan, Datu Unsay, Shariff Aguak and Ampatuan, all in the Provinces of Maguindanao and Shariff Kabunsuan, covering an area of about 201,850 hectares. At some point in the past, portions of their ancestral domain were covered by civil reservation settlements under the then Commission on National Integration (CNI), Presidential Assistance on National Minorities (PANAMIN), as well as ancestral domain claims pursuant to Department Order No. 2 of the Department of Environment and Natural Resources. [TLADMADC CADT Petition, 30 August 2005]

The *Inged* or ancestral territorial domain of the Teduray and Lambangian peoples refer to the traditionally recognized territory of the Teduray and Lambangian peoples as stipulated in the historic agreement forged by and between the brothers Mamalo and Tabunaway after Shariff Mohammad Kabunsuan arrived at the embankment of the Pulangi River in Cotabato City to propagate the Islamic faith sometime between 1450 A.D. to 1475 A.D. [Article II, Section 1(b), Ukit (Teduray and Lambangian Constitution)]

C. Notion of Justice

Chapter I (Declaration of Principles and Policies), Article I (Principles and Policies), Section 7 of the Ukit states:

Section 7. Peace of Mind as Basis on Justice and Development.— Peace of mind is the absence of conflict in the community, whether physical or emotional. This is the basis for justice and development for all and not the satisfaction of one person or a few people in the community.

Kefiyo fedew or peace of mind is defined as "a state of mind and physical being of an individual which is free of any problem be it emotional or physical." (Section 1, Article I, Chapter I, Ukit)

Thus, conflicts are always resolved through a "win-win solution", where both parties are satisfied, have no ill feelings, and have their Kefiya Fedew (good state of mind) restored. By achieving such, it may be said that justice is achieved with justice being the restoration of "good fedew in terms of respect for rights and feelings of all people involved." [Ester Sevilla and Danilo Lacson, "Timuay at Datu: Indigenous Self-Governance in Teduray and Maguindanaon Societies", The Road to Empowerment, Volume I (International Labour Organization)]

D. Elements of the Timuay Justice and Governance System

The Timuay system is an indigenous form of leadership and self-governance practiced by the Teduray and Lambangian peoples since time immemorial. The body of customary laws being followed by the Timuay Justice and Governance (TJG) is called the Kitab Keadatan. It is composed of three major works: the Ukit or Constitution, the Tegudon or Creed, and the Dowoy or penal laws. [TJG Orientation] The Kefedewan or Tribal Justices is but one of the three (3) branches of the TJG which include: the Minted sa Inged or Supreme Council of Chieftains, the Inged Kasarigan or Inged Executive Body, and the Fagilidan or Inged Justices. [TJG, Oryentasyon ng Gawaing Kefedewan]

The Kefedewans are the administrators of the Tiwayan or the conflict settlement process or tribal judicial procedure, and are instrumental in facilitating justice for the victims of ketete fedew (injustices). (Ibid.) Aside from having the authority to settle lidu or conflict, the Kefedewans are also considered as the doctors of fedew or ill-feelings. By settling conflicts, the Kefedewans help maintain a person's good state of mind or rational feelings called the kefiya fedew.

The role of the Kefedewan is similar to that of a lawyer because he represents his "client" informal negotiation of agreements (e.g. marriage) and in settlement of conflicts. But the Kefedewan also acts more than that of a court attorney. He pays the tamuk (blood price or fine) imposed on his "client" if the latter is unable to do so. A Kefedewan who willingly does this for his client is regarded with utmost respect. [Ester Sevilla and Danilo Lacson, "Timuay at Datu: Indigenous Self-Governance in Teduray and Maguindanaon Societies", The Road to Empowerment, Volume I (International Labour Organization)] Thus, not a single Kefedewan is rich. More often, the Kefedewan would offer his own properties (e.g. cattle) just to achieve good fedew and settle the conflict. That is also why, they would add, there are those who are hesitant to take on the role of being a Kefedewan.

The Kefedewans may be found in the three (3) levels of the Timuay governance, the Inged (territory), the Remfing Fenuwo (cluster of villages), and the Fenuwo (village). The center of leadership in territorial (i.e. Inged) judicial work is the Fagilidan or Inged Justices. It is composed of the Timuay Fagilidan or Chief Justice as head, the Sungku Timuay Fagilidan or Deputy Chief Justice, and the members. They are selected by consensus during the Conference of the Kefedewan and are confirmed (fisaan erang) during the Timfada Limud or Tribal Congress. The Fagilidan also serve as an Appellate Court for decisions rendered by the Kefedewans in the Remfing Fenuwo and Fenuwo levels. The kefedewans in the Fenuwo or village level are called the Samfeton. The Samfetons or Fenuwo Justices are responsible for the administration of the Tiwayan in the Fenuwo. The work of the Remfing Fenuwo

Justices, also called Kefedewans, is no different from the work of the Fenuwo Kefedewan or Samfeton. [TJG Orientation] Except for South Upi, the Kefedewans are currently present only in the Inged and Fenuwo levels. In South Upi, the presence of Kefedewans in the Remfing Fenuwo level was facilitated through the initiative of the Municipal Mayor.

1. Nature of Crimes/Offenses

As as mentioned earlier, the Kitab Keadatan or body of customary laws of the Teduray and Lambangian peoples is composed of three major works: the Ukit or Constitution, the Tegudon or Creed, and the Dowoy or penal laws. The Dowoy (Teduray and Lambangian penal laws) details the crimes and offenses and the various types of penalties and disciplinary actions that may be imposed. Some of these offenses are also enumerated in the Tegudon (Teduray and Lambangian Creed).

Listed below are the crimes and offenses [i.e. LIDU (CONFLICT) – Fedew (ill feelings) done against an individual or against the community as a whole or against customary law] enumerated in the Tegudon (Teduray and Lambangian Creed).

a. Death – the cause of death is considered in order to determine the presence or absence of conflict.
 Druun (Sickness) – there is conflict if the person was not carefully assistedvduring the time of sickness and if the appropriate practice in handling dead persons (from funeral to his/her 7th day) was not followed.

 Fétoyo (Suicide) – although intentionally committed by the person himself/herself, it is believed that said person did not do it without reason. Therefore, it is important to know the cause, which is the real killer.

 Sugsug (accident) – although unintentional, the person responsible for the accident will still be held accountable before the tribal court.

 Kénémér – this type of death is intentional. Whatever the reason of the suspect may be, he/she shall still be brought before the tribal court.

 Ingomén – in this case, the act is merely verbal wherein a person predicts or hopes for the death of a person. The person who makes such a verbal pronouncement will be held accountable because, in the Teduray and Lambangian culture, once it is said ("langé sen") it is the same as already committed, i.e. it is as if the other person is already dead.

b. Wounds – whenever a person is wounded, blood, in varying amounts, flows from the body. Hence, it is considered an offense. The Teduray and Lambangian peoples believe that there should not be any blood loss because blood is needed to keep a person alive. Moreover, they believe that it is forbidden for blood to flow to the soil because it would mean that part of the body has already returned to the soil where it came from.

c. Malah (dignity) – there is loss of dignity when a person is shamed through any of the following acts:
 Féngirasén – calling a person by his/her sexual organ
 Génoén – name-calling
 Rumen – underestimating a person's capacity
 Slyawén – to demean a person

d. Gilak (fear)
 Tékangén – making things that scare a person
 Fénayamén - unseen spirits that frighten the person

e. Rasay (useless effort)

f. Lugi (deceit) – Through manipulation and deceit, a person was not able to receivethe amount equivalent for his/her services or products.

g. Raadén – Belief or statement merely based on an unverified assumption. It becomes a lidu or conflict when such is stated in public.

h. Méndafat – There is damage, whether or not deliberately done, to another person's property. It may be caused by a person or his animals, or by any other means. Those found to have caused the damage or loss (e.g. dead crops or animals) will be held accountable.
 Agricultural crops

 Animals
 Barandiya – may either be animals or property.

i. Fénénakaw (stealing) – When a thing is lost and the owner cannot find it after a thorough search, there is the possibility that somebody might have stolen it.
 Nowlh – getting the property of another without the consent nor knowledge of the owner.
 Mamfél – getting a property of another without the consent of the owner, but with the latter's knowledge.
 Téréda – getting the property of another while the owner is absent (i.e. in a far away place) or the latter is a family member or relative.

j. Géllfayan - Unintentional violation of a customary law, wherein there is a valid for said violation.

k. Lifayén (intentionally violated) – Intentional violation of a customary law. In such a case, said person violates not only the law but also the rights of other persons. He is therefore answerable to both the individual person(s) and the community as a whole for the said violation of customary law.

2. Kayang Bala: Penalty Imposed on the Violator(s) of the Kitab
Over time, there have been certain adjustments made in the Dowoy, especially in the area of penalties imposed. These penalties traditionally took the form of the giving of goods (e.g. gong, sundang) to the aggrieved party. However, since most of these goods are now rather hard to find, the penalties were converted to cash equivalents. For example, the equivalent of Mérémoto Tamuk ranges from P3,000.00 and above; and for Séékét, it is set
below P3,000.00.

The Kayang Bala covers the range of penalties set by the Tegudon. Although this serves as the primary reference regarding penalties, there are other bases that may be considered in setting the exact amount of penalty to be imposed by a Kéféduan. The sanction and/or penalty imposed is set in the Tiwayan or settlement of conflict. After which it is the responsibility of the entire community to enforce the penalty. [Ester Sevilla and Danilo Lacson, "Timuay at Datu: Indigenous Self-Governance in Teduray and Maguindanaon Societies",The Road to Empowerment, Volume I (International Labour Organization)]

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Sevilla and Danilo Lacson, "Timuay at Datu: Indigenous Self-Governance in Teduray and Maguindanaon Societies", The Road to Empowerment, Volume I (International Labour Organization)]

Tiwayan varies depending on the nature of the case or conflict. Listed below are the different forms of Tiwayan and the procedure each form follows as found in the Tegudon.

Forms of Tiwayan
1. **Kukum Rasam** – case settlement among relatives. However, this can also be used in cases where non-relatives are involved, if the parties agree to such. Under this form of settlement, the full amount dowoy agreed upon or the fine set by the kitab will not be imposed. Rather, such will be decreased to at most half of the original amount
considering the close relation of the parties with each other. In addition to said dowoy or fine, the Inged will receive a dowoy af P500.00 from the respondent.

2. **Séékémén** – swift and confidential settlement of sensitive or delicate cases [i.e. most, if not all, involve offenses that are sexual in nature]. Only the assigned Kefedewan and the parties directly involved (i.e. the alleged perpetrator and the complainant/victim) are present. It is forbidden for any of the parties to reveal the details of the settlement. There will be a fine of P1,500.00 imposed on those who will violate the confidential nature of said proceedings.

3. **Talitib** – A thorough yet quick settlement of "meduf lidu" or controversial issues. The parties involved are not allowed to face each other during the settlement process, so as to avoid any physical confrontation that may arise. The amount of the settlement [i.e. kéfiyo

lédéw of the gébénal], as agreed upon by the parties, will be released at once to the victim or aggrieved party in order to appease him. If the respondent lacks the capacity to immediately meet the terms of the agreement, the community will intervene in order that the situation will not worsen.

4. **Féginau** – Case settlement of a minor conflict that needs to be addressed immediately in order to prevent further conflict. This will be settled by giving advice, rebuke and warning to the parties involved.

5. **Baruwat (Appeal)** - Case settlement by another Kefedewan of a conflict already been settled in the past. The Kefedewan who settled the conflict shall be included.

Tiwayan Process

1. **Felolok (Filing of the Case)** - The case shall be reported to the Kefedewan, detailing all the circumstances that surround the case plus recommendations as to the resolution of the case.

2. **Sobut (Verification)** – The Kefedewan of one party will approach the Kefedewan of the other party to set a date for the settlement of the case. The suspect/respondent shall be informed of the case filed against him, and he will then be informed, as with the complainant, of the date for case settlement.

3. **Tiyawan (Actual Settlement)** - The process of resolving the conflict, the objective of which is to achieve peace of mind. There are different styles are used depending on the nature or type of conflict.

Actual Settlement of the Case

1. **Adang (introduction)** - The first step of the Tiyawan. It starts with both parties exchanging greetings. After checking if all the people involved are already present, the Kefedewan in charge will then narrate the facts of the case.

2. **Sefetukol** – At this stage, the rights of both parties will be stated. Those who appear responsible for the wrongdoing shall accept his/her fault and responsibility. Any proposal for the settlement of the conflict shall be brought back to the Kefedewan for consideration and appropriate decision.

3. **Timfad** - One of the Kefedewan will state the decision. He will then ask everyone present to give their reaction or comment to the decision.

4. **Feredaan** – Agreement between the parties. In certain cases, a ritual referred to as Iném Kénugéw is performed. Said ritual is performed in order to finally settle any ill feelings remaining between the parties. After the ritual, the relationship between the two are considered restored.

E. The Indigenous Justice System and its Interface with State Laws and Policies

1. Strengths and Weaknesses of the Indigenous Justice System

The Kefeduans are well respected and the indigenous justice system recognized by the community members. For the Tedurays and Lambangians, most would prefer going to the Kefeduans. Rarely would they choose to go to the police or the Lupon.

There are a number of reasons why the indigenous justice system is preferred. First, it is

rooted in their culture, thus reflecting their system of beliefs and values. In the Tiwayan system relationships and reconciliation or the Kefiya Fedew is of primary importance. What is restored is not only the good relations between the two parties and their families, but also the good relations within the community. This for them is true justice which cannot be achieved by the adversarial nature of the mainstream legal system.

Familiarity with the Kefedewans and the Tiwayan system is also a key factor for choosing their indigenous system over the formal legal system. They claim that the way the Kefedewans handle cases brought before them is a lot different from they way such would be handled by the police or the courts. As such, they are able to speak their minds before the Kefedewans, thus making the resolution of the conflict more participatory. And because the parties are involved in the decision or final settlement of the conflict, they have a sense of owning with regard to the settlement or agreement.

Even the penalties imposed are relatively lower than those set by the mainstream legal system. Thus, allowing the offender to produce said amounts. Furthermore, the role of the family giving support to the offender in this area is also encouraged in their system. Another reason why the people prefer their own indigenous system of conflict-resolution is that in said system, blood relations are always considered. They believe that such is a key to the settlement of conflicts. Which, in turn, leads to another reason for their preference, that is, cases brought before the Kefedewans are always resolved.

Lastly, in some remote areas or barangays, the presence of the local government unit is hardly felt. Thus, the only system of governance the people in said areas would be familiar with will be their own indigenous system. They are not aware of the katurangang pambarangay system since the Lupon does not even exist in their community.

On the other hand, there are areas where people prefer to go to the local government unit, or more specifically, the mayor. This is true in South Upi where the mayor is also a Teduray, leading some to believe that such is the same as or part of their traditional structures.

2. Aspects Interfaced

Although the Indigenous Peoples Rights Act or IPRA does not cover ARMM, still there is a recognition of the effectiveness of the indigenous system of conflict resolution of the Teduray and Lambangian peoples. Most of the cases are brought to the Kefedewans for resolution. In the few instances where cases are brought directly to the police or the barangay, these are, more often than not, referred back by the police or the barangay to the Kefedewans once it has been determined that the parties involved are members of the tribe.

In an attempt to have an interface between the two systems, and in recognition of the effectiveness of the Kefedewans in resolving conflicts, the Kefedewans were made to sit as members of the Lupon. However, this is the only point wherein there is such an interface. When cases are brought before the Kefedewans, the parties approach them not as members of the Lupon but as Kefedewans. The procedure then applied is not that of the katarungang pambarangay system but that of the Tiwayan system of resolving conflicts.

When asked whether the two systems may indeed be interfaced, the Kefedewans agree that this may prove to be a difficult task since the two systems are very different from each other. For one, their concept of justice is hinged primarily on reconciliation and the restoration of relationships and the peace of mind of the individual. The penalties imposed are for this purpose and not to serve as punishment for the offender. Neither is the procedure followed in the Tiwayan system adversarial in nature, unlike that in the courts.

However, such a view that an interface is not only difficult but impossible may also be brought about by a lack of understanding as to how the so-called mainstream or formal legal system works. And also, the failed attempt at interface is, in turn, brought about by the lack of understanding, from the side of the mainstream legal system, of the Tiwayan system of the Teduray and Lambangian peoples.

3. Recommendations and Challenges Ahead

The Teduray and Lambangian peoples are well aware of the effectiveness of their own system for resolving conflicts. As such, their foremost concern is the strengthening of their indigenous systems, not only as regards conflict resolution or their justice system as a whole, but also as regards their over-all system of governance.

A key element to strengthening their justice system is ensuring its preservation. Thus, efforts are now being undertaken to train young Kefedewans as to the Tiwayan system and the role of the Kefedewans. As part of the training of the young Kefedewans, they are given an orientation regarding the history of the Teduray and Lambangian peoples and the over-all structure of the Timuay Justice and Governance [TJG]. Also covered are the customary laws of the Teduray and Lambangian peoples as contained in their Ukit, Tegudon and Dowoy.

There is also the need to develop an awareness and understanding of the formal or mainstream legal system. Even leaders within the Timuay Justice and Governance [TJG] and the Kefeduans recognize such a need. This recognition is brought about by the difficulties they have experienced in dealing with the formal legal system. They are, more often than not, at a loss as to how to handle cases already brought before the police or the prosecutor. In particular, they see the need to learn more about criminal law and criminal procedure, just so they know how to deal with the police and the courts. Such knowledge will also help them in understanding their rights.

One of the biggest challenges now faced by the Teduray and Lambangian peoples is to have their customary laws and indigenous system of governance recognized by the mainstream legal system. They are currently lobbying for the passage of a bill by the Regional Legislative Assembly [RLA] of the Autonomous Region in Muslim Mindanao or ARMM which will formalize such a recognition. While this may not ultimately resolve the question of interface, they see this as another step towards the strengthening customs, laws and traditions and their justice system and system of governance.

ANNEX A

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights2 and the International Covenant on Civil and Political Rights,2 as well as the Vienna Declaration and Programme of Action,3 affirm the fundamental importance of the right to self-determination of allpeoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights4 and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to theimprovement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their

intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

ANNEX B

S. No. 1728
H. No. 9125

Republic of the Philippines
Congress of the Philippines
Metro Manila

Tenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-eight day of July, nineteen hundred and ninety seven

Republic Act No. 8371

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLE, CREATING A NATIONAL COMMISSION OF INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::

CHAPTER I
GENERAL PROVISIONS

Section 1. Short Title. - This Act shall be known as "The Indigenous Peoples Rights Act of 1997."

Section 2. Declaration of State Policies. - The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b)The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on

an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.

CHAPTER II
DEFINITION OF TERMS

Section 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands,inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which their traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) Ancestral Lands - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership,continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;

c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;

d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

e) Communal Claims - refer to claims on land, resources and rights thereon, belonging to the whole community within a defined territory

f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;
g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to; be determined in accordance with their respective customary laws and practices, free from

any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language an process understandable to the community;

h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

i) Indigenous Political Structure - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processed for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;

j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;

k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;

l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use,manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III
RIGHTS TO ANCESTRAL DOMAINS

Section 4. Concept of Ancestral Lands/Domains. - Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

Section 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

Section 6. Composition of Ancestral Lands/Domains. - Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Sec. 3, items (a) and (b) of this Act.

Section 7. Rights to Ancestral Domains. - The rights of ownership and possession of ICCs/IPs t their ancestral domains shall be recognized and protected. Such rights shall include:

a. Rights of Ownership.- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b. Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interfere with, alienation and encroachment upon these rights;

c. Right to Stay in the Territories- The right to stay in the territory and not be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d. Right in Case of Displacement. - In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support system: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to

which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed:

e. Right to Regulate Entry of Migrants. - Right to regulate the entry of migrant settlers and organizations into the domains;

f. Right to Safe and Clean Air and Water. - For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g. Right to Claim Parts of Reservations. - The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and

h. Right to Resolve Conflict. - Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

Section 8. Rights to Ancestral Lands. - The right of ownership and possession of the ICCs/IPs, to their ancestral lands shall be recognized and protected.

a. Right to transfer land/property. - Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b. Right to Redemption. - In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs,or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

Section 9. Responsibilities of ICCs/IPs to their Ancestral Domains. - ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c. Observe Laws- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

Section 10. Unauthorized and Unlawful Intrusion. - Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

Section 11. Recognition of Ancestral Domain Rights. - The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

Section 12. Option to Secure Certificate of Title under Commonwealth Act 141, as amended, or the Land Registration Act 496. - Individual members of cultural communities, with respect to individually-owned

ancestral lands who, by themselves or through their predecessors-in -interest, have been in continuous possession and occupation of the same in the concept of owner since the immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this Section shall be exercised within twenty (20) years from the approval of this Act.

CHAPTER IV
RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

Section 13. Self-Governance. - The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

Section 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordillera to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

Section 15. Justice System, Conflict Resolution Institutions and Peace Building Processes. - The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

Section 16. Right to Participate in Decision -Making. - ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

Section 17. Right to Determine and Decide Priorities for Development. - The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation,implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

Section 18. Tribal Barangays. - The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

Section 19. Role of Peoples Organizations. - The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

Section 20. Means for Development /Empowerment of ICCs/IPs. - The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V
SOCIAL JUSTICE AND HUMAN RIGHTS

Section 21. Equal Protection and Non-discrimination of ICCs/IPs. - Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force of coersion against ICCs/IPs shall be dealt with by law.
The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

Section 22. Rights during Armed Conflict. - ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

Section 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. - It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.
ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' conditions. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

Section 24. Unlawful Acts Pertaining to Employment. - It shall be unlawful for any person:
a. To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

b. To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

Section 25. Basic Services. - The ICC/IP have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government 's basic services which shall include, but not limited to water and electrical facilities, education, health and infrastructure.

Section 26. Women. - ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.
The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

Section 27. Children and Youth. - The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

Section 28. Integrated System of Education. - The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and Young people of ICCs/IPs.

CHAPTER VI
CULTURAL INTEGRITY

Section 29. Protection of Indigenous Culture, traditions and institutions. - The state shall respect, recognize and protect the right of the ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.

Section 30. Educational Systems. - The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

Section 31. Recognition of Cultural Diversity. - The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

Section 32. Community Intellectual Rights. - ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

Section 33. Rights to Religious, Cultural Sites and Ceremonies. - ICCs/IPs shall have the right to manifest, practice, develop teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial object; and the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

a. Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
b. Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.
Section 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. - ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

Section 35. Access to Biological and Genetic Resources. - Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

Section 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the bio-genetic and resource management systems among the ICCs/IPs and shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

Section 37. Funds for Archeological and Historical Sites. - The ICCs/IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

CHAPTER VII
NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

Section 38. National Commission on Indigenous Cultural Communities /Indigenous Peoples (NCCP). - to carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

Section 39. Mandate. - The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

Section 40. Composition. - The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommendees submitted by authentic ICCs/IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven (7) Commissioners shall be women.

Section 41. Qualifications, Tenure, Compensation. - The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be the members of the Philippine Bar: Provided, further, That the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

Section 42. Removal from Office. - Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

Section 43. Appointment of Commissioners. - The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

Section 44. Powers and Functions. - To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, thorough which such assistance may be extended;
b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
e) To issue certificate of ancestral land/domain title;
f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;

i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;
k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;
l) To prepare and submit the appropriate budget to the Office of the President;
m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
n) To decide all appeals from the decisions and acts of all the various offices within the Commission:
o) To promulgate the necessary rules and regulations for the implementation of this Act;
p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

Section 45. Accessibility and Transparency. - Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

Section 46. Officers within the NCIP. - The NCIP shall have the following offices which shall be responsible for the implementation of the policies herein after provided:

a. Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral land/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with the master plans as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

b. Office on Policy, Planning and Research - The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs.

c. Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and related rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of

available appropriation, a special program which includes language and vocational training, public health and family assistance program and related subjects.
It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices who shall personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs /IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

d. Office on Socio-Economic Services and Special Concerns - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;

e. Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous socio- political, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all level decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations are protected and promoted;

f. Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies, and related services. It shall also administer the Ancestral Domains Fund; and

g. Legal Affairs Office - There shall be a Legal Affairs Office which shall advice the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

Section 47. Other Offices. - The NCIP shall have the power to create additional offices as it may deem necessary subject to existing rules and regulations.
Section 48. Regional and Field Offices. - Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field office shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field offices, the NCIP shall establish field offices in said provinces.

Section 49. Office of the Executive Director. - The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon the recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

Section 50. Consultative Body. - A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from the time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII
DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

Section 51. Delineation and Recognition of Ancestral Domains. - Self-delineation shall be guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the Scope of the territories and agreements/pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the rights of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

Section 52. Delineation Process. - The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

a. Ancestral Domains Delineated Prior to this Act - The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of his law. ICCs/IPs enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

b. Petition for Delineation - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;

c. Delineation Paper - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;

d. Proof required - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:

1. Written accounts of the ICCs/IPs customs and traditions;
2. Written accounts of the ICCs/IPs political structure and institution;
3. Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
4. Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
5. Survey plans and sketch maps;
6. Anthropological data;
7. Genealogical surveys;
8. Pictures and descriptive histories of traditional communal forests and hunting grounds;

9. Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
10. Write-ups of names and places derived from the native dialect of the community.

e. Preparation of Maps - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office of the NCIP shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;

f. Report of Investigation and Other Documents - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP; g. Notice and Publication - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;

h. Endorsement to NCIP - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the selection below.

i. Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies - The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;

j. Issuance of CADT - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and
k. Registration of CADTs - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

Section 53. Identification, Delineation and Certification of Ancestral Lands. - a. The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b. Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

c. Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this act, including tax declarations and proofs of payment of taxes;

d. The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e. Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available

f. Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g. The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate or corporate (family or clan) claimant over ancestral lands.

Section 54. Fraudulent Claims. - The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.
Section 55. Communal Rights. - Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provide, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.

Section 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

Section 57. Natural Resources within Ancestral Domains. - The ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the

ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains.

Section 58. Environmental Consideration. - Ancestral domains or portion thereof, which are found necessary for critical watersheds, mangroves wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by the appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of the government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirement of the existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

Section 59. Certification Precondition. - all department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certificate shall only be issued after a field-based investigation is conducted by the Ancestral Domain Office of the area concerned: Provided, That no certificate shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is pending application CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

Section 60. Exemption from Taxes. - All lands certified to be ancestral domains shall be exempt from real property taxes, specially levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes and upon titling by other by private person: Provided, that all exactions shall be used to facilitate the development and improvement of the ancestral domains.

Section 61. Temporary Requisition Powers. - Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

Section 62. Resolution of Conflicts. - In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That in any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

Section 63. Applicable Laws. - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs.

Section 64. Remedial Measures. - Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good". The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided, further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, That the action for reconveyance shall be a period of ten (10) years in accordance with existing laws.

CHAPTER IX
JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

Section 65. Primary of Customary Laws and Practices. - When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Section 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Section 67. Appeals to the Court of Appeals. - Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

Section 68. Execution of Decisions, Awards, Orders. - Upon expiration of the period here provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

Section 69. Quasi-Judicial Powers of the NCIP. - The NCIP shall have the power and authority:
a. To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;
b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;
c. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
d. To enjoin any or all acts involving or arising from any case pending therefore it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

Section 70. No restraining Order or Preliminary Injunction. - No inferior court of the Philippines shall have the jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER X
ANCESTRAL DOMAINS FUND

Section 71. Ancestral Domains Fund. - There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of the One Hundred thirty million pesos(P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten millions pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may be deem appropriate. Thereafter such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI
PENALTIES

Section 72. Punishable Acts and Applicable Penalties. - Any person who commits violation of any of the provisions of this Act, such as, but not limited to, authorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

Section 73. Persons Subject to Punishment. - If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office.

CHAPTER XII
MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES (ONCC) AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES (OSCC)

Section 74. Merger of ONCC/OSCC. - The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials and employees of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filing up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees

who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

Section 75. Transition Period. - The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

Section 76. Transfer of Assets/Properties. - All real and personal properties which are vested in, or belonging to, the merged offices as aforestated shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

Section 77. Placement Committee. - Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The placement Committee shall be composed of seven (7) commissioners and an ICCs/IPs representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII
FINAL PROVISIONS

Section 78. Special Provision. - The City of Baguio shall remain to be governed by its Chapter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or required through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

Section 79. Appropriations. - The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

Section 80. Implementing Rules and Regulations. - Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

Section 81. Saving Clause. - This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

Section 82. Separability Clause. - In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

Section 83. Repealing Clause. - Presidential Decree NO. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Section 84. Effectivity. - This Act shall take effect fifteen days (15) days upon its publication in the Official Gazette or in any two (2) newspapers of general circulation.

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