

THE ROAD TO EMPOWERMENT

Strengthening the Indigenous Peoples Rights Act

VOLUME I

Old Ways, New Challenges



Case Study Writers

SEDFREY M. CANDELARIA

VICTORIA P. DINOPOL

GERT A. GUST

REY DANILO C. LACSON

JILL LOPEZ

CARLOS P. MEDINA, JR.

ESTER O. SEVILLA

Editor

YASMIN D. ARQUIZA

Published by the International Labour Organization (ILO) in partnership with
the

United Nations Development Programme (UNDP), the National Commission
on Indigenous Peoples (NCIP) and the New Zealand Agency for
International Development (NZAID)

2007

Copyright © International Labour Organization 2007
First published 2007

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered in the United Kingdom with the Copyright Licensing Agency, 90 Tottenham Court Road, London W1T 4LP [Fax: (+44) (0)20 7631 5500; email: cla@cla.co.uk], in the United States with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923 [Fax: (+1) (978) 750 4470; email: info@copyright.com] or in other countries with associated Reproduction Rights Organizations, may make photocopies in accordance with the licences issued to them for this purpose.

ILO

The Road to Empowerment: Strengthening the Indigenous Peoples Rights Act
Volume 1: New ways, old challenges
Manila, International Labour Office, 2007

ISBN 978-92-2-119701-0

ISBN 978-92-2-119702-7 (web pdf)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

For the complete text of case studies in this book, visit our website: www.ilo.org/manila

Printed in the Philippines

Also in this series

Volume 2
Nurturing the Earth, Nurturing Life

Message

Indigenous peoples (IPs) in the Philippines have experienced poverty, marginalization and discrimination for many years. Hence, they are a significant target group for the International Labour Organization (ILO) under its Decent Work Country Programme.*

A main pillar of ILO work is to pave the way for the broader social and economic advancement of women and men, their families and their communities. The ILO has two specialised programmes for promoting the rights and reducing poverty of IPs: The Project to Promote ILO Policy on Indigenous and Tribal Peoples (PRO 169) and the Interregional Programme to Support Self-Reliance of Indigenous and Tribal Peoples through Cooperatives and Self-Help Organizations (INDISCO).

The two projects work in an integrated way to promote the rights of indigenous and tribal peoples and contribute to the improvement of their socio-economic situation, in compliance with the principles of ILO Convention No. 169, the Indigenous and Tribal Peoples Convention of 1989. Convention No. 169 is the only legally-binding international instrument open for ratification that deals exclusively with the rights of indigenous and tribal peoples. The Philippines' Indigenous Peoples Rights Act (IPRA), R.A. 8371, of 1997 reflects the spirit and intent of the ILO convention which has not been ratified in the Philippines to date.

The Road to Empowerment: Strengthening the Indigenous Peoples Rights Act documents the journey of Filipino IPs as they aspire to achieve decent work through the implementation of the IPRA. It also makes references to Convention No. 169 as well as to other related ILO conventions and international legal instruments. The two-volume publication comprises 13 case studies, culled from the experiences of IPs in selected communities throughout the country. The first volume deals with IP issues related to employment and discrimination, jurisdiction, customary governance, intellectual property rights, human rights and conflict resolution. The second volume contains chapters on change management, indigenous resource management, ecotourism, the role of IP women in managing ancestral domains, child labour among IPs, alternative health care, and indigenous education.

The study is published through the project, "Development and Publication of Case Studies in Support of the Implementation of the IPRA" which was implemented by the ILO SRO Manila through PRO169-INDISCO in collaboration with the United Nations Development Programme (UNDP). The National Commission on Indigenous Peoples (NCIP), implementing agency for the IPRA, facilitated the "free and prior informed consent" (FPIC) of indigenous cultural communities included in the study and organized the workshops in which research findings could be verified. Implementation of the project was made possible through financial support from the New Zealand Agency for International Development (NZAID).

All indigenous cultural communities involved in the study provided important information in documenting their experiences. Other partners in government, civil society and academe also gave invaluable contribution in validating the case studies.

Maraming salamat sa lahat!



LINDA WIRTH

Director, International Labour Organization
Subregional Office for South-East Asia and the Pacific

* The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

Message

Since the passage of Republic Act 8371, also known as the “*Indigenous Peoples’ Rights Act*”, UNDP has been in the forefront of providing capacity to the Government of the Philippines for the empowerment of Indigenous Peoples. The sector, which is composed of an estimated population of 12 million, is recognized as one of the most vulnerable groups in the country. Many live in far-flung upland and coastal areas and are marginalized due to limited access to social services, markets and opportunities.

The protection, promotion, and recognition of the rights of indigenous peoples are central to the work of UN and its agencies. UN’s work with Indigenous Peoples in the Philippines has been long-running through assistance in their tenurial security, governance, capacity-building, women and children, education and in the formulation of their Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs).

This set of case studies on Indigenous Peoples produced through the collaboration of New Zealand Agency for International Development (NZAID), International Labour Organization (ILO) and UNDP, provides a source of valuable empirical information based on cultural and sustainable environment practices, traditions and governance systems that can guide policy makers to be attuned to the distinctiveness of Indigenous Peoples.

The Millennium Development Goals (MDGs) can only be fully achieved through the inclusion of all sectors. The meaningful participation of Indigenous Peoples in their own development and growth is central to achieving the MDGs.

UNDP congratulates the authors of the case studies for sharing their valuable insights and analysis. My sincerest gratitude goes to the Indigenous Peoples’ Groups of the Philippines, NZAID and ILO, and to those who have helped make this initiative truly successful. Your hard work and commitment to complete this process is indeed commendable.

Maraming salamat at mabuhay kayong lahat!



NILEEMA NOBLE
UNDP Resident Representative
and UN Resident Coordinator

Acronyms

ADB	Asian Development Bank	LDCI	Lumad Development Cooperative, Inc.
AFP	Armed Forces of the Philippines	LGO	Local Government Officer
ARMM	Autonomous Region in Muslim Mindanao	LGU	Local Government Unit
CADT	Certificate of Ancestral Domain Title	MDO	Mamalo Descendants Organization
CAFGU	Citizens Armed Force Geographical Units	MILF	Moro Islamic Liberation Front
CAR	Cordillera Administrative Region	MTPDP	Medium-Term Philippine Development Plan 2004-2010
CARHRIHL	Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law	NCIP	National Commission on Indigenous Peoples
CARP	Comprehensive Agrarian Reform Program	NCR	National Capital Region
CBA	Collective Bargaining Agreement	NDF	National Democratic Front
CHED	Commission on Higher Education	NEDA	National Economic Development Authority
CHR	Commission on Human Rights	NGO	Non-Government Organization
CIPRAD	Coalition for Indigenous Peoples' Rights and Ancestral Domains	NPA	New People's Army
CNA	Collective Negotiation Agreement	OPAPP	Office of the Presidential Adviser on the Peace Process
CPP	Communist Party of the Philippines	OSH	Occupational Safety and Health
CSC	Civil Service Commission	OSHC	Occupational Safety and Health Center
DA	Department of Agriculture	PASAKAMI	Mangyan Tribes in Occidental Mindoro (<i>Pantribong Samahan sa Kanlurang Mindoro</i>)
DAR	Department of Agrarian Reform	PLC	Philippine Labor Code
DENR	Department of Environment and Natural Resources	PNP	Philippine National Police
DepEd	Department of Education	PO	People's Organization
DOLE	Department of Labor and Employment	QRU	Quick Response Unit
DSWD	Department of Social Welfare and Development	RA	Republic Act
ECOP	Employers Confederation of the Philippines	RLA	Regional Legislative Assembly
GRP	Government of the Republic of the Philippines	SC	Supreme Court
HDI	Human Development Index	SME	Small and Medium Enterprise
ICC	Indigenous Cultural Communities	TESDA	Technical Education and Skills Development Authority
IFMA	Integrated Forest Management Agreement	TIPC	Tripartite Industrial Peace Council
ILO	International Labour Organization	TJG	Timuay Justice and Governance
IP	Indigenous Peoples	TLADMADC	Teduray-Lambangian-Dulangan Manobo Ancestral Domain Claimants
IPEC	International Programme on the Elimination of Child Labor	UDHR	Universal Declaration of Human Rights
IPRA	Indigenous Peoples' Rights Act (1997) or RA 8371	UN	United Nations
		UNDP	United Nations Development Programme

Table of Contents

Case Study 1

Indigenous Filipinos in the World of Work1

Towards Equality and Non-Discrimination in Employment and Livelihood

By GERT A. GUST

Case Study 2

Who Decides? 31

Jurisdiction and Indigenous Peoples' Rights

By SEDFREY M. CANDELARIA AND JILL LOPEZ

Case Study 3

Timuay at Datu 42

Indigenous Self-Governance in Teduray and Magindanaon Societies

By ESTER O. SEVILLA AND DANILO C. LACSON

Case Study 4

Copyright for the T'nalak 63

Protecting the Intellectual Property Rights of the T'boli People

By SEDFREY M. CANDELARIA

Case Study 5

Caught in the Crossfire 81

How Indigenous Peoples Cope with Human Rights Violations

By CARLOS P. MEDINA, JR.

Case Study 6

The Power of Language 103

A Conversation Analysis of the Iraya Mangyan Conflict Resolution Process

By VICTORIA P. DINOPOL

List of Reference..... 125



CORDILLERA & REGION 1

Bontoc,
Balangao, Isneg,
Tingguian,
Kankanaey,
Kalanguya,
Karao, Ibaloi,
Ayangan, Ifugao,
Tuwali, Kalinga
Apayao, Bago,
Gaddang

ISLAND GROUPS

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, Kongking

NORTHERN & WESTERN MINDANAO

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

ETHNOGRAPHIC MAP



CENTRAL MINDANAO

Aromanon, Tiruray, Bagobo, Ubo Manobo,
Higaonon, Subanen, Maguindanao,
Maranao, Iranon, Karintik B'laan,
Lambangian, Dulangan

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

**REST OF LUZON/
SIERRA MADRE
MOUNTAIN RANGE**
Aeta, Negrito. Baluga,
Pugot, Abelling, Agta,
Dumagat,
Remontado,
Bugkalot, Cimaron,
Kabihug, Tabangnon,
Abiyan (Aeta),
Isarog, Itom, Pullon

**SOUTHERN & EASTERN
MINDANAO**
Manobo, Mandaya,
Mansaka, Dibabawon,
Banwaon. Bagobo,
Ubo Manobo, Tagakaolo,
Talaingod, Langilan,
Mamanwa, Higaonon,
B'laan, T'boli, Kalagan,
Tagabawa, Manobo B'lit,
Matigsalog, Sangil,
Tigwahanon

Introduction

“Only a law of such breadth, depth and scope as R.A. 8371 can provide our indigenous peoples with the seeds of their empowerment and social equity.”

- Philippine President Fidel V. Ramos
during the signing of the Indigenous Peoples’ Rights Act,
29 October 1997

Indigenous peoples are among the most disadvantaged and marginalized human beings on earth. Centuries of colonization have made them victims of exploitation, and some are even on the verge of extinction after getting forced out of their ancestral territories. The modern world has continued this pattern with the introduction of so-called economic development projects such as dams, mining operations, plantations, eco-tourism, and geothermal plants that have led to the massive displacement of indigenous peoples. Along with the loss of their land is the gradual deterioration of their culture and identity.

Recognizing their sad plight, the United Nations spearheaded the drafting of the Declaration on the Rights of the Indigenous Peoples in the 1980s. The UN General Assembly also declared 1995-2004 as the International Decade of the World’s Indigenous Peoples and in December 2000, created a Permanent Forum on Indigenous Issues. All these developments are milestones for indigenous peoples who have been struggling for decades to win official recognition in the global community.

In June 1989, the General Conference of the International Labour Organization (ILO) adopted the Convention Concerning the Indigenous and Tribal Peoples in Independent Countries. Known as ILO Convention 169, it is considered as the only international legal document devoted purely to indigenous peoples so far. It recognizes their aspirations to “exercise control over their own institutions, ways of life, and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.”

In the Philippines, Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997 was passed in accordance with the constitutional mandate. The law defines indigenous cultural communities or indigenous peoples as descendants from populations that inhabited the Philippines at the time of colonization and continue to live as homogenous societies in communally bounded ancestral territories, sharing common bonds of language, customs and other distinctive cultural traits. According to the National Commission on Indigenous Peoples, they number around 11 million, or about 15 per cent of the total Philippine population. Majority are found in the southern island of Mindanao while about one-third reside in Luzon.

To facilitate the effective and full implementation of IPRA, the New Zealand Agency for International Development (NZAID) provided support to the International Labour Organization (ILO Manila office) to implement the project “Support to Policy and Programme Development” in partnership with the United Nations Development Programme (UNDP) and the National Commission on Indigenous Peoples (NCIP). The project was undertaken to generate data on a number of indigenous practices and concerns. Through this project, it is hoped that the Philippine government and indigenous peoples’ advocates would be able to find relevant information that would help them improve their interventions for partner communities.

This project comes at a crucial phase in the relentless efforts of Philippine indigenous communities to assert their rights. Ten years after the law was signed, the “seeds of empowerment” that then-president Ramos had talked about remains largely in the germination stage due to several hurdles thrown down IPRA’s path. As the stories in this book would show, there is still a lot to be done for indigenous Filipinos to fully realize the benefits of the IPRA law.

This is the first in a two-volume series that compiles several case studies dealing with various aspects of the IPRA law. In this volume, critical issues concerning indigenous peoples' rights and their customary governance are discussed extensively, based on field experiences documented by legal and academic experts. From labor and intellectual property rights to conflict resolution processes, these stories are replete with examples of how the IPRA law may be substantively utilized to address the problems that continue to hound the country's indigenous communities.

As the country moves forward in implementing the IPRA law, these case studies serve as valuable sources of inputs for constructive and well-planned projects that may be undertaken in the future to bring the country's indigenous peoples abreast with national development efforts.



Notes on the cover: The front cover shows a researcher trudging up the mountains of Rifao in Upi, Maguindanao province with Teduray community leaders, the oldest T'boli woman in a community in Lake Sebu, and an indigenous Pala'wan fisher below a banner proclaiming "People first, not pearls" used in a protest against an influential farm that drove them out of their traditional fishing grounds. The back page shows a Teduray elder from Rifao and a young Tagbanua girl playing the gimbal or native drum. (Photos courtesy of Jofelle P. Tesorio/Bandillo ng Palawan, Notre Dame University and Temesgen Samuel/ ILO SRO Manila Sr. International Labour Standards Specialist)

Indigenous Filipinos in the World of Work: Towards Equality and Non-Discrimination in Employment and Livelihood

By Gert A. Gust



Indigenous peoples in the Philippines have experienced a long history of discrimination. Rejecting foreign domination and acculturation, they were left out from mainstream development and were largely excluded from socio-economic and political participation in mainstream society.

Most of them are found in rural areas and hinterlands, where some 70 per cent of the poor also reside. Eking out a living as subsistence farmers, hunters, fishermen or forest dwellers, they account for a high proportion of the poor and are often confined to ancestral domain areas that are exposed to environmental degradation. In the Philippines, as in other countries, poverty can be perceived as the result of a combination of factors, including discrimination in employment and livelihood. Unless contained and reversed, poverty will continue breeding prejudice and discrimination.

The Philippine Constitution of 1987 and several laws contain extensive provisions that proscribe discrimination in employment and call for equal opportunity and treatment in employment and occupation. The Indigenous Peoples Rights Act (IPRA) of 1997 and its Implementing Rules stand out as a progressive piece of legislation. This is the first time that a state in Asia explicitly expressed the rights of IPs to their ancestral domain, to self-determination and to the free exercise of their culture. These laws bear testimony to the national commitment to right past wrongs and to place IPs on an equal footing - politically, economically and socially - with all other Filipino citizens.

In recent decades the human and labor rights of indigenous and tribal peoples have been widely discussed at national and international levels. In broad terms, IPRA reflects the concepts and definitions embodied in UN and ILO key Conventions related to equality, non-discrimination and decent work (*see Table 1*). It is interesting to note the high degree of convergence between the general principles on human and labor rights between the ILO Convention No. 169 and IPRA. Hence, the IPRA law can be seen as an expression of political will to recognize and promote the human, civic and labor rights of IPs in line with international standards and instruments. Furthermore, if the Philippine Senate ratifies ILO Convention No. 169, this would provide a new momentum to concerted efforts to overcome discrimination and deprivation of IPs in the future.

Equality, Discrimination, and Decent Work

Equality at Work and Decent Work are not mere abstract concepts enshrined in constitutional and labor law and IPRA, but are practical guideposts for the real world of work. These are mutually reinforced through rights at work, opportunity, dignity, fairness, justice and participation in decision-making in matters affecting the rights, work and livelihood of what the IPRA law terms as ICCs/IPs (indigenous cultural communities/ indigenous peoples). Discrimination on ethnic grounds impairs both Equality and Decent Work. These linkages are shown in *Figure 1*.

Equality in Employment generally means that people at work are treated fairly on the basis of their capabilities and the requirements of the job, irrespective of such personal characteristics as race, ethnicity, color, sex, religion, political opinion, national extraction or social origin.

Table 1: Human and Labor Rights of IPs

International Instruments	National Instruments
ILO - Indigenous and Tribal Peoples Convention, 1989 (No.169) Article 2: Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of the peoples and to guarantee respect for their integrity. Article 20: Recruitment and Conditions of Employment 2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards: (a) admission to employment, including skilled employment, as well as measures for promotion and advancement; (b) equal remuneration for work of equal value; (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing; (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations. - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Equal Remuneration Convention, 1951 (No. 100) - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) - Equality of Treatment (Social Security) Convention, 1962 (No. 118) UN - Universal Declaration of Human Rights - International Covenant on Economic, Social and Cultural Rights - International Convention on the Elimination of All Forms of Racial Discrimination	- The Philippine Constitution of 1987 Art. XIII Social Justice and Human Rights Section 3: "The State shall afford full protection of labor, local and overseas, organized and unorganized, and promote full employment and equality of employment for all." - The Philippine Labor Code of 1974 - The Indigenous Peoples Rights Act of 1997 (RA 8371) and its Implementing Rules and Regulations Chapter V: ☐ Freedom from discrimination and Right to Equal Opportunity and Treatment ☐ Special measures by State regarding freedom from any form of discrimination with respect to recruitment and conditions of employment ☐ No coercive recruitment systems (bonded labor) ☐ Equal treatment in employment of men and women

"Employment" is a broad concept that refers to persons above a specified age who work for wages in an employer-employee relationship. This type of wage employment is primarily found in the formal private and public sectors such as factories, businesses, offices or farms. Here, employees enjoy the full protection of the labor or civil service laws that regulate employment and working conditions. Moreover, workers may draw protection from membership in trade unions and favorable conditions embodied in Collective Bargaining Agreements (CBAs) in the private sector or Collective Negotiation Agreements (CNAs) in the public sector.

In the case of IPs, a very small number has managed to enter the formal private and public sectors, mainly because only a minority of IPs possesses the training, skills and education required for regular employment. Discrimination comes into play when disqualification for a job is based on prejudice against IPs and not on an objective assessment of the candidate.

A vast majority of IPs continues to be involved in non-wage work and family-based labor, making a **livelihood** in small scale farming, fishing, hunting, trading or similar activities to ensure



basic subsistence and income. Since they are involved in non-formal sector activities, these IP workers do not enjoy the protection of the labor law but are protected under IPRA. Hence, equality and non-discrimination would have different meanings for an IP employed in a government office or a factory and an IP engaged in subsistence farming.

Discrimination

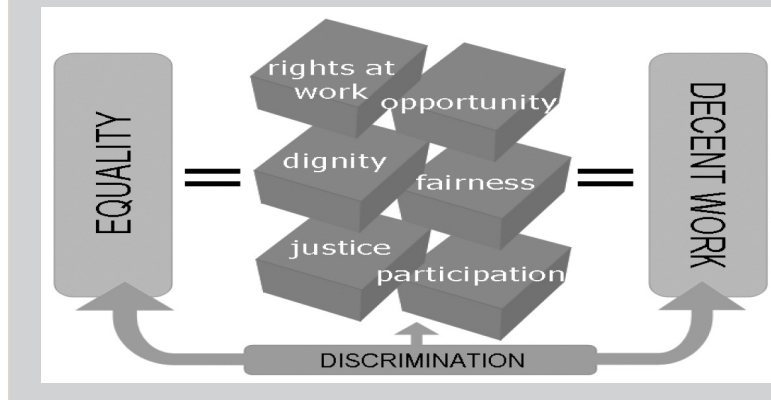
is a major constraint to equality in the world of work. Often, it involves detrimental consequences for the IP worker, the family, the community, the firm and the economy.

Although frequent reference is made to discrimination, especially in connection with the IPs' Human and Social Rights, neither IPRA nor its Implementing Rules contain a definition of the term. However, considering the general convergence between IPRA and ILO instruments, one can assume that in the Philippine context, discrimination can be defined by analogy to ILO Conventions Nos. 100, 111 and 169. In these international treaties, discrimination is defined as any distinction, exclusion or preference made on the basis of certain personal characteristics like ethnic origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation. One could also define discrimination as any employment practice that disadvantages a worker or a category of workers on the basis of some attribute of the individual or group (i.e. race, gender, nationality, disability, etc.), resulting in unfair treatment in connection with hiring, promotion, pay, dismissal or harassment. This applies to formal employment and occupations where an employer-employee relationship exists. For IPs involved in non-wage livelihood activities, discrimination occurs when IPs fail to have full access to natural resources like their ancestral domain, or to special support services provided by law due to prejudice, denial or neglect. As a consequence, IP workers are constrained in their traditional livelihood activities and are thus disadvantaged, socio-economically, as compared with non-IPs.

Direct discrimination occurs when laws, policies or regulations exclude individual workers or groups of workers on grounds of such personal characteristics as ethnicity, sex, age etc. Recruitment, promotion, tenure or working conditions offer a wide field for direct discrimination, because of preconceived ideas of certain employers regarding the personal traits of a potential candidate. Although undocumented, there is widespread belief that certain employers select their candidates on the basis of ethnic criteria, personal characteristics or religious affiliation.

As far as traditional activities are concerned, direct discrimination occurs when IP workers are constrained, due to outside intervention or attitudes, from pursuing their livelihood. This would be the case where material goods and services like land, forests and natural resources, which are the basis of IP livelihood, are not readily accessible to them or are being contested or constrained by unjustified privileges of well-placed vested interests. The denial or curtailment of special services would amount to direct discrimination, to which IP workers are entitled under IPRA to put them on par with mainstream society in such areas as education, social protection, or health.

Figure 1: Linkages between Equality, Discrimination and Decent Work



Indirect discrimination occurs when supposedly neutral rules and practices have negative effects on a disproportionate number of members of a particular group, irrespective of whether or not they meet the requirements of the job. In other words, everyone is treated the same but there are conditions or requirements that may put IPs, for example, at a disadvantage compared with other workers of non-IP origin. This may be the case where certain formal requirements such as school diplomas are required, which IPs cannot obtain as compared to members of mainstream society.

Multiple discrimination happens where several personal characteristics like ethnicity, sex, age or marital status combine to disadvantage individual workers or groups of workers. Thus, female IP workers may face multiple discrimination when they are denied employment on account of their sex, ethnicity or family commitments.

“Affirmative” or **“positive action”** is practiced through special measures to help members of disadvantaged groups, such as ICCs/IPs, to overcome persistent and severe disadvantages due to past or current discrimination in education, employment or government services. Accordingly, IPRA underscores the obligation of the State for “special measures” to provide a complete, adequate and integrated system of education relevant to the needs of children and young people among indigenous communities. More specifically, IPRA’s Implementing Rules call for “affirmative action with regard to IP employment in government and private undertakings in proportion to the IP population in their respective areas of operation.” Other forms of affirmative action relate to IP women, elderly and differently-abled persons as well as to housing, sanitation, health, social protection and infrastructure. In principle, such measures are strictly temporary in nature, with the intention of eventual phase-out with the achievement of greater equality for the disadvantaged groups.

Decent Work is the primary goal of all interventions for Equality and Non-Discrimination. It stands for a state of economic and social wellbeing where all work is carried out in a safe, healthy environment in conditions of freedom, equality, security and human dignity. This is an underlying concept of IPRA, especially in Chapter V. Among indigenous Filipinos, varying deficits in equality or the denial of rights at work, opportunity, dignity, and fairness add up to varying degrees of discrimination. For example, lower pay for IPs for work of equal value compared to that of non-IPs reflects a discriminatory deficit of their rights and dignity and thus infringes on both equality and decent work.

Equality and Non-Discrimination: A Historical Perspective

Long before the arrival of the Spaniards in the 16th century, the Philippines has seen successive population movements by different peoples from the Asian mainland. Researchers have shown that a vast Austronesian population movement started after the end of the Ice Age about 6,000 years ago and spread from the Chinese mainland. In the Philippines, the immigrants eventually replaced, absorbed and/or marginalized the original inhabitants, the Negritos.

Today, most of the population of the Philippines, Indonesia, Malaysia and tropical Southeast Asia are rather homogenous in appearance and genes and reminiscent of their South Chinese origins. Their languages are equally homogenous: while some 300 languages are spoken in the Philippines and Western and Central Indonesia, all of them are closely related and fall within the same Western-Malayo-Polynesian sub-family.

The Austronesian migration went hand in hand with the movement from island to island of small settler groups and the development of distinct cultural and linguistic identities in different locations of the vast archipelago, as historians have noted.

From present-day perspectives, equality and non-discrimination within tribal groups in pre-colonial times were the exception rather than the rule. Individual tribal groups in the main regions of Luzon, the Visayas and Mindanao were characterized by highly stratified societies — the ruling class, the freemen and the slaves. There were clearly defined rights and obligations of the rulers and their subjects, but tribal justice was accessible to all members of the community.



While the tribal groups shared a common cultural history, individual groups developed distinct customs depending on their abilities to adjust to their respective environment and outside contacts through international trade, supplies and ideas. Some groups developed more sophisticated societies than other tribes, especially those in the hinterlands. For example, due to their contact with the outside world and easier access to raw materials and technology, the Tagalog communities were able to produce more sophisticated tools and weapons than the Igorots. The Butuanos and Manobos in the northeastern part of Mindanao became major players in regional and international trade in the 10th and 11th centuries due to their superior entrepreneurial drive, seafaring skills and political organization. Over the centuries, inter-island and inter-tribal trade between lowland dwellers and highland minorities were common features in the archipelago. Still, in pre-colonial times, tribal warfare and slave raiding were common practice.

The imposition of colonial authority in the 16th century added new dimensions to the issue of equality and non-discrimination in Philippine society. While the population in the lowlands of Luzon and the Visayas readily responded to military and moral pressures to adjust their customs to colonial rule, they came to consider themselves different from those who had resisted acculturation. Similarly, in northeastern Mindanao, where Magellan first claimed the archipelago for Spain, religious orders and military colonizers struggled for centuries to Christianize coastal populations while trying, with little success, to subdue tribal people in the mountainous hinterlands.

Therefore, discrimination of indigenous peoples can be traced back to Spanish rule. To a large extent, it was the outcome of policies that forced a majority of Filipino subjects to live in *pueblos*, distributed vast tracts of land as grants to privileged owners (*encomiendados*) or attributed protected lands to *pueblos*. An *encomienda* was a royal allotment or grant of land to a Spaniard for the purpose of governance and exploitation.

Military occupation, administrative organization and land distribution under colonial rule went hand in hand with missionary activities to convert the natives to Catholicism and to have them abandon their native beliefs and practices. Those who defied the Spanish rulers had to retreat into the hinterlands and became known under such derogatory terms as *remontados*, infidels or *tribus independientes*. Eventually the assimilated population internalized these prejudices and, as a consequence, a dichotomy between the mainstream population and the indigenous people emerged, with its related problems of marginalization and discrimination.

After the end of the Spanish rule in 1898, the large landholdings remained and many plantations were established, often under American ownership. Under American rule, during the early decades of the Philippine Republic, the government continued to disregard IP rights to their ancestral domain, self-determination, social justice, and cultural identity.

The situation changed for the better only in the 1980s, with the increasing clamor from indigenous communities to be accepted as full citizens with a particular cultural identity and lifestyles. Their plight received support from progressive elements of the political establishment and civil society, with practical guidance and assistance from international laws.

The Philippine Constitution of 1987 set the broad framework for a national policy in favor of IPs, but it took a decade of heated debate to promulgate the IPRA law, that made equality for 11 to 15 million IPs in the Philippines a greater reality. Former President Fidel V. Ramos, upon signing IPRA into law, stated that the groundbreaking legislation was designed to stop prejudice against ICCs/IPs and accelerate their “emancipation from the bondage of inequity” which had bred poverty, ignorance and deprivation. According to him, the problem had to be dealt with directly at the roots, meaning the issue of land ownership: “To our indigenous peoples and to many others in our country, who suffered from such exploitation by the elite and the oligarchs, land is a way of life. The value of land goes beyond economics and encompasses the entire spectrum of political, social, cultural and religious aspects of Philippine life. For so long, the superior forces of the lowlanders had deprived the members of our cultural communities not only of their ancestral lands but also of their livelihood



and their way of living. Those who resisted through force were called bandits while those who did not adjust to the mores of the lowlands were deemed as savages and were marginalized just because they were different. Mounting injustice against our indigenous cultural communities bred a host of other problems, affecting both rural and urban centers, even as it diminished the rights and opportunities of our indigenous peoples.”

While the direction seemed clear, it was widely accepted that the journey to achieve tangible results for all indigenous peoples would require sustained and concerted efforts by the IPs, government, civil society and the international community. Nearly a decade after the passage of IPRA, it is opportune to take stock of the achievements and shortfalls of this legislation and the measures undertaken for its implementation.

Public statements, research studies and occasional media reports suggest that problems of IP discrimination still persist. For instance, in a speech delivered at an anti-poverty conference in 2001, former Chairperson Evelyn Dunuan of the NCIP noted: “Today, when one speaks of indigenous peoples, it is not so much about their beautiful story as peace-loving communities bound to Mother Nature and Father Spirit of the Universe; nor their talents and skills and accomplishments. For the term indigenous peoples has been made synonymous to oppression, exploitation, discrimination and poverty. They, whose ancestors were once the proud rulers of this land, are now the scum of the earth, the so-called poorest of the poor in the Philippines.”

Official statistics confirm such critical observations. According to the Philippine Human Development Report in the year 2000, provincial regions with a large ICC/IP population accounted for nine out of the ten provinces with the lowest HDI (Human Development Index) rating; the only exception was Western Samar in the Visayas. The ten provinces with the highest HDI are all located in the main island of Luzon and, except for Isabela province, have no significant ICC/IP population.

Philippine Framework for Equality and Non-discrimination of IPs

Over the past decades, the State has taken up the challenge of promoting equality at work for IPs by creating a legal and operational framework that provides comprehensive protection of IP labor, organized and unorganized, against discrimination in recruitment and conditions of employment. Enlisting a wide array of stakeholders, the framework also aims at correcting the disadvantages of IPs in education and training in order to enhance their access to employment, income and livelihood.

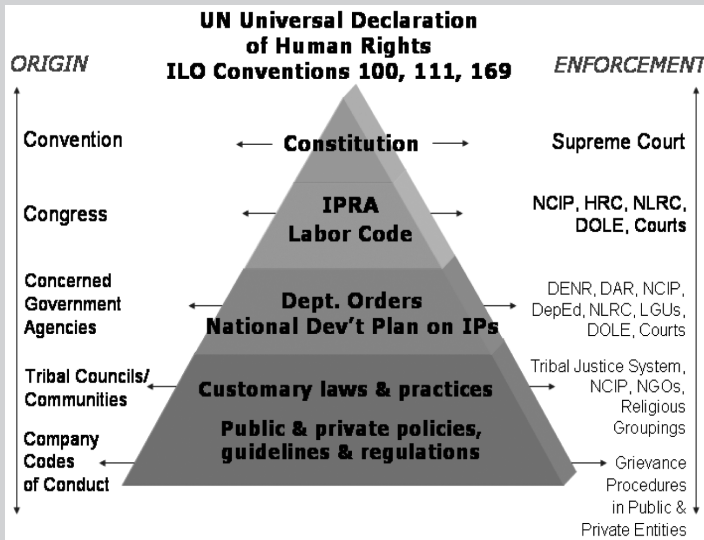
Figure 2 shows that the Philippine Framework for Equality and Non-Discrimination for ICCs/IPs is built around a number of principles such as convergence between international and national standards of Human and Labor Rights; comprehensive coverage of IP Human and Labor Rights; poverty eradication; special measures and “affirmative action” by the State; institutional capacity building; representation and consent; customary law and justice; and sanctions.

The convergence between international and national understanding of equality at work goes back to the 1950s, after the Philippines became a member of the UN and the ILO. The Philippine government has successively ratified some 30 ILO Conventions, including those related to equal opportunity and non-discrimination in employment. In line with these international instruments, the Philippines has promulgated an impressive body of anti-discriminatory legislation. These include the Equal Opportunity Act of 1984, the 1992 Magna Carta for the Disabled, the 1995 Magna Carta for Migrant Workers, the Anti-Sexual Harassment Law of 1995, the Paternity Leave Act of 1996, the HIV/AIDS Prevention Act of 1998, and the Solo Parents Welfare Act of 2000.

The IPRA law’s Chapter V on Social Justice and Human Rights and its Implementing Rules has detailed provisions on recruitment, working conditions, social protection, access to education, training and health services for IP workers. This means that IP equality is addressed in a comprehensive manner



Figure 2: Philippine Framework for Equality and Non-Discrimination of IPs



at various levels through regulatory, promotional and developmental measures. The integrated approach is necessary, as equality and non-discrimination of IPs in the areas of employment cannot be seen in isolation. They are closely linked to other important areas where ICCs/IPs continue to suffer from deficits in equality. For instance, the right to self-governance would be meaningless without cultural integrity. In the same vein, the right to ancestral domains is an important prerequisite for adequate income and livelihood.

For the effective

protection of ICCs/IPs with regard to recruitment and working conditions, IPRA underlines the paramount role of the State, especially with regard to “special measures” such as equal opportunity in education and employment, health services, social protection, occupational safety and work-related benefits.

The establishment of the National Commission on Indigenous Peoples (NCIP) under IPRA has given IPs a national platform for representing their interests in national development. It also has opened up formal channels for IP claims, investigations into infringements of IPRA, and the implementation of corrective measures. To ensure adequate representation of ICC/IP interests, strict criteria are applied regarding the qualifications of the Chairperson and the six commissioners. For example, they must be appointed from ethnographic regions and have extensive work experience with ICCs/IPs.

In the area of poverty reduction, which is the overriding theme of concerted interventions, the Medium-Term Philippine Development Plan for Indigenous Peoples 2004-2008 provides a roadmap and a coordinating mechanism to improve the quality of life for about 110 ethno-linguistic groups in the country. As part of social justice, asset reform shall be hastened to expand the endowments of poor people in order to secure entitlements to food, education and health care through the completion of agrarian reform, managing urban land reform, financing socialized housing and intensifying ancestral domain reform and development.

The effectiveness of ICC/IP representation largely determines the successful promotion of their political, economic and cultural rights. There is wider scope for capacity building through the NCIP, various ICC/IP organizations and networks, mandatory representation in policy-making bodies, and local legislative councils. Indeed, ICCs/IPs are making decisions that affect their work, using the mechanisms of customary law for conflict settlement, and determining their own priorities for development. Their consent is required for projects in their areas, and ICCs/IPs are entitled to financial and technical support to fully develop their own institutions and initiatives.

Encouraged by their right to information and prior informed consent, ICCs/IPs, have become assertive and vocal in defending their human and labor rights and protecting their livelihood and ancestral domain. In recent years, tribal residents in Sinacbat and Dalipey in Benguet province successfully made a petition and halted a plan by the Luzon Hydro Corporation to build a tunnel underneath their mountain communities that would dry up the springs essential for their livelihood.

In another campaign, Dumagat leaders were very vocal in requesting the DENR and leaders of the wood-based industries for the retrieval of logs and driftwood in streams and rivers in Quezon and Aurora provinces in order to avert a potential calamity. In Cebu City, the Badjao communities are taking a strong stand in discussing with different agencies the restoration of their ravaged habitat after a fire in early 2005, and the terms of a possible relocation of their settlement to a new site.

Equality and non-discrimination for ICCs/IPs is closely linked to the recognition and fair application of customary law and justice. Section 65 of IPRA provides that “when disputes involve ICCs/IPs, customary law will be used to resolve the dispute.” This new focus on customary law as a primary source for dispute settlement provides a sound basis for ICCs/IPs to pursue their traditional rights in the wider context of the constitutional framework. Historically, tribal courts were not recognised except for amicable settlement of disputes prior to filing action in court. Section 15 of IPRA acknowledges the right of ICCs/IPs to “use their own commonly accepted justice system, conflict resolution institutions, peace building process and other customary laws and practices within their respective communities.” Section 66 of IPRA provides the NCIP with far-reaching powers as a quasi-judicial agency in terms of fact-finding, investigation and decision-making on issues affecting indigenous communities.

Lastly, there are clear guidelines under sections 24 and 73 of IPRA of punishable acts of discrimination against ICCs/IPs with respect to terms and conditions of work. The Implementing Rules (Rule XI, Section 2) list the following punishable acts:

- exposure to hazardous working conditions;
- non-payment of salaries, wages and other work benefits;
- violation of the freedom of association and trade union activities;
- exploitation of child labor;
- sexual harassment; and
- other analogous circumstances.

There is no information available on sanctions of imprisonment or heavy fines for those who violate IP labor rights. However, there are reports of reprimands given to individuals considered guilty of discriminatory acts against IP workers.

Discrimination of IP workers: A Survey

The general perception that IP discrimination has not gone away was substantiated in surveys and interviews undertaken in 2005 with key informants and IPs in the greater Manila area and Cebu City, and in the provinces of Aurora, Agusan del Sur, and Palawan. A total of 42 key informants who were either government officials or experts with IP background or connections and familiar with IP policies and programs in different regions of the country were interviewed. Among them, 68 per cent believe that equality and non-discrimination is a reality in society, community and workplaces today to some extent. One third of all respondents feel that discrimination in employment, occupation and livelihood still persists.

However, the responses to questionnaires and interviews of 60 Dumagats, Manobos and Badjaos speak a different language. An overwhelming 97 of respondents felt that they are treated differently from non-IPs and that they are suffering from unfair treatment because they were IPs. For them, major factors that seem to play a role in IP discrimination are age and economic reasons; gender, religion and disability are much less important. Other reasons are related to misinterpretations by non-IPs of IP culture and their prejudice of IPs as “uneducated, illiterate and dangerous.”

Causes of discrimination. In descending order, key informants identified tradition, class distinction, prejudice, economic reasons and education as primary causes of discrimination in employment, occupation and livelihood of IPs. About one third of respondents ranked legislation,



administrative, company rules and regulations much lower in the list of causes. Opinions were evenly divided between those that agree, disagree and had no opinion on legislation and other minor factors as causes of discrimination in employment, occupation and livelihood.

For the IPs as a group, the lack of understanding of IPs by non-IPs was a major cause of discrimination, followed by tradition and prejudice. From their point of view, other causes of discrimination are related to their poverty, possession of land and physical attributes. About one-tenth of IP respondents believed that legislation, company rules and regulations are responsible for discrimination against IP workers.

Manifestations of discrimination. Majority of key informants felt that unfair treatment and exclusion were the most common forms of discrimination affecting IPs. Mobbing and harassment followed next, while half of the respondents felt that violence was a minor form of discrimination against IP workers.

In contrast, majority of IP respondents pointed to **harassment** as the most common form of discrimination that generally affects them, followed by abuse and exclusion. Violence ranked lower and even fewer included exploitation of IPs by non-IP with respect to natural resources, non-payment of wages and “low priority to IP interest in transactions.”

However, in terms of personal experience, most IP respondents identified “**unfair treatment**” as the most recurrent type of discrimination followed by complaints about the withholding of rights and privileges, denial of services, limited or no access to justice, abuse and exclusion.

Noticeably, violence figured relatively low as a manifestation of IP discrimination for both key informants and IP respondents. This could be attributed to the generally peace-loving nature of indigenous peoples and their preference for compromise instead of open conflict. Even so, IP workers are well aware of other subtle forms of discrimination like unfair treatment, mobbing, bullying or harassment. This may be traced to their increasing contact with mainstream society, and also to a better understanding of their rights and possible avenues for airing their grievances.

Effects of discrimination. Most key informants agree that perpetuating the **vicious cycle** of prejudice, exclusion, poverty, lack of education and opportunity was the primary effect of IP discrimination. Closely related to this are “**deprivation**” and “**marginalization**” along with lowering of self-esteem and motivation of IPs.

They consider access to regular employment covered by standard conditions in the private or public sectors as the most difficult hurdle for IP workers. Almost half of the respondents identified tenure of employment, promotion, and protection from workplace hazards and risks as factors to consider in determining discrimination in employment.

The IP respondents confirmed these observations, as most of them considered “**access to jobs**” of paramount importance and often subject to discrimination. It speaks for itself that only 43 per cent of respondents had held jobs during the last two years prior to the interview; out of this number, only 12 per cent held regular jobs, while 39 per cent of jobs were either contractual or seasonal in nature.

Half of the IP respondents who had been unemployed gave preference for self-employment as a reason for not landing a job. However, majority also referred to lack of suitable jobs in their area while some respondents complained about lack of access to jobs. Less than one-fourth of the respondents thought that employers did not take IPs because of their ethnicity and/or lack of employable skills for the job. Other reasons for unemployment were ongoing studies, household responsibilities, and, generally, difficulties for new graduates of finding a job.

With majority of IP workers making a living through modest, often marginal activities in small-scale agriculture, hunting, fishing or trading, most key informants gave a high priority for IPs to gain access to a package of basic requirements for their livelihood. For them, the major determining factor for reversing discrimination in IP livelihood would be access to **entrepreneurship, mentorship and technical advisory services**. Other important factors to consider, in descending order of importance, are access to training and skills development; access to basic services; access to credit; social insurance; and access to land, fishing ground, forests and other productive resources.

These responses dovetailed with responses from IP workers. With regard to livelihood and self employment, 60 per cent said they had access to land, fishing grounds, forests and market stalls. However, only 25 per cent had access to credit while a meager 8 per cent were able to avail of technical services, which could explain the low productivity of IP labour compared with non-IP workers. Less than half had access to health and health insurance, about half had access to educational assistance, while a little more than half the respondents had access to social and physical infrastructure, as well as training opportunities.

A Portrait of IP workers: Manobos, Dumagats and Badjaos

In the past two decades, IP equality and non-discrimination has taken centre stage in the national debate on socio-economic development. Advocacy efforts from the NCIP, IP leaders, NGOs, religious groups, academe and the media have raised awareness and understanding for IP concerns among the mainstream population. The following summaries of interviews are meant to illustrate how three different tribal groups — the Manobos, Dumagats and Badjaos — view their human and labor rights.

Manobos

The Manobos are considered the original indigenous people of Mindanao, with a rich ethnographic and genetic heritage of Butuano, Malay, Indonesian and Chinese origin. The pre-colonial history of the Manobos is shrouded in legends, songs, dances, costumes and traditions that tell of elaborate socio-political systems with specific roles of chieftains, shaman elders, warriors and slaves. Pre-colonial records report about the existence of far-flung trade and commercial contacts of Butuano-Manobo communities in the Agusan River Valley with Chinese, Indian and Arab merchants. When the Spanish colonizers arrived, the Manobo people were not spared from the efforts of religious orders to Christianize the entire country. On occasion, Manobo leaders with close relations to the administrative and religious establishment were enlisted as mediators and interpreters to facilitate administrative control over their elusive relatives in the remote hinterlands. From the colonial period up to modern times, the dispossession or exploitation of ancestral domains by outsiders through agriculture, fishing, logging or mining operations has been a primary concern of Manobo tribes.

Presently numbering over 800,000, Manobos consist of numerous distinct groups, speaking dialects of a proto-Manobo language. Most now use Cebuano or Ilonggo as their market languages, while the educated ones also speak Tagalog and English. Present-day Manobos are perceived as peace loving, sensitive and trustworthy but also vulnerable to



Manobo elder and child

Owen Duceña, NCIP

manipulation, exploitation or discrimination. Despite their experience, the respondents are struggling for a fair and decent living by acquiring basic and even higher education, no matter how hard this might be.

Manobos are primarily upland dwellers applying shift and burn cultivation for raising their crops. Many are still hunters and gatherers in areas where ample forests remain. Chased from the valleys by invading Visayans and Spaniards, their general orientation may be predominantly upland terrain but the Manobos have an adaptation to virtually every ecological niche, from rugged highlands to coasts.

Manobos are led by chieftains and are grouped in families, clans and tribal communities. Tribal leaders play an important role in ensuring continuity of tribal coherence and identity. However, their traditional socio-political structure is gradually giving way to the westernized scheme of provincial government and local councilmen, which places more emphasis on the young and educated.

Social and economic segregation and discrimination is still a major concern. Of primary importance is the recognition, restitution or protection of ancestral domain with its rich agricultural, forestry or mining resources. After all, the ancestral home of the Manobos is the timber and mining heartland of Mindanao; it also counts among the poorest regions in the country. Tribal, religious and cause-oriented groups have been protesting and demonstrating in Butuan against gross violations by certain firms and local politicians of environmental laws, incursions into ancestral domains, illegal mining, logging and smuggling of illegally cut lumber. (*See Box*)

Profile of Manobo workers in Agusan del Sur: Among the survey respondents, a remarkably high educational attainment was reflected in the number of high school graduates, college undergraduates and graduates and postgraduates who made up 70 per cent of the total. Only five per cent were vocational graduates, while one fourth had no basic education whatsoever.

Over the past two years prior to the interviews, more than half of the respondents had been employed: 27 per cent of them were regular employees, 38 per cent were casuals, 18 were contractuels while the remainder held elective and co-terminal positions in government. One-fifth of the respondents were farmers and forestry workers, while the same number had other occupations like housekeeper, vice-mayor or driver. It is remarkable that nearly one-third worked as professionals or technicians. On the downside, 30 per cent of respondents were unemployed due to lack of suitable opportunities in the area, preference for self-employment and hazardous working conditions.

CONGRESS PROBES CARAGA LOGGING & MINING OPERATIONS

APART from numerous logging and mining firms operating in the area, some 50 additional firms have applied for new concessions. In a two-day hearing in February 2006, members of the House Committee on Natural Resources heard testimonies by tribal and cause-oriented groups. They complained about alleged traces of air and water pollution, poisoning of families and children in illegal mining operations, forest denudation that cause pocket landslides, rampant violations of environmental laws such as cutting of smaller trees, log smuggling, and the displacement of indigenous peoples.

The legislators advised logging and mining companies that although the local people welcomed the creation of employment in the region, the firms must comply fully with rules and regulations on responsible logging and mining practices. In no way should their operations compromise the environment, livelihood and health of resident populations. They warned existing and would-be logging and mining companies in the Caraga Region to “shape up or ship out.”

Source: Mindanao Enquirer, 22 February 2006.

Majority of respondents reported that they had access to land, fishing grounds, forests and market stalls for their livelihood. However, opportunities for training and skills development were scarce and so were technical support services. Credit and basic services including educational assistance, social, health and physical infrastructure were equally limited, perhaps due to the fact that the respondents lived in remote areas.

In terms of awareness, most of the respondents who had heard about IP rights on equal treatment referred to IPRA, followed by the Constitution, customary law and CARP. Most had learned about their rights through NCIP and other government agencies and to a much lower degree through their families, academe, and NGOs.

Respondents had a clear opinion of what “discrimination” meant to them and what it was all about: 100% believed that they were discriminated because they were IPs. According to them, lack of understanding of IPs by the non-IP community stood out as a primary cause of discrimination, followed by tradition. While prejudice and legislation ranked much lower, company rules and regulation were not considered discriminatory at all. A possible explanation is the absence of companies operating in the area and the low level, usually temporary, jobs held by IP workers. Respondents added that possession of land and their physical attributes could be causes for discrimination. Less than half said they had experienced discrimination over the past two years, but a large number were aware of discrimination cases among family members, within their communities and among co-workers.

No less than 80 per cent considered “unfair treatment” and “harassment” as a primary manifestation of discrimination. This was followed by disregard for IP culture, exclusion, withholding of rights, denial of services, access to justice, dignity and respect. Half of the respondents considered government personnel as the main instigators of discrimination because of disappointment over a shortfall of expected basic services. Employers and companies were considered minor sources of discrimination.

The respondents felt that individuals were suffering most from discrimination at work, but they added that the families are affected as well. The effect on the community was regarded as marginal; while respondents felt that their tribe might be affected, this did not apply to colleagues, neighbours, the community or the nation.

Discrimination at work resulted primarily in “hurt feelings,” the loss of self- esteem and the feeling of being excluded. The denial of rights and financial disadvantages were recognised. Anger, feelings of revenge, and loss of trust in those who discriminated against the IP workers were cited as possible reactions.

Whenever there are cases of discrimination, IP respondents had to rely primarily on themselves. They also turned to their families and to government services for support, but to a much lesser degree to colleagues, supervisors or neighbours. In 2003, the large majority of cases handled by NCIP Quick Response Units were related to claims of Manobo groups. Surprisingly, tribal associations, religious groups, NGOs and academe had not played any major supporting role.

Corrective measures were mainly in the form of apologies and formal rulings, but involved to a much lesser extent the restitution of rights and compensation. Sanctions on the perpetrators



Some Manobo women interviewed for the study

Source: Owen Dueena, NCIP

included warnings and reprimands, according to 95 per cent of respondents. Dismissal, cash payments, imprisonment or exchange of gifts were minimal.

More than half of the employed respondents confirmed that they had enjoyed working conditions similar to non-IPs. Only 15 per cent admitted that their working conditions were inferior to those of non-IPs, while nearly one-third did not answer the question. In the area of promotion and training, a large majority of respondents felt that they had the same opportunities as non-IPs.

To obtain assistance in eliminating discrimination against IP workers, respondents gave first priority to NCIP and next to other national government agencies and local government units, particularly the village councils. Following by a wide margin were the media and the courts, while a negligible role was attributed to employers, NGOs, religious groups and academe. A significant number of respondents confirmed the existence of special grievance procedures for labor disputes, primarily through conciliation by tribal leaders but to a much lesser extent through formal mechanisms.

In order to improve their working conditions, Manobo respondents saw a need for urgent action to reduce discrimination against IPs in the following areas: access to employment and anti-poverty programs, social protection, education and training opportunities. These were followed by labor relations, working conditions, livelihood support, and access to credit. Surprisingly, access to land ranks lowest in their priorities for urgent action.

In terms of measures for the promotion of equality and non-discrimination of IPs, the respondents gave highest priority to information campaigns, advocacy and the strengthening of NCIP. This was followed by measures in developing employment and livelihood skills. Legislation, affirmative action, stiffer sanctions, corporate social responsibility and research were given lowest priority.

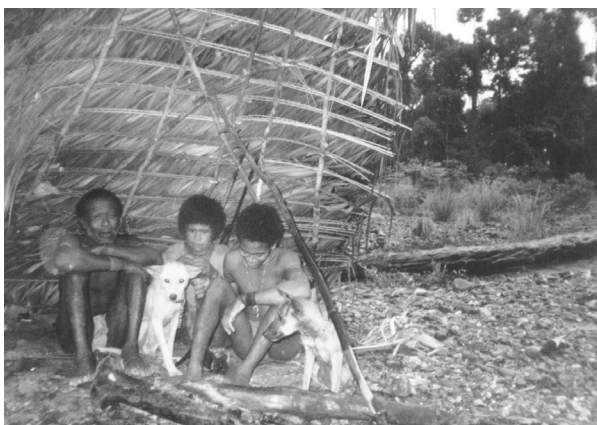
Dumagats

The logical origin of the term Dumagat is thought to be from the word *taga-dagat*, referring to their way of life as “sea gypsies.” The Dumagats show typical Negrito physical traits — dark brown to black in complexion and curly hair. They have well-proportioned bodies and compare in height to the average Filipino. Dumagats are sensitive, timid and peace-loving people. They show considerable perseverance and patience in their work and in making a livelihood.

The Dumagats live in single-pole makeshift huts along riverbanks during summertime and move to sturdier dwellings on higher ground during the monsoon rains. They have a distinct language, but they can also speak with facility the language of the region to which they have migrated. Despite contacts with lowland dwellers, most Dumagats maintain their traditional lifestyle.

Majority of Dumagats are illiterate for a number of reasons: their itinerant life style, long distance to schools, teasing and bullying by non-IP students, and the absence of regular income to support their children’s education.

For their livelihood, the Dumagats depend almost exclusively on forest and farm products. Most of them are subsistence farmers, hunters and rattan traders. They specialize in collecting edible wild fruits and in growing root crops like camote, cassava, ube and gabi. They also plant vegetables and bananas. Like the Manobo, they practice swidden farming and also make a living by fishing with hooks, traps, and spears.



Hazel Torretel, NCIP

Dumagats choose to live either in small huts or in makeshift shelters called ‘pananaheng’.

Hunting is their basic occupation. Their weapons consist of bow and arrow. Hunting with dogs is a favorite technique. They gather rattan vines and exchange these in the lowland markets for rice, sugar, salt, and other basic commodities. Sometimes, Dumagat workers seek employment in logging or mining companies operating within their ancestral domain.

Profile of Dumagat workers in Casiguran, Aurora Province:

Of the 20 respondents, only one had graduated from high school and one had reached postgraduate level. The occupational profile reflects the Dumagats' traditional source of livelihood: 15 made a living in the forest, two worked as hunters and trappers, and one each listed farmer or fisherman as main job. Only one respondent, a Dumagat mestiza employed in the Municipal Office, had a non-traditional occupation as "health worker."

The cultural, occupational and educational background of the respondents made the interviews somewhat difficult, and this was compounded by the fact that there is no specific term for discrimination in the Dumagat language. In the absence of experience as regular wage earners, the interviews focused instead on possible discrimination in the exercise of the Dumagats' subsistence livelihood as farmers and forest laborers.

Most of the informants confirmed that they were continuously discriminated because of their ethnic background, poor living conditions, and lack of education. They reported increasing discrimination and non-equality in recent years because of an influx of migrants into their domain, including non-IPs and other IPs from the neighboring Cordillera region.

For a vast majority of respondents, equality meant "fair treatment" which was further qualified as respect and recognition and, to a lesser extent, dignity, IP rights and justice. Discrimination was associated with "unfair treatment" and qualified in descending order by the denial of services (education, health, social security), denial of access to ancestral domain, disregard of Dumagat culture, abuse, limited access to justice, exclusion and withholding of rights under formal and customary law.

All respondents reported that they had personally experienced some form of discrimination over the past two years, with "unfair treatment" topping the list. In addition, the Dumagats complained that their products were often compensated at below market value. Those who discriminated against them were identified primarily as non-IPs followed by government services, employers, neighbors or companies operating in the area. There were isolated cases of discrimination by colleagues and politicians, but none were attributed to leaders of religious groups and NGOs.

Only five respondents had heard about the rights for equal treatment of IPs in the Constitution and IPRA, mainly coming from government sources and tribal associations.

A very high proportion of respondents (between 85 and 95 per cent) cited "being an IP," education and age as the main causes of discrimination. Disability, gender and religion were considered marginal reasons. Whenever they experience discrimination, most respondents relied on themselves through "personal struggle" but they could also count on their families, NGOs, the church, tribal associations supervisors, colleagues or neighbours. Government and academe were not cited as a source of support.



Hazel Torreted, NCIP

Dumagat children playing near their houses

Justice was obtained primarily through apologies while formal court rulings, compensation and restitution of rights played a minor role. Further reference was made to the recognition of rights to ancestral domain but also to a fatalistic attitude, expressed in this way: “We let them have their way even if we get hurt.”

For 85 per cent of respondents, reprimands were the main sanction imposed on the sources of discrimination followed by warnings. Dismissal, cash payment and imprisonment were only reported in one case. In two cases, the sanctions took the form of “*besege/parusa*” (penalty) and physical retribution.

As primary causes of discrimination, the respondents singled out “tradition” and “prejudice” as well as poverty. Legislation and lack of understanding of IPs were seen as minor causes, while company rules were not at all regarded as sources of discrimination.

Harassment, abuse, and exclusion were the main forms of discrimination against Dumagat workers. Significantly, respondents added “exploitation of natural resources” to the list of manifestations of discrimination. “Violence” was regarded as an expression of discrimination to a much lesser extent.

On the effects of discrimination, the overwhelming majority referred to “hurt feelings,” the “feeling of being excluded” and “loss of self esteem” as major reactions, followed by complaints about the denial of rights.

Among those who had not held a job in the last two years, six traced the reason to “employers do not take IPs” followed by lack of skills and availability of suitable jobs in the area. Meanwhile, those who were able to get a job listed lower wages, benefits and social security, as well as significant deficits regarding security of tenure, training and promotional opportunities, and occupational safety as a form of discrimination.

Among the self-employed Dumagats, only 25 per cent felt that they had adequate access to land, fishing grounds, forests, market stalls, training and skills development. They fared somewhat better in terms of basic services such as health, educational assistance, livelihood support, social and physical infrastructure and access to credit.

Only five respondents commented on special grievance procedures for discrimination of Dumagats, and they all referred to cultural and informal mechanisms. However, all 20 respondents saw the need for urgent action to reduce discrimination against them. Suggested areas for improvement, in order of priority, are: improved livelihood and credit, better access to employment; training in employable skills, basic services like education and health; labor relations; social protection; access to land; better working conditions; and the implementation of anti-poverty programs.

“Advocacy” and “information” stand out as the principle measures recommended for the promotion of equality and non-discrimination for IP workers. Other suggested measures included legislation, stiffer sanctions, strengthening of tribal associations, affirmative action, strengthening of NCIP, and corporate responsibilities.

To obtain assistance in eliminating discrimination, the respondents would turn primarily to NGOs, the church, government agencies or local government units. Low priority was accorded to the media and NCIP, and none referred to the courts at all.

Badjaos

Popularly known as the “Sea Gypsies” of the Sulu and Sulawesi seas, the Badjao people are said to have derived their name from the term Orang Laut in the Malay language, which connotes “man of the seas.” Traditionally, they live in house boats clustered at moorings near certain strands and beaches, with access to both their fishing grounds and market places. Their livelihood used to be totally dependent on the resources of the sea - fishes, seaweeds, shells — either for food or for sale/barter in local markets for other necessities such as farm produce, clothing, materials for boat

construction and fishing equipment. On shore, they fetch drinking water, gather firewood, and look for materials needed for the construction or repair of their houseboats.

While some Badjaos maintain their traditional sea-based lifestyles, other groups have established fixed coastal settlements. This is the case of the Badjaos who left their native Zamboanga in the 1970s for Cebu City because of civil strife in their home region. Now counting about 2,000 people, this group of Badjaos live in two adjoining communities, known as group A and B, in single-room stilt houses located near the reclamation area in Alaska, Malimbing in Cebu City.

Leadership in both groups is exercised by Community Councils headed by chieftains, descendents of the original leaders who led them to their present settlement. Their authority is based on individual leadership qualities, and extends to all community affairs ranging from settling disputes to presiding over traditional rituals. Although Badjaos exercise their right to vote, they are not formally represented in political institutions such as Barangay (village) or City Councils.

Relations between the Badjao settlers and the surrounding Cebuano communities are said to be good but both ethnic groups still keep very much to themselves. The Cebuanos are known to be tolerant towards the Badjaos, but the latter feel “looked down upon” and are sometimes harassed for being outsiders. Fortunately, the Badjaos can count on support from cause-oriented groups, as reflected in a recent controversy. (See Myths about Badjaos)

The Badjaos maintain their identity, language, and traditional culture without being inward looking. Radio and TV are part of their daily lives, and the younger generation can communicate well in Cebuano and sometimes in English. Teenage Badjaos, who attend high school or college, behave and dress much like their peers in Cebuano mainstream society.

Having lived for about 30 years at the outskirts of a large and sprawling city like Cebu has brought about significant changes in the livelihood and life styles of the Badjaos. For the adults, fishing is still a primary source of livelihood in the fishing grounds extending from the waters in Cebu to Bohol. Expert divers, Badjaos fish with traditional spears and gear including goggles and flashlights. Often, divers use air compressors for them to remain underwater for extended periods. This hazardous practice has led to health complications and, in some instances, to fatal accidents.

MYTHS ABOUT BADJAOS

A **RELIGIOUS** group has criticized popular misconceptions as the underlying problem in the arrest in September 2005 of Badjao fishermen who were mistaken as Abu Sayyaf bandits. Speaking on behalf of the Redemptorist’s Justice and Peace Desk, an Irish nun insisted in an emotional press statement that the Badjaos were peace-loving people. Moreover, they were not primarily responsible for the filth in the waters near their houses because the garbage and litter had been washed down to the river from communities upstream. She also strongly objected to the accusation that mendicancy was the primary occupation of Badjao women and children, because the community was generally looking after their poor members well. She added that it was unfair to assume that begging was a typical form of Badjao livelihood, as the vast majority of beggars in Cebu City were not Badjaos but belonged to other ethnic groups who merely pretended to be Badjaos to gain sympathy and get higher donations.

Source: Ma. Sinson, Frauline, “Uncovering Myths about Badjaos”, Sun Star Cebu, 2005.





Pinky Tabanera, NCIP

Badjao youth as 'coin divers'

The young generation shows little inclination to pursue fishing as a permanent livelihood and seeks, through education, to pursue land-based career opportunities.

To supplement family income from fishing, men and women engage in various forms of barter, trade or peddling of different foodstuff, beverages, consumer goods, ornaments and pearls. Other livelihood includes boat building and ferrying of passengers to nearby islands. Some youth dive for coins thrown by ship passengers into the sea.

Through regular contact with the two Badjao communities, the NCIP office

in Cebu assists them in many ways. These include rehabilitation of the communities after fires that ravaged dwellings and infrastructure some months ago, the assignment of Badjao health workers to the two communities, and the creation of a day-care center for pre-school children, and the promotion of birth registration. Community members also receive legal advice in cases of conflicts with the law for mendicancy or illegal fishing.

A major concern for both Badjao communities is their proposed relocation to Tongo Island, a 10-minute boat ride from Cebu. Although they would prefer to stay in their present place and get titles to the government-owned reclamation area, congestion, sanitation, and environmental considerations seem to speak for relocation. Amid a heated debate among the parties involved, a Cebu City official categorically denied that the transfer of the Badjaos was an act of discrimination; rather, he considered it a way of helping them improve their livelihood and living conditions.

Profile of Badjao workers in Cebu City. Most of the 20 interviewees for this field study had little education, with only two who were able to graduate from high school. Twelve were fishermen while the others listed were basket weavers, bracelet makers, teachers and housewives.

The total absence of wage-employment and their exclusive dependence on self-employment is striking; in fact, only four respondents had held seasonal and temporary jobs during the two years preceding the interviews. The Badjao's tradition as "men of the sea" may explain their preference. At the same time, most of them pointed to the lack of suitable jobs and to lack of access to jobs as reasons for self-employment.

Few respondents felt that employers did not take in IPs because of their ethnicity. During the time that they had been employed, 10 respondents said they enjoyed working conditions at par with those of non-IPs; only four complained that they had not enjoyed equal treatment with non-IPs regarding benefits, safety and health, social insurance and promotion. They had received the same pay for equal work as non-IPs, but for the Badjaos, job security was non-existent.

It appears that there is no outright discrimination of Badjaos in wage employment, but they are certainly up against a number of odds in getting employed in the first place. While prejudice of potential employers may play a role, it is also a fact that many Badjaos lack the necessary basic formal education required for even low paying jobs in the private or government sectors. Poor technical skills and modest communication skills in Cebuano and English are other limiting factors for land-based wage employment. Badjaos are at a great disadvantage in a very tight and competitive labor market, where access to jobs depends to no small degree on patronage, education and other factors. Not surprisingly, the younger generation is opting for better education and language skills



Pinky Iabarrera, NCIP

Badjao women as food peddlers

as possible avenues to land-based careers. “Fishing is too hot” – hence, unattractive because of the working conditions at sea – was the answer of one Badjao college student when asked why he did not take up his father’s occupation as a fisherman.

As self-employed workers, majority of the Badjao respondents had no access to training and skills development; technical support services; land, fishing grounds or market stalls; credit; and even basic livelihood support. To augment family income from fishing, many Badjao women and children peddle foods and shell craft or beg. These activities are highly competitive

and sometimes subject to harassment. Badjaos resent the occasional police roundup of beggars under Cebu’s anti-mendicancy ordinances, which they allege focus primarily on the Badjao and less on non-IP beggars.

Sensitive as they are, the Badjaos have a clear understanding of what “equality” and “discrimination” are all about. For them, equality means respect, dignity, justice, inclusion and fair treatment. Discrimination is associated with “unfair treatment” and the withholding of rights and privileges under customary and formal law like the Constitution and IPRA. Discriminatory acts include the denial of services in education, health and social security, which they argue are more readily available to non-IPs. Since they consider the sea as their “ancestral domain” they tend to disregard prohibition of fishing in sanctuaries and occasionally come into conflict with the law. Less frequently mentioned aspects of discrimination were limited or no access to obtain justice in case of grievances.

Almost half of the respondents had heard about their rights for equal treatment under the Constitution, IPRA and customary law. Most of them learned about IP rights through government, especially NCIP, their families, neighbours or tribal associations. A few referred to academe and NGOs as a source of information.

Majority of respondents were aware of discrimination cases within their families and communities. A large majority traced the causes of discrimination to “prejudice” and “lack of understanding of IPs by non-IPs.” Nearly one-third cited company rules and regulations as responsible for such cases, but only 15 per cent cited tradition as a cause.

For a vast majority of respondents, “harassment” and “abuse” were primary manifestations of discrimination followed with a wide margin by exclusion, violence and exploitation. In their view, individual IPs were the ones most affected by discrimination but their families, neighbours and community had to carry a fair share of the burden. Badjaos are now very conscious of their rights for equal treatment and become quite vocal whenever they feel, rightly or wrongly, of being put at a disadvantage compared with their Cebuano neighbours, as in the case of release of government support following a fire that ravaged the area in early 2005.

While 11 respondents did not know of special grievance procedures for labour disputes in their communities, nine acknowledged the existence of such mechanisms, primarily in the form of culture-based arrangements.

Suggested areas for urgent action to reduce discrimination against IPs included, in descending order of priority: better working conditions, access to employment and training opportunities, livelihood and access to credit, land and other natural resources, education and training.

For all the respondents, “advocacy” was a primary measure for the promotion of equality and non-discrimination of IPs. High priority was also given to the strengthening of NCIP as well as information campaigns. Some emphasis was placed on strengthening of tribal associations, while much lower priority was given to legislation and stiffer sanctions for non-compliance and to research.

They also singled out NCIP as the primary source of assistance in eliminating discrimination against IPs, followed by other government agencies. The Badjaos also felt that an important role could be played by the academe, church and courts, but to a much lesser extent by the media.

Critical Areas of IP Equality

According to Section 24 of IPRA, it is unlawful to discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. It is worth looking at the various aspects of equality and non-discrimination to see how the IPRA law has been implemented in this regard.

Wage-Employment

In Chapter V, Section 21 and 23 and Implementing Rule V, Section 4 of the IPRA law, the State is committed to the effective protection of IP workers with regard to the recruitment and conditions of employment, the right to create and join trade unions and the right to conclude collective bargaining agreements with employers’ organizations. They shall not be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

Most importantly, the State is committed to “affirmative action” with regard to:

- IP employment in government and private undertakings in proportion to their population in their area of operations;
- Periodic monitoring of IP employment with government agencies, NGOs and private companies;
- Provision of appropriate training for IP workers in employable skills; and
- Placement procedures for unemployed or underemployed IPs.

Recruitment, employment conditions, promotion, and termination are critical areas for all workers dependent on wage-employment. These are areas where real and perceived equality deficits tend to arise, and these are also where determined and enlightened action can go a long way towards greater equality for IPs in the workplace.

It is widely believed, and to some extent documented, that progress with regard to equality of IPs at wage-employment has been slow and uneven. The interviews carried out in this study bear vivid testimony to the fact that IPs are still seeking equal opportunity in employment and equal pay for work of equal value. There has been much advocacy by concerned government agencies, IP representatives and NGOs for the rightful place of IPs in private and government employment. However, only a small minority of IPs seems to enjoy similar access to employment as non-IPs, as well as comparable employment conditions and career prospects with their non-IP peers.

Recruitment: Ideally, individuals are employed in the private and public sectors solely on the basis of objective criteria. This would ensure a perfect match between the requirements of the vacant post and the personal qualities and technical competencies of the candidate. Still, in the real world, recruitment is often guided by preferential treatment according to ethnic origin, sex, age, religion, family connections or other criteria unrelated to the ability of the individual to perform the job.

IP workers are still up against tacit or open prejudice in competition for scarce jobs with non-IPs. For a vast majority of respondents in this study, limited access to jobs was considered a major handicap for IPs. The fact that not more than three of the 60 IP respondents had held a regular job in the two years prior to the interviews speaks for itself. This is attributed mainly to lack of employment

opportunities in the area and deficits in skills and qualifications, but also to employers who “do not take IPs.”

As the major source of employment in the country, the government is expected to set an example and play an active role in implementing the national policy of equality and non-discrimination. This is an obligation under IPRA, which commits the NCIP to develop a



Badjao stall in Cebu City

Jobs and Employment Program for the appropriate training and placement of IPs. Conscious of its obligation, the Civil Service Commission (CSC) has adopted various guidelines on equal employment opportunities while proscribing discrimination as “any distinction, exclusion or preference made on the basis of gender, religious or political affiliation, *minority or cultural extraction* or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” This means that IPs, like other disadvantaged groups, should not be discriminated in getting access to civil service positions.

Statistics, anecdotal evidence and the interviews in this study suggest that IPs have not benefited significantly from these progressive policies and directives so far. Indigenous groups remain underrepresented at all levels in the private and public sectors. Also, there is no evidence about systematic efforts for recruitment of IPs, except for NCIP, which employs a large number of IP staff on account of its mandate. A majority of IPs may not succeed in getting formal employment because they lack the necessary qualifications, and there have been (undocumented) instances where IPs with necessary skills and qualifications were denied employment because of their cultural and ethnical background.

In the urban centers, the influx of IP migrants who have lost their source of livelihood in resource-rich ancestral domains that were claimed by investors has resulted in a growing unemployment problem. Most IP workers cannot find paid jobs because even low-paying jobs are out of reach for them due to their lack of education and perceived ideas about IP qualifications and capabilities. In Baguio City, for example, research has shown that more than half of the population consists of indigenous peoples from the Cordillera villages, with 65 per cent suffering from extreme poverty due to un- and underemployment.

Other factors affecting IP opportunities in employment and livelihood include the very tight labor market, with very high unemployment and underemployment rates of 13% and 28% in 2004 respectively. Statistics also show a clear trend towards wider use of contractual and casual labor. More flexible employment and work arrangements are done through downsizing, reengineering, subcontracting or outsourcing, which tend to affect mostly workers without specific technical skills, such as IPs.

General Conditions of Employment: Where an employer-employee relationship exists, all workers should enjoy the provisions of the Philippine Labor Code on minimum conditions of employment for the private sector. Every employer is, of course, free and indeed encouraged to go beyond the minimum requirements. It is worth asking, to what extent do IP workers enjoy at least these minimal conditions of employment?

Employment Security: Tenure is a key concept of the Philippine industrial relations system. It is firmly rooted in the Philippine constitutional and labor law as well as in IPRA. Article 281 of the Philippine Labor Code stipulates that after six months, an employee who continues working should be considered as a regular employee. Tenure as a regular employee carries a guarantee that dismissal will not occur on discriminatory grounds, like ethnicity. Unfortunately, few IP workers have been able to aspire to regular employment, and as the interviews have revealed, regular status and related tenure is virtually out of reach of most IP workers.

Termination of employment occurs when an employer discharges an employee before the end of contract or before the employee reaches the statutory retirement age (normally 65 years). The law and jurisprudence protect employees against illegal dismissal, and here, IPRA is very specific: according to Section 24, it is an unlawful, punishable act to discharge IPs “for the purpose of preventing them from enjoying any of their rights or benefits provided under this Act.” Generally, employers can claim legitimate termination only for “just cause” like serious misconduct, fraud, disobedience, etc. It is up to the National Labor Relations Commission (NLRC) and the courts to decide whether the alleged causes were indeed valid or had merely served as a cover-up for discriminatory termination on grounds of ethnicity, sex or sexual harassment.

A particularly objectionable and discriminatory practice of so-called “legal” termination is the “voluntary” resignation of an employee provoked by bullying, harassment or mobbing. Rarely reaching the courts, such practice is popularly known as “constructive dismissal.” Other employers may proceed with illegal dismissals on the premise of “terminate now, pay later” after a decision has been taken by the arbitrators, according to one study. Long delays in cases of arbitration and high cost involved for the worker amount to a denial of equal treatment of workers.

Despite the IPRA’s protective provisions, IP workers tend to be the last in and the first out of a job. This in itself is a discriminatory practice; IP workers seem to be the first to be affected when management has to resort to collective dismissal for economic reasons. Therefore, in order to avoid any suspicion of discrimination, management should consult staff representatives regarding the criteria to be applied for termination, well in advance of any scheduled retrenchment.

Complaints over violations of the right to security of tenure or illegal dismissal are a major cause for individual grievances, strained labor-management relations, administrative and court cases, and media coverage. They make up the bulk of cases handled by the National Conciliation and Mediation Board (NCMB) and the NLRC, but available statistics do not differentiate cases according to the ethnic origin of the complainants. Several reasons may explain why there are no court decisions on termination for reasons of ethnicity. For one, the number of IP workers holding regular employment is very small. Moreover, discriminatory termination on grounds of ethnicity is difficult to prove in court. Also, IP workers may not be aware of their rights or the procedures to follow in filing a complaint, and finally, IPs may prefer conciliation and mediation through traditional channels in settling labor conflicts.

Wages: As compensation for services that workers render under various forms of contractual arrangements, wages are a key element in the overall employment package. For a majority of workers, wages are the main, often the only, monetary income; therefore, the role of wages as a source of livelihood cannot be overestimated.

For the State, wages are important instruments to promote equality, and so it has taken a strong hand in upholding the principle of equal remuneration for work of equal value by women and men, both for IPs and non-IPs. The constitutional provisions on fundamental equality before the law of all citizens are echoed in the Philippine Labor Code and the IPRA. The IPRA considers it an unlawful act of discrimination to pay lower wages to IPs than non-IPs for work of equal value.

Despite these legal guarantees, wage discrimination is a common occurrence. There is a plethora of studies to prove wage differentials between men and women for work of equal value.

There are no known studies about wage differentials for IPs and non-IPs. However, the interviews in this study revealed that direct wage discrimination of IPs was not a major issue for the respondents. The few IPs who had jobs did enjoy, in principle, equal pay for work of equal value. This does not exclude situations of inequality of pay between IPs and Non-IPs that may arise where IPs are given less productive jobs, or their underpayment is being justified because of their deficits in training, skills or productivity. Generally, the reduction, if not elimination, of possible wage discrimination according to ethnicity remain a major challenge for policy makers, employers, workers' organizations and human resource managers.

Promotion: Advancement is the assignment of an employee to a job at a higher level of responsibility and authority; it usually goes together with higher status and income. Promotion is also associated with personal challenges and the development of individual talent and capabilities.

Neither constitutional and labor law nor IPRA specify any right to promotion, but these laws generally emphasize the effective mobilization of all human resources on the basis of equal opportunity and non-discrimination. However, according to the Philippine Constitution, the state should provide facilities and opportunities for IP to realize their full potential in the service of the nation. For the private sector, the Philippine Labor Code prohibits discrimination in promotion on grounds of sex. This is echoed in IPRA and many corporate policies and codes of conduct.

In the private sector, the promotion of individual employees remains the prerogative of the employer and is generally practiced according to broad criteria like performance, leadership qualities, technical competencies or personal attitudes. In reality, promotion is often surrounded by suspicion of unfair treatment as well as allegations of discriminatory preference or prejudice related to ethnic origin, sex, marital status, family and social background and networks, as well as school and fraternity connections. To avoid any suspicion of discriminatory bias against IP workers and other groups, management should exercise maximum transparency in the application of these criteria and procedures, for example through labor-management consultations or in the context of collective bargaining.

In the public sector, procedures are in place that regulates the selection of individuals to senior positions. As in the case of recruitment, women seem to have been the main beneficiaries from policies of non-discrimination related to advancement. There is no anecdotal or documentary evidence that IP workers have benefited from non-discriminatory regulations in the civil service as far as advancement is concerned.

Increasing numbers of IP workers have gone a long way to improve their career prospects through education, and highly motivated IPs appear increasingly well-equipped for rising to senior levels. However, under-representation of IPs in senior positions may reflect existing biases in corporate recruitment practices, even when their policies establish rules on fair play and equal access to senior posts. Thus, IPs may experience difficulties in progressing to senior positions despite equal qualification for higher rungs as non-IP candidates. They may come up against unexplained barriers, such as ethnic prejudice or non-IP "old boy" networks.

As the largest single employer in the Philippines, government has much scope to ensure, through affirmative promotion policies, a wider representation of IPs in executive positions. At the same time, progressive concepts for IP promotion in the civil service can set standards for the rest of the world of work. A directory of "IP on the Move" could be created with the names and CVs of IP workers in government and in the private sector who can be considered for senior level positions.

Freedom of Association and Collective Bargaining: Like other workers, IPs have the right of freedom of association to join and organize unions and to bargaining collectively. Usually, union membership is open to and sought by workers in regular employment. Since only a few IP workers hold regular employment, there is reason to believe that IP membership in unions is negligible. To increase IP employment and union membership, CBAs and CNAs should include clauses that encourage the access of IPs to employment on equal footing with non-IPs.

Non-wage Livelihood Activities

Majority of IP workers are not wage earners but are self-employed and dependent on livelihood activities such as traditional agriculture, forestry and fishing. Hence, control of their ancestral domain is vital for their income and socio-economic status. A most destructive form of discrimination manifested in this regard is limited access to or outright dispossession of their ancestral domains — the land, sea, forest, rivers and mountains — where a vast array of natural resources are found. In the past, tribal areas were redistributed to outsiders through paper titles, permits and licenses. According to the DENR, ancestral domains have dwindled to a fraction of the 15 million hectares recorded in 1950, and these are now confined mainly to parts of the Cordilleras and Mindanao. Research shows that the massive and arbitrary grabbing of IP lands occurred immediately after World War II, or upon the birth of the Republic of the Philippines in 1946. As a result of discriminatory policies and practices, IP communities were constrained to ever decreasing ancestral domains. In marginal hinterlands, IP families have to eke out a living with high rates of unemployment, underemployment and widespread poverty.

Limitation to self-employment amounts to discrimination, not only from the IP perspective, but also under Philippine and international law. Lack of security of tenure over land and natural resources results in limited opportunities for self-employment and income, and impairs individual and collective self-reliance. The absence of basic social services, in the area of health for instance, compounds the problem as disease persists in IP communities. Similarly, IP workers have limited access to adequate training and education as well as new technologies to improve their produce and incomes.

Many self-employed workers are exposed to various forms of discriminatory treatment: underpayment of products, precarious conditions of work, and lack of social protection. Terms and conditions of casual or seasonal work are highly flexible, often substandard, and are not subject to enforcement and regulation. Denied regular credit, they are dependent on the usurious rates of moneylenders. Since access to legal protection is costly or unavailable, enforcement of labor rights is elusive. Lobbying and protection by cause-oriented groups or unions are limited.

Fortunately, several measures have been done to overcome discrimination in IP livelihood activities. For instance, there has been a definite improvement in the legal and policy framework to rectify discriminatory laws and policies. The Rights to Ancestral Domain and Lands figure prominently

NEW LIVELIHOOD FOR AETAS

DISPLACED by the eruption of Mount Pinatubo in 1990, the Aeta people of Pampanga were deprived of their original livelihood in forests with abundant resources. After the disaster, the Aetas had to contend with lahar covered lands, costly agricultural inputs and exploitative marketing conditions.

Resettled in Porac, Pampanga on privately donated land, an Aeta community of 116 families was able to rebuild their livelihood. Government training and production assistance helped the community increase their income from planting and marketing agricultural products such as root crops, bananas, beans, mango etc. A multi-purpose cooperative became operational and the local government provided a market stall as the sales outlet for the products of the Aeta community. Plans are underway for diversification into products with higher value like catsup, chips and juices.

Source: Cabalatungan, Cielo C., Paper presented at “Training of Facilitators for the promotion of ILO Convention (No 169) on Indigenous and Tribal Peoples”, Manila, August 2005

in IPRA, together with Rights to Self Governance and Empowerment, Social Justice and Human Rights and Rights to Cultural Integrity. Thus, in line with relevant constitutional provisions and IPRA, the Medium-Term Development Plan for Indigenous Peoples 2004-2008 gives the highest priority to the right of IPs to manage their land and natural resources. This policy guarantees that IP workers will not be displaced from their lands in case of development projects, which must be designed and implemented with their consent. An estimated 2.5 million hectares of ancestral domain are being considered for titling over the next one or two decades.

Mechanisms are now in place to settle disputes over ancestral domain between IP tribes, clans and individuals on the one hand, and vested business interests on the other. Safeguards on the rights of ICCs/IPs to ancestral domain include the right to information and prior consent, and mechanisms for consultation and litigation. To facilitate speedy resolution of conflicts, the NCIP maintains focal points in each ethnographic region. Operating under the Office of the Chairperson, these Quick Response Units intervene in emergency situations through information gathering, investigation, and coordination. In 2003, virtually all the cases handled by these teams were related to disputes over ancestral domain, according to the NCIP.

To be successful, developmental support of IP livelihood has taken the form of a comprehensive approach involving all stakeholders including the indigenous peoples, the communities, local government, and NGOs, often with financial assistance from international donors. Many of these development initiatives have shown encouraging results, as seen in the experience of one Aeta community displaced by the deadly Mt. Pinatubo eruption in the early 1990s. Their example shows that partnership and mutual trust between the IPs and mainstream society can bring about socio-economic progress, equality and non-discrimination. (*See New Livelihood for Aetas*)

In recent years, ILO has been promoting the wider application of policies enshrined in its Convention No. 169 on Indigenous Peoples by providing technical assistance under its development program for IPs (INDISCO), focusing on community-driven participatory approaches. Operating in four indigenous communities in Mindanao, Occidental Mindoro, Cordillera and in Zambales, INDISCO's projects include the preservation and promotion of indigenous culture, decent employment and income opportunities, gender equality, and protection of natural resources.

Tailor-made projects for individual communities may be seen in the wider context of the Decent Work Country Programme of the Philippines, adopted in 2002 by the three social partners (government, employers and workers organizations) and the ILO. The program starts from the premise that only concerted efforts by all social partners and civil society at large can develop a strong culture of compliance with constitutional and human rights of all citizens. Therefore, protection against discrimination cannot be limited to the formal sector, comprising 25 per cent of the total labor force or about six million workers, but must extend to the remainder of the Philippine labor force in the informal sector (about 20 million people), which includes a vast majority of IPs. Concrete measures in support of IPs would involve the ratification by the Philippines of Convention No. 169, operational activities under INDISCO, and related programs under the auspices of national and international stakeholders.

Overall, results have been mixed as far as the livelihood, incomes and employment opportunities of IPs are concerned. According to a 2002 report from the ADB: "On the whole, in the indigenous peoples' regions, the incidence of poor families and poor populations did not improve substantially between 1988 and 1997 despite the rise in average income, except for Region II. In some cases, the incidence has worsened and, ironically, in the indigenous peoples' regions that registered the more respectable growth rates in average income. This implies that the fruits of regional development have not trickled down to the poorest of the poor. Moreover, in the indigenous peoples' regions that registered a high incidence of poverty, the poverty gap ratio, especially in the rural areas, is also stubbornly high."



Education, Training and Skills Development

Knowledge and skills are primary prerequisites for employment and livelihood, for the improvement of living conditions, and upward social mobility. A UNDP study in 2004 observed that ICCs/IPs, “because of their low educational status and unique social and cultural norms, they have been subjected to historical discrimination and exploitation.” Educational opportunities could therefore become a powerful means for reducing and eliminating poverty and discrimination.

Ideally, no individual should be at a disadvantage in acquiring education, knowledge and skills compared to others in reaching his or her full potential in work and life. This statement is embodied in both ILO and Philippine instruments. Echoing ILO Convention No. 169 that IPs “acquire education at all levels on at least an equal footing with the rest of the national community,” IPRA commits the State through NCIP to “provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs.” The government’s development plan also commits the DepEd and NCIP to design and implement educational programs attuned to ICC/IP rights to cultural integrity, social justice and human rights and the right to self-governance and management. This would include tailor-made curricula and instructional materials, teacher training and the inclusion of IP documents in public school libraries to permit information sharing between cultures.

To be relevant and effective, education and training must be attuned to the specific requirement of the ICCs/IPs. It should be flexible and innovative. It could take various formal or informal arrangements, use appropriate means of instruction, involve public and private stakeholders, and address different IP groups. One example is the formal and informal training under the auspices of the Bakun Indigenous Tribes Organization (BITO) and ILO/INDISCO covering an integrated package of issues: Promotion of Cultural Values, Environment & Natural Resources, Solid Waste Management, Organizational management, Livelihood Development, Indigenous knowledge system & practices, Functional Literacy and Gender Mainstreaming.

Despite some progressive initiatives, IPRA’s ambitious expectations have at best been partially fulfilled. Over the past decade, IP workers may have lost out because of a definite disadvantage compared to non-IPs regarding access to education and training, as confirmed in the field research for this study. Dramatic changes in technologies and processes in agriculture, industry, business and administration have bypassed many IP workers. Incursion into their ancestral domain is often accompanied with new patterns of rural development, extensive extraction, and ecological degradation. Some IP workers have tried, often with some success, to adjust to change and to acquire employable skills. In this way, they can improve their chances of obtaining formal employment within and outside their areas, and thereby catch up with their peers in mainstream society.

Occupational Safety and Health (OSH)

In the Philippines, occupational safety and health protection carries strict standards for the formal sector but compliance varies widely. According to the Occupational Injuries Survey of the DOLE of 2000, 13.4 million out of 28.2 million workers were working in hazardous establishments. One out of 88 workers sustained an injury while at work, one work-related death was reported for every 12,500 workers, and one out of every 89 workers was temporarily incapacitated.

In line with ILO Convention No 169, Section 23 of the IPRA law makes a strong case for OSH protection of IP workers by emphasizing their “right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.”

Much can be done to raise OSH standards for IP workers. Progressive awareness raising campaigns on pesticide management in vegetable farming have been launched through private and public sector initiatives in primary schools in Benguet province. The focus is on school children, as

many of them assist their families in vegetable gardening and may therefore be exposed to pesticide hazards. A partnership between Bayer Crop Science, the Fertilizer and Pesticide Authority, the Occupational Safety and Health Center (OSHC) of the Department of Labor and Employment (DOLE) and the Department of Agriculture, the program gives school children an opportunity to learn about integrated pest management and precautionary measures that would ensure a healthy and safe work environment in vegetable farming.

There is a wider scope for inspection, preventive services, or enforcement in livelihood activities. In recent years, assistance from the ILO, UNDP and bilateral sources has enabled DOLE/OSHC to develop and test intervention methods on which expanded services to the informal sector can be based.

Psychosocial Environment

Discrimination is primarily a very personal feeling of disadvantage, exploitation and deprivation; however, beyond the individual, discrimination can have wider ramifications for the family, firm, community or economy. It is related to all aspects and stages of the work relationship — from recruitment to general working conditions and social protection. It can also extend to the livelihood of IP workers in case of a real or imagined denial of training, technical services or access to land and natural resources.

One of the surveys in this study underscores the fact that discrimination in employment and livelihood extends to virtually all members of the IP community. More specifically, illiterate and poor IPs are regarded as the most discriminated groups followed by the women, disabled, elderly and children.

Equality and non-discrimination in the world of work is an emotionally loaded issue for all stakeholders. Just like other individuals, IP workers perceive equality and non-discrimination at work as a safe and healthy psychosocial environment. Yet, the existence of psychosocial problems at work is a stark reality for many IP workers in the private and public sectors.

Taken together, the responses from the Manobo, Dumagat and Badjao interviewees showed that an overwhelming majority of 97 per cent felt they were discriminated because of their ethnic background. Most of them also said that they had experienced unfair treatment, and they identified non-IPs as the major instigators of discrimination. More than one-third observed that their rights and privileges have been withheld, their indigenous culture had been disregarded, they were denied services and they had limited access to justice. Some of them also experienced exclusion from employment and basic services.

On account of their ethnicity, IP workers seem to suffer from various forms of prejudice, intolerance and other discriminatory causes. Left unchecked, these causes and manifestations tend to reinforce each other, leading to loss in motivation and productivity, increased cost for counseling, treatment or rehabilitation.

The IPRA law indirectly calls for a favorable psychosocial work environment for IP workers, without going into details. However, it does specifically proscribe sexual harassment as a key psychosocial problem at work.

The fight against harassment and other forms of aggressive acts that affect the psychosocial environment must be taken to the company level; it could be part of a policy on No-Tolerance to Harassment and other psychosocial problems at work. Ideally, progressive managers and workers' representatives would cooperate closely to create a company culture where harassment cannot thrive and the disruptive and demoralizing effects of unsolved psychosocial problems at work can be prevented. Many employers have taken pro-active initiatives on this matter.

Community Relations

Firms such as mining companies or agri-businesses operating in ancestral domain areas depend on the goodwill of the communities. Enlightened employers understand that this goodwill

depends on harmonious relations with local leaders, the support of its workers, their families and the community at large. Therefore, the elimination of different forms of discrimination at work would have benefits, not only for the firm, but also for the community where the firm is located or from where the workers originate.

There is growing recognition among firms, human resource managers, and academics about the relationship between corporate commitment to eliminate various forms of discrimination at work and a company's competitiveness, productivity and profitability. Concepts such as Corporate Governance are gaining ground among individual employers and business groups (*See Corporate Social Responsibility Benefiting IPs*). In mobilizing the talents of their workers irrespective of ethnicity, gender, or social background, progressive firms can expect substantial returns in terms of firm-level excellence. Gradually, IP workers seem to be benefiting from this proactive outlook, but much more can be done and achieved through community relations.

Socioeconomic Development

Effective mobilization of human and natural resources is crucial to socioeconomic development. Any failure by the State to mobilize the potential of IPs and non-IPs alike would amount to discriminatory neglect. This leads to inefficiencies at the level of the individual, the firm, the community and ultimately, the economy.

The last decade has seen a wide spectrum of substantial efforts to raise the standard of work and life of the regions where most IP communities are found. Hence, one can only speculate about the causes of a disappointing share of ICCs/IPs in national development, manifested in their material poverty and low HDI rating. Obviously, public and private initiatives for the socioeconomic development and nondiscrimination of ICCs/IPs have to take place in the wider framework of policies embodied in IPRA and the government's development plans.

The MTPDP 2004-2010 makes a strong case for preferential access of ICCs/IPs and other vulnerable groups of society to employment, livelihood, and income through a package of initiatives. It provides a blueprint for integrated action to:

- provide educational assistance to poor but deserving IPs;
- provide ICCs/IPs with legal assistance in litigation involving community interests;
- provide health services to the ICCs/IPs, including enrolment in the National Health Insurance Program;

CORPORATE SOCIAL RESPONSIBILITY BENEFITING IPs

CREW, a mining company, has been practising Corporate Social Responsibility for some time with respect to ICCs/IPs in their world-wide operations, including the Philippines.

Aiming at full compliance with the IPRA law, CREW's Philippine subsidiaries undertake mining operations in such a way that they do not interfere with the ICCs/IPs traditions and way of life. Where qualified IPs are available, the company will employ 50 percent of its workforce from among the IPs in the area of operations. Minimum wages are strictly applied and "equal pay for work of equal value" serves as a guiding principle. Other working conditions are granted equitably without prejudice to the ethnic origin of the employees. Support to communities located in the mining areas includes infrastructure development to facilitate farm to market transport, health services, and education facilities. The company is hiring an expert on IP matters to formalise its practices in line with national and international standards on indigenous and tribal peoples.

Source: Arne Isberg, mining consultant/former CREW country manager

- promote cooperatives in accordance with the beliefs and customs of ICCs/IPs;
- provide indigenous women, youth and older persons with programs and projects for the improvement of their socioeconomic conditions;
- facilitate agro-technological development among the ICCs/IPs, building upon their customary practices and traditions;
- deliver socioeconomic services to the ICCs/IPs communities such as infrastructure, extension, credit, financing, and marketing;
- enhance skills among IPs for work productivity and self-employment particularly through traditional livelihood programs; and
- create the Tribal Barangays and ensure mandatory representation of IPs in local policymaking bodies and legislative councils.

Full implementation of sound policies and plans will go a long way in creating a level playing field where all disadvantaged and advantaged groups like indigenous peoples, women, youth, or workers in the informal sector can mobilize their potential for their own benefit and that of the firms, community and economy.

From Vicious Cycle to Virtuous Cycle

It is safe to say that the pro-IP Constitution of 1987 and the IPRA law have brought dramatic changes to the lives of indigenous Filipinos. Still, progress has been uneven in different areas and for different ethnic groups. Is it realistic then, to assume that the **vicious cycle** of discrimination and inequality can be turned into a **virtuous cycle** of equality and non-discrimination for ICCs/IPs? Figure 4 shows that this can be done by applying a mix of interventions including progressive ICC/IP policies and programs, sustained implementation, and advocacy.

The following recommendations highlight some of the areas where proactive and concerted interventions by stakeholders hold promise for significant improvements in IP equality and non-discrimination in their world of work.

Policy Review. From time to time, policies need to be assessed for their relevance and effectiveness, and corrective measures must be taken where required. This is particularly necessary with regard to such important and complex areas as IP human and labor rights, which must be viewed in the context of the Millennium Development Goals, the MTPDP 2004-2010 and the Decent Work Country Programme of the Philippines. The ongoing debate for the proposed ratification by the Senate of ILO Convention No 169 on Indigenous and Tribal Peoples provides an ideal opportunity for such a policy review.

The agenda of such a review must be defined through broad consultations of representatives of government, NCIP, IPs, NGOs and other concerned parties. Possible issues include convergence between national and international instruments like IPRA and ILO convention No 169, the clarification of the concept of discrimination in employment, the nature and content of “affirmative action” and “special measures” in favor of ICCs/IPs, and the roles of social partners like employers and workers’ organizations as well as cause-oriented NGOs and groups.

Sustainable Operational Programs. To improve their living and working conditions, most ICCs/IPs require external assistance. The ADB, UNDP and ILO have reported only modest overall improvements of IP working and living conditions over the years. Therefore, major efforts will be required by all stakeholders to achieve full implementation of IPRA under the Medium Term Philippine Development Plan for Indigenous Peoples 2004-2008.

Project evaluations carried out by ILO and DOLE suggest that tangible results can best be achieved through a comprehensive approach of a package of mutually supportive interventions in training, capacity and institution building. Each case is subject to special conditions and requirements;

examples are the resettlement described in this study about entire IP communities like the Aetas or Badjaos. Mechanisms for monitoring and evaluation must be put into place to ensure cost effective implementation.

Capacity Building. Progress in the area of IP rights and standards of life and work depends to an increasing degree on the institutional capacity of IP communities. Many

tribal communities have proven that they can develop the capacity to pursue their rights and to muster support from within and from outside. Others still lack the capacity to have a voice in matters of vital interest, like the protection and development of their ancestral domains, the socio-economic development of their communities, rehabilitation from natural disasters etc.

Government agencies and NGOs should step up leadership training and networking for IP communities. In the long run, IP communities may wish to seek formal representation in local policy making bodies, like Barangay and City Councils, to effectively pursue the economic, cultural or political interests of their communities.

Wage employment. Concerned government agencies, employers' organizations, civic groups and tribal associations should explore ways and means of creating more jobs for IP workers at the local, regional and national levels. Traineeships should be organized to prepare IPs for entry into formal employment.

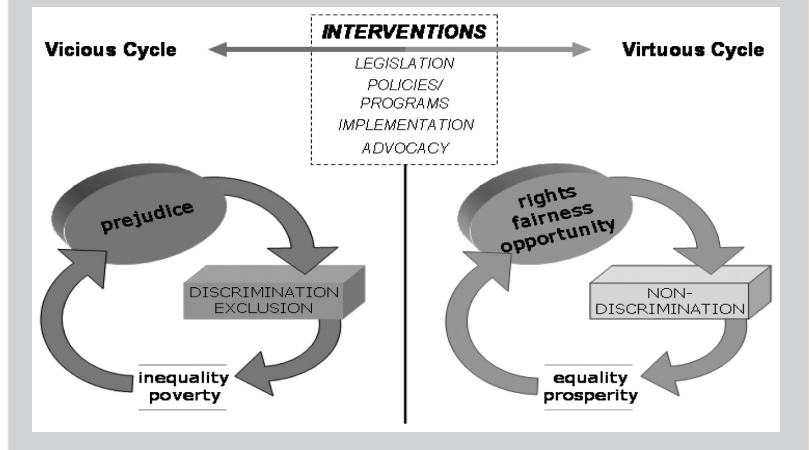
Non-wage livelihood activities. Impact evaluations of selected projects have shown the potential for improved productivity of incomes through initiatives of the IPs with technical support and security of access to their ancestral domains. Building on the experiences from successful projects, individual communities should be assisted in defining their development goals and mobilizing their own resources as well as external support to ensure high return on investment.

Basic Services: Education, training and skills development. The scope for raising educational standards of IPs is immense; there is a great need and demand for accessible and affordable educational and training opportunities for them. Obviously, the organizational and financial challenges for education providers are considerable, but many government agencies can help provide the necessary facilities. They can also seek support from local governments, civic organizations, and foreign-funded projects in providing know-how and resources to help IP workers acquire the education and training necessary to land a job or succeed in self-employment.

Advocacy. Misconceptions of IP and non-IP groups about their respective rights, traditions and aspirations has a long history, but awareness-raising campaigns among both IP and non-IP communities can be a powerful means of eliminating prejudice. In particular, advocacy campaigns should target the young (and their parents) through the DepEd, NCIP, local governments, IP associations, and other appropriate channels including youth organizations.

Another focus should be the workplaces in the formal and informal sectors, through workers' and employers' organizations. Following the principles of Corporate Social Responsibility, large

Figure 4: Vicious/Virtuous Cycles and Interventions



companies could put more effort in propagating ideas and practices on "no tolerance of IP discrimination at work" among their staff, subcontractors, suppliers and clients.

Collection and Dissemination of Data. While up-to-date information on IP discrimination is not readily available, considerable data is spread throughout research studies, reports from government and private agencies, documentation from NGO, and articles in the media; of particular importance are relevant court and administrative decisions that may serve as precedents for new cases.

To consolidate all these documentary sources, databases at NCIP offices may be established for the systematic collection and analysis of information on cases of IP discrimination in the world of work. Such a database would be helpful in formulating advice and policies, designing and implementing programs, resolving cases, court proceedings, interventions and corrective measures, and the propagation of experiences on discrimination cases among IP workers.

Research. Studies are meant to provide analytical data that serve as a basis for policy-making and program development. A significant information gap still exists on most aspects of IP employment and livelihood, as well as their relations with mainstream society. Universities and colleges in areas with significant IP populations could promote research by faculty and students in close consultation with indigenous communities and concerned agencies such as the NCIP. Wider circulation of research findings should be ensured through reviews and the media.

Dr. Gert A. Gust is the President of the ILO Association of the Philippines. He is a former Associate Professor at the School of Labor and Industrial Relations, University of the Philippines (UP SOLAIR) and a former Director of the ILO Office in Manila.



Who Decides?

Jurisdiction and Indigenous People's Rights

By Sedfrey M. Candelaria and Jill Lopez



The concept of jurisdiction is understood in general as the power of a legally mandated body to hear an action and render judgment on a particular case. With the passage of the Indigenous Peoples' Rights Act (IPRA), several jurisdictional issues have surfaced in relation to the Philippine judicial system.

The NCIP and the Philippine Judicial System

The IPRA grants the National Commission for Indigenous Peoples (NCIP) jurisdiction over all claims and disputes involving indigenous communities, the power of delineation and recognition of ancestral domains as the original venue for petition for delineation, and the power to conduct preliminary investigation.

The NCIP is composed of seven Commissioners who are *bona fide* members of indigenous cultural communities or indigenous peoples (ICCs/IPs) from the different ethnographic areas specified in the law. They must have experience in ethnic affairs, and have worked for at least 10 years with an indigenous community and/or any government agency involved with indigenous peoples. They have a fixed term of three years, and may be reappointed for another term.

The NCIP's rules are inconsistent with the qualifications and security of tenure of judges in the judiciary, whose members must possess certain qualifications and enjoy security of tenure mandated by the Constitution. They must also have power, along with the courts, to issue search warrants and warrants of arrest.

Under the amended Rule 112, Provincial or City Prosecutors and their assistants, National and Regional State Prosecutors, and other officers as may be authorized by law, such as the NCIP, have the power to conduct preliminary investigation. The conduct of preliminary investigation has now been removed from judges of the first level courts.

The NCIP and the Shari'a Court

The Shari'a Court of the Philippines is a special body in the judicial system vested with a limited jurisdiction to hear and decide cases and to administer justice for Filipino Muslims in accordance with their own laws. The mandate for the Shari'a Courts is embodied in The Code of Muslim Personal Laws (Presidential Decree 1083). Within the Philippine judicial system, it is the body most similar to the NCIP in the sense that both exercise jurisdiction over disputes involving special categories of people whose rights are characteristically defined on account of their distinctive culture and history. However, the institutional similarity ends there.

The Shari'a Court is included in the category of regular courts along with other bodies such as the Regional Trial Courts and Municipal Trial Courts. Its members must have, in addition to knowledge of Islamic law and jurisprudence, the same qualifications as a judge in the Courts of First Instance (now Regional Trial Courts). This means that membership in the Shari'a Court is more specialized, unlike members of the NCIP who need not have the qualifications of a judge under the Judiciary Law. Moreover, the Shari'a Court is under the administrative supervision of the Supreme Court, while the NCIP is an independent agency under the Office of the President. Under E.O. 364

dated September 27, 2004, creating the Department of Land Reform (DLR), and as subsequently amended by E.O. 397, dated October 26, 2004, NCIP was classified as an attached agency of DLR.

The Quasi-Judicial Character of the NCIP

As a quasijudicial body exercising specific powers, the NCIP may be compared with the National Labor Relations Commission (NLRC) or the Department of Agrarian Reform Adjudication Board (DARAB) in the executive branch of government.

The DARAB has primary jurisdiction to adjudicate all agrarian disputes, except for petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under the Comprehensive Agrarian Reform Law, which are lodged in the Special Agrarian Courts.

Similarly, the NLRC is a quasi-judicial agency created to hear and decide labor cases as specified in the Labor Code. It has the power to promulgate rules and regulations, issue compulsory processes, investigate and hear disputes within its jurisdiction, conduct ocular inspection, and exercise appellate jurisdiction and the power to cite persons in contempt.

Clearly the NCIP falls under the same genre of agencies in government as the NLRC and the DARAB. These are all administrative agencies within the Executive Department, which are empowered by the Constitution or statute to hear and decide certain cases. They exercise quasi-judicial powers and hence, are commonly called quasi-judicial agencies.

The NCIP and Customary Law

Under IPRA, the jurisdiction of the NCIP is as follows: 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.

A cursory reading of the law suggests that NCIP's decisions have the same status with those of Regional Trial Courts since these decisions may be brought to the Court of Appeals by way of petition for review. Unmistakably, the most distinctive feature of the NCIP's quasi-judicial power is the primacy of customary laws in settling disputes.

Primacy of Customary Laws

Many indigenous communities are still governed by customary laws. Often, a collective of elders exercises the executive, legislative, judicial and religious powers within a community, based on a set of rules founded on reason, consent, necessity and confirmed by common usage and dictates of society. It is the established way of doing things, in a prescribed form, rite, ritual, routine procedure, social usage, or unwritten law observed by indigenous peoples, so that things that are done contrary to custom and manner of their ancestors are neither in order nor appear right.

The primacy of customary law means that when there are disputes, it must be applied first before the parties involved seek recourse through the NCIP or the regular courts. In applying national laws and regulations, due regard is given to their customs or customary laws, as stipulated as well in ILO Convention 169. The global treaty provides that indigenous 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 recognized human rights.

The IPRA law contains several provisions that define how customary law may be applied in settling disputes involving indigenous peoples rights, as follows:

1. Section 7 (h) recognizes the right of *ICCs/IPs* to resolve land conflicts in accordance with customary laws of the area where the land is located...;





Awarding ceremony for Bakun CADT

2. Section 15 acknowledges the rights of *ICCs/IPs* to use their own commonly accepted justice systems, conflict resolution institutions, peace building process and other customary laws and practices within their respective communities...;
3. Section 32 permits the use of customary laws by *ICCs/IPs* to regulate and protect their community intellectual property rights...;
4. Section 35 necessitates the consent of *ICCs/IPs* to access by non-*ICCs/IPs* to biological and genetic resources and indigenous knowledge within ancestral domains and ancestral lands in accordance with customary laws;
5. Section 53 (a) provides that the allocation of ancestral lands within ancestral domains to individual or traditional group claimants who are members of the *ICC/IP* shall be in accordance with customary law;
6. Section 57 requires that the consent of the *ICC/IP* to any natural resource project within the ancestral domain must be obtained in accordance with customary law;
7. Section 58 provides the same requisite with regard to certification issuance by the NCIP;
8. Section 62 states that customary process shall be followed if the dispute is between and/or among *ICCs/IPs* regarding the traditional boundaries of their respective ancestral domains;
9. Section 63 provides that when conflicts arise regarding property rights, claims and ownerships, hereditary and settlement of land disputes involving *ICCs/IPs*, customary laws and practices of the land in the area of the conflict shall be applicable;
10. Section 66 requires the exhaustion of remedies under customary laws before parties can go to NCIP or settlement of disputes; and,
11. Section 72 provides for priority application of customary laws to punish violators of IPRA, at the option of the affected *ICC/IP*.

This is not the first time that the use of customary practices is recognized in some way by law. Under the Civil Code, customary laws are accepted as fact. The Local Government Code also requires the use of indigenous processes in order to facilitate an amicable settlement as a condition precedent for filing actions in court, similar to the Katarungang Pambarangay (village level) justice system.

However, IPRA defines more precisely the concept of customary law, which is used not only to arrive at an amicable settlement but also to process it in an acceptable manner. Section 65 of IPRA

WHO DECIDES?

states: When disputes involve ICCs/IPs, customary law will be used to resolve the dispute. Hence, the IPRA law gives the choice of dispute settlement process to the community.

In accordance with the provisions of the Philippine Constitution, customary law is stipulated as the set of norms that would be used in cases of conflict regarding boundaries and tenure rights with respect to ancestral domains. Any doubts on its application or interpretation will be resolved in favor of the ICCs/IPs.

Indigenous Justice System

Indigenous Peoples may utilize their own justice system subject to proof of traditional practice within their community. To the extent compatible with the national legal system and international human rights agreements, the methods customarily practiced by the indigenous peoples concerned for dealing with offenses committed by their members shall be respected.

However, there are established limitations, standards or conditions for the legitimate application of indigenous justice systems. These include compatibility with the national justice system, and with internationally recognized human rights. For instance, they cannot execute or actually implement a death penalty on their own in accordance with traditional practices. Indigenous peoples must respect the fundamental law, the bill of rights and all other aspects of the legal system.

Limitations of NCIP's Jurisdiction

Criminal Cases

Under the national law, criminal penalty is based mainly on the classical theory that its purpose is retribution. Punishment is standardized in proportion to the gravity or nature of the offense. But among indigenous peoples, the purpose of customary law is rectification, i.e. to restore whatever social relations between clans of the offender and the offended party that was destroyed, as one study emphasized. The main approach behind customary laws and processes in criminal

cases is the use of social and clan pressure to maintain peace and order within the community. Clan members of the offender contribute to the penalty paid to the family of the victim. Penalties may be in the form of cash, animals, ancestral land or combination of any of these, according to former executive director Evelyn Dunuan of the NCIP.

Under the IPRA, offenders who violate any of the rights of indigenous peoples may be punished in accordance with the customary laws of the community concerned, whether or not the offender is *IP* or non-*IP*. However, there is an explicit limitation that any penalty



Rice god called “bul-ul” and view of terraces

PANLILIPI



Indigenous rituals are part of customary law

PANLPI

imposed is not cruel, degrading nor inhuman. Death penalty and excessive fines may not be imposed as well.

When an IP violates any right of another IP from his own community, the law is clear that the offender may be prosecuted under the tribe's own commonly accepted justice system, conflict resolution or any other customary laws and practices within the limits set by the national legal system and internationally recognized human rights.

Both parties, however, may still have recourse to regular courts.

When the offender is an IP belonging to another tribe or a non-IP, the law seems to imply that the same provision of IPRA is applicable - that any violation of indigenous rights shall be punishable in accordance with customary law subject to the prohibition against cruel, degrading or inhuman punishment. At the same time, the offended party retains the option to resort to existing court processes.

In line with this, does the NCIP, as a quasi-judicial agency and not part of the judiciary, have jurisdiction over criminal cases involving non-ICCs/IPs? The conflict arises on the question, which body shall take cognizance of the criminal case the NCIP or the regular trial courts? Criminal cases are those defined under the Revised Penal Code and other special penal laws with imprisonment and/or fine as sanctions. Civil cases, on the other hand, merely entail compensatory liability.

The guarantee of the right to use customary laws and the commonly accepted justice system is applicable only within indigenous communities. But in the wider arena, the principle of territorial integrity — that criminal laws undertake to punish crimes committed within the Philippine territory and that penal laws are effective against all those residing in Philippine territory — would suggest that all criminal actions must be governed by the Revised Penal Code. Thus, criminal cases would have to be initiated in the regular trial courts. However, the Katarungang Pambarangay Law provides an exception to this principle and enumerates several criminal cases that must be submitted to village conciliation before resorting to the courts.

Thus, in cases where the parties belong to different tribes or one of the parties is a non-IP, the NCIP would have jurisdiction over criminal cases that fall under the Katarungang Pambarangay Law. These include offenses for which the law prescribes a maximum penalty of imprisonment not exceeding one year or a fine of not over five thousand pesos, or where the accused is not under detention, where a person has not otherwise been deprived of personal liberty calling for habeas corpus proceedings, where actions are not coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and where the action may not otherwise be barred by the statute of limitations.

Other than those cases, and judging from the penalty provided in IPRA, the Regional Trial Court would have jurisdiction over criminal cases where the penalty prescribed reaches a maximum of twelve years imprisonment. However, judges must still consider customary laws in the trial of any violation of the rights protected under IPRA.

WHO DECIDES?



Civil Cases

On the same note, customary laws of the community shall be applicable to civil cases involving disputes of IPs belonging to the same IP community.

Moreover, Section 63 of IPRA provides that in matters of claims and ownership, hereditary succession, and settlement of land disputes, customary law shall be applied first with respect to property rights within ancestral domains and ancestral lands. This provision does not involve cases such as property rights of a car owned by an indigenous person, since there is a clear enumeration of the possible actions to be resolved under customary laws that are limited to disputes within ancestral domains and lands.

However, the IPRA law does not cover situations where the contending parties are IPs belonging to different tribes. In the absence of clear guidance on the matter, the parties should follow any customs and traditions common to both tribes to settle the dispute. The other option is to apply the rules under the conventional amicable settlement of the barangay justice system. If the parties still fail to arrive at a settlement, then the recourse would be to file it with the NCIP.

If one of the parties is a non-IP, the legal route is to avail of the remedy under the Katarungang Pambarangay Law before the case is brought to the NCIP for settlement, according to executive director Ma. Vicenta de Guzman of the indigenous peoples' advocacy group Panlipi.

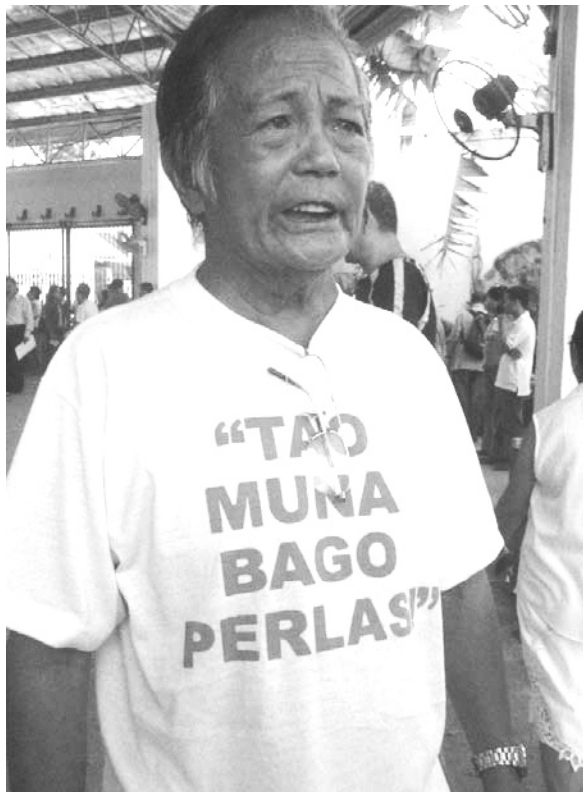
Katarungang Pambarangay Law

The *Katarungang Pambarangay* Law is a compulsory route to the formal adjudication of disputes, unless urgent legal action is necessary from the courts or any government agency. Two bodies are constituted in barangays to conciliate the differences between its residents: the Lupong Tagapamayapa, whose main function is to exercise administrative supervision over various Pangkats - or teams,

and the Pangkat Tagapagkasundo that handle all disputes not successfully settled through conciliation or arbitration.

In barangays where majority of the inhabitants are members of indigenous peoples, the Local Government Code stipulates that customary shall be applied in settling disputes between members. Again, this would seem to indicate that if there is a dispute between an IP and non-IP, then the general law and not the customary law shall apply because the latter applies only to disputes between members of the same community.

In conciliation proceedings among members of indigenous communities, the Local Government Code also holds that customs and traditions shall be applied in settling disputes. For the settlement conducted under customary laws to bar subsequent filing of a case in court,



Jofelle Tesorio

Panglima Calo, a Pala'wan leader
leading the fight to reclaim ancestral waters

attestation of successful settlement from the tribal elders is required. The attested settlement has the same force and effect as a settlement arrived at through the procedures provided upon the expiration of 10 days from the date the attested copy of the settlement is received by the Punong Barangay.

Land Cases

The emphasis on land rights is necessary because all the rights provided in the IPRA are anchored upon the indigenous peoples' attachment to their ancestral domains and lands. Land is the central element of indigenous peoples' existence. It is their source of livelihood. The concept of land for indigenous peoples is life.

There are numerous possible actions involving land disputes that are explicitly provided in IPRA. To begin with, there is a clear enumeration under Section 63 regarding land disputes within the ancestral domain, which are property rights, claims and ownerships and hereditary succession and settlement of land disputes in which the customary laws of indigenous peoples where the conflict arises shall be applicable.

More possible actions are found in the IPRA law that specifically gives the jurisdiction of land disputes either to the NCIP or the regular trial courts. These various actions are explained in greater detail in the following sections.

Titling and Registration

Claim of ownership under IPRA may be done under two general routes: 1) securing a Certificate of Ancestral Domain Title (CADT) or a Certificate of Ancestral Land Title (CALT) under Sections 51 to 53; and 2) securing a Certificate of Title under Section 12.

A CADT 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, while CALT is defined as a title formally recognizing the rights of ICCs/IPs over their ancestral lands. The NCIP has the power to issue both titles as mandated in the IPRA law.

The process of claiming ancestral domains and ancestral lands is outlined under Sections 51 to 53 of the IPRA law and is primarily governed by self-delineation. The CADTs and CALTs are covered by the Property Registration Decree, in the sense that the IPRA law requires the NCIP to register such titles before the Register of Deeds in the local government unit where the property is located. The CADT or CALT confirms ownership over the ancestral domain and ancestral land respectively, with rights and limitations under Section 7 of IPRA.

On the other hand, the New Civil Code provides further guidance to the ownership of land with a title obtained under Section 12 of the IPRA law. Although this provision states Land Registration Act 496, the Property Registration Act or PD 1529 has superseded the former, thus, the reference to the latter law. Under this provision, applicants that choose to avail of the option must be:

- (1) individual members of ICCs/IPs;
- (2) owning *ancestral lands* in their individual capacities;
- (3) in possession and occupation thereof, by themselves or their predecessors-in interest, continuously and in the concept of owner;
- (4) in possession and occupation of the land since time immemorial or for a period not less than 30 years immediately preceding the approval of the IPRA; and
- (5) in possession and occupation of the land and whose claim of ownership must be uncontested by other members of the same ICC/IP.

The claim of title under this provision shall be filed in the Regional Trial Court where the property is located.

One possible advantage in utilizing this option is that an individual owner may acquire title over a piece of property under the Civil Code concept of private ownership. This could be done even

without the consent of other members of the community, and ownership is not controlled by rights and limitations under Section 7 of IPRA.

However, like any other individual ownership of ancestral domains and ancestral lands, the exercise of any option under Section 12 of IPRA could undermine the integrity of the indigenous character of ancestral domains. Outsiders could assume ownership through transfers, resulting in fragmentation. It may also be argued that registration under the optional regime may submit the ancestral land to all the risks of ordinary properties, leading to the loss of the indigenous character of the ancestral domain.

Under Section 48 of the Public Land Act of 1936, the Government recognized the rights of occupants or claimants as a result of the latter's public, continuous, exclusive and open occupation or possession of public agricultural land for at least 30 years under claim of ownership made in good faith. The time frame commenced in 1964 but Presidential Decree No. 1073, which became effective on 25 January 1977, removed this distinction, as follows:

The provisions of Section 48 (b) and Section 48 (c), Chapter VII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or through his predecessor-in-interest, under a bonafide claim of acquisition of ownership, since June 12, 1945.

In its ruling on ***Republic v. Court of Appeals and Paran***, the Supreme Court interpreted these changes to mean that as a matter of fact, during the 13 years between 1964 to 1977, members of national cultural minorities had rights to lands of the public domain, disposable or not.

Pursuant to IPRA, completion of imperfect titles must be filed before 31 December 2000. However, this should not be construed as a prescriptive period that would defeat private vested property rights by failing to accomplish a formality. The major difficulty is that amendatory legislation would be needed to complete titling.

Action to Quiet Title

Under the Civil Code, the right to quiet title is available whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title....

This is an ordinary civil remedy and the proceedings are characterized as *quasi-in rem*, which means that the judgment is conclusive and binding only between the parties, unlike proceedings *in rem* which binds the entire world, meaning third persons not part of the dispute. The registered owner of the property or any person who has equitable right or interest in the property may file this action.

An action to quiet title brought by a party who is in possession of the land in dispute is imprescriptible, or may be filed anytime. The Supreme Court has ruled that an adverse claimant of a registered land who is in possession thereof for a long period of time is not barred from bringing an action for reconveyance. In effect, the ruling seeks to quiet title to the property against a registered owner who is relying upon a Torrens title that was illegally or wrongfully acquired.

There is no specific provision on quieting of title in IPRA, but as stated earlier, the law applicable is the New Civil Code. The action must be brought before the appropriate Regional Trial Court where the property is located in accordance with Rule 63, Section 1 of the Revised Rules of Court on Declaratory Relief and Similar Remedies. This remedy is subject to the right to resolve land conflicts using customary law, especially when the contending parties belong to the same indigenous community.



Action to Claim Parts of Reservations

The IPRA law gives indigenous communities the right to claim parts of reservations within ancestral domains that have been reserved for various purposes, except those intended for common and public welfare and service. Through executive proclamation, the President of the Philippines has the power to reserve alienable lands of the public domain for a specific public use or service such as military reservations, educational institutions, penal colonies and civil reservations.

The lands subject to reservations are limited to public domains of the Government, the use of which is not otherwise provided by law. Since ancestral lands are not lands of the public domains, but are private lands owned by the indigenous peoples, *ICCs/IPs* may claim parts of reservation within their ancestral domains. The IPRA directs investigation and study of uses or reservations found within the ancestral domains, and whenever the reservation no longer serves its purpose or is laid idle, the *ICCs/IPs* have the right to demand that the ancestral domains should revert to them.

Since proclamations for reservations are executive acts, practicability dictates that the action to claim reservation must be filed with the NCIP, as the latter is also part of the executive branch of the government. This is usually done by coordinating with the Office of the President to amend the proclamation, or enter into a Memorandum of Agreement with the agencies in the reservation affected by an ancestral domain claim.

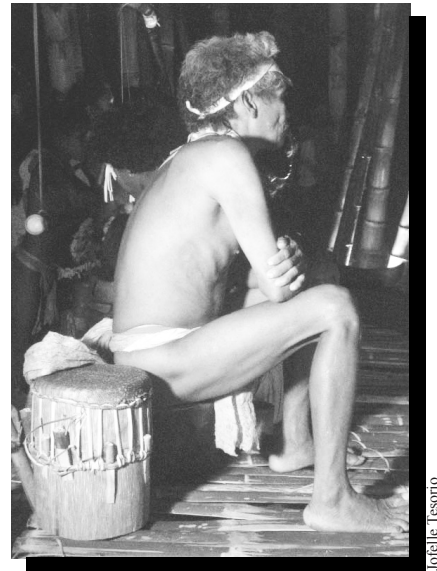
Annulment of Fraudulent Titles

Under the Torrens System of registration, a certificate of title may be cancelled on several grounds, one of which is fraud. This is based on Section 32 of PD 1529, which specifies that fraud must be extrinsic and actual, with the purpose of reopening the decree of registration. The action must be filed with the proper Regional Trial Court not later than one year from and after the date of entry of such decree of registration.

The cancellation of fraudulent ancestral domains and ancestral land titles and claims is within the primary administrative jurisdiction of NCIP. This covers certificate of ancestral domain claims under DENR Administrative Order No. 2 of 1993, and CADTs and CALTs issued by the NCIP that have not yet been converted into Original Certificates of Title. This action does not include the annulment of Original Certificate of Title and Transfer Certificate of Title, as the NCIP has no jurisdiction over titles issued by the courts.

Under Section 54 of IPRA, indigenous communities may file a written request with the Ancestral Domains Office of the NCIP to review existing claims within their ancestral domains that have been fraudulently acquired by any person or community. Any fraudulent claim found may be cancelled by the NCIP after due notice and hearing of all parties concerned. The Ancestral Domains Office acts like a plaintiff or prosecutor in this particular case. The NCIP shall take appropriate legal action for the cancellation of officially documented titles that were illegally acquired, provided such procedure shall respect the rights of possessor in good faith.

The action for cancellation of documented titles shall be initiated within two years from 22 November 1997, the date the IPRA took effect, or until 22 November 1999. After this date, complainants may avail of appropriate remedies as described in the following sections.



A Tagbanua musician

Jofelle Tesoro

Reconveyance

After one year has elapsed, a decree of registration is no longer open to review or attack even if its issuance is attended with actual fraud. But the aggrieved party is not without a remedy at law, for an action for reconveyance is still available if the property has not yet passed to an innocent purchaser for value. This is the sole remedy of the landowner whose property has been wrongfully registered in another's name. If the property has passed into the hands of an innocent purchaser for value, an action for damages should be maintained against the applicant or any other persons responsible for the fraud.

To avoid the possibility of the land passing to an innocent third person and to preserve the claim of the real owner, a notice of *lis pendens* or an annotation that there is a pending dispute over the land may be placed on the certificate of title issued immediately upon the institution of the legal action. The prescriptive period for the reconveyance of fraudulently registered real property is 10 years reckoned from the date of the issuance of the title. The NCIP shall be the party authorized to file the claim in behalf of the ICC/IP concerned.

This action is under the jurisdiction of the Regional Trial Court, which handles civil actions involving the title to, or possession of real property or any interest therein, except forcible entry and unlawful detainer, which is within the jurisdiction of first level courts. This is clear in Section 19 (2) of Batas Pambansa Bilang 129.

Action for Damages

After one year from date of the decree and if reconveyance is not possible because the party has passed to an innocent purchaser for value and in good faith, the aggrieved party may bring an ordinary action for damages against the applicant or persons responsible for fraud or were instrumental in depriving him of the property. Such action may be done within 10 years from the issuance of the Torrens title over the property. This is under the jurisdiction of Regional Trial Court.

Redemption

Under the IPRA law, the right of redemption can be exercised by an IP who: (1) has transferred land or property rights to a non-IP by virtue of any agreement or device that is tainted with defective consent; or (2) has transferred land or property rights to a non-IP for an unconscionable consideration or price. The claimant has a period not exceeding 15 years from date of transfer to claim or demand the return of the contested land or property.

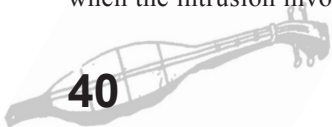
This action would seem to imply that the sale of ancestral land in favor of a non-IP is governed by the national law on the sale of real property. Since redemption is one of the possible consequences of a sale to a non-IP, it must be governed by the New Civil Code. This action is within the jurisdiction of the trial courts, since it is a specific cause of action and IPRA is silent on the jurisdiction of NCIP over such action.

Conflicts Arising from Adverse Claims Within Ancestral Domain

This action is clearly within the jurisdiction of the NCIP, as expressly provided in IPRA. It may be availed of whether the adverse claimant is a member of the indigenous community or not. The qualification that the parties come from the same indigenous community is material only on the question of applicability of the customary law in resolving the conflicts. If the dispute regarding traditional boundaries of ancestral domains is between and among ICCs, customary laws in the land where the conflict arises shall be observed. Hence, like any other action under the NCIP, there is a prerequisite that the parties have exhausted all legal remedies under their customary law.

Unauthorized and Unlawful Intrusion

This violation is explicitly punishable under IPRA. Although there is no express provision in the law causing this action to fall under the jurisdiction of the NCIP, this is deemed to be the case when the intrusion involves ancestral domains.



Expropriation

Expropriation is the exercise by the State of its power of eminent domain. This is found in Article III, Section 9 of the 1987 Constitution. It shall be effected only upon payment of just compensation and upon showing that the taking of the property is for public use. This constitutional process is prescribed as a Special Civil Action under Rule 67 of the Revised Rules of Civil Procedure. The power of the eminent domain is exercised only when there is opposition from the owner to the sale, or by the lack of any agreement on the price of the property.

Taking in eminent domain cases must be attended by the following circumstances: (1) expropriator must enter the private property; (2) the entrance must be permanent; (3) entry must be under warrant or color of legal authority; (4) property must be devoted to public use; and (5) utilization of the property must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

When expropriation is exercised by the State over ancestral domains and ancestral lands, there is an apparent conflict. Expropriation is necessarily undertaken when the owner of the property opposes such taking by the State and essentially results to ousting the owner from the property. However, under Section 64 of the IPRA law, expropriation may be resorted to in the resolution of conflict of interest under the principle of common good. This would imply that expropriation in ancestral domains may be treated as a special kind of taking by the State where a new requisite of free and informed consent shall be included to effect relocation of the affected indigenous community.

Although the IPRA law mentions expropriation, this must be interpreted in accordance with established Supreme Court rulings, which reiterate that expropriation can only be done before regular courts. Therefore, the action for expropriation is under the jurisdiction of the Regional Trial Courts and not under the NCIP.

Certiorari and Prohibition

Since it is a quasi-judicial agency, the actions of the NCIP as a collegial body and those of its Regional Hearing Officers and Commissioners are subject to special civil action of certiorari and prohibition.

According to the Revised Rules of Court, petitioners may avail of an original action for certiorari to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions who has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no plain, speedy and adequate remedy. An action for prohibition asks the court to command desistance from further proceeding in the action specified to a tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, when it acts without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no plain, speedy and adequate remedy.

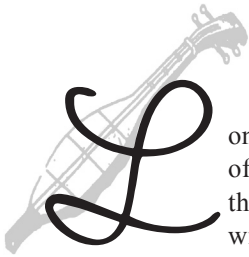
A possible action in this regard could be done after the NCIP issues a CADT/CALT and registers the title before the Register of Deeds where the property is located. The Register of Deeds shall register such CADT/CALT as its ministerial duty. A likely action may be opposition to the registration from the Department of Environment and Natural Resources (DENR), which may institute an action for certiorari to annul or modify the proceedings in the NCIP. It may also file an action for prohibition to forbid the Register of Deeds from registering the title.

Section 59 of IPRA is a fertile source of prohibition actions. This provision requires that all government departments and agencies, before granting any concessions, license, lease, production sharing agreement, must get a certification from the NCIP that the area affected does not overlap with any ancestral domain. In case the NCIP grants the certification, the aggrieved indigenous group may apply with the NCIP for the issuance of a cease and desist order.

Atty. Sedfrey M. Candelaria is the Head of the Katutubo Desk of the Ateneo Human Rights Center, Ateneo de Manila University School of Law. The co-author, Atty. Jill Lopez, is a practising lawyer specializing on natural resources law.

Timuay at Datu: Indigenous Self-Governance in Teduray and Magindanaon Societies

By Rey Danilo C. Lacson and Ester O. Sevilla



Long before Spanish and American colonizers set foot in the southern Philippine island of Mindanao, indigenous communities in the area had their own forms of governance that were appropriate to the needs of the villages. Some of these practices have withstood the test of time, and are gaining renewed recognition and appreciation among younger generations.

This case study focuses on two forms of self-governance in two distinct communities: the Teduray indigenous community, and the Magindanaon Muslim community in Maguindanao province. Their experiences and efforts to revive traditional practices find resonance in overall efforts to improve local governance in the Philippines.

The TEDURAY of Upi

The Teduray is one of the 18 indigenous ethno-linguistic groups that originally inhabited the island of Mindanao. Today, as it was since time immemorial, Teduray communities are concentrated in the towns of Timanan and Upi, in what is now the Maguindanao Province.

As early as 1450, Muslim settlers had established the Maguindanao Sultanate in the area and placed the smaller Teduray community under their political control. However, the Teduray villages retained a distinct leadership and conflict resolution system within the setup.

In the beginning of the American occupation in the 1900s, provinces and towns were created as new geo-political units carved out of the different indigenous villages and settlements in Mindanao. They transformed the Maguindanao sultanate into the Special Muslim Province and much later, into the Empire Cotabato Province. The Teduray territory of Upi was officially designated as a barrio of Dalican (now the Municipality of Datu Odin Sinsuat). The influx of Ilocano migrants from Luzon and Ilonggo settlers from the Visayas in the 1920s increased the area's population and powered its economic growth, mainly from agriculture.

In 1957, Upi became independent from Dalican and was declared a municipality of the Empire Cotabato Province. On October 26, 1976, the town of Upi was divided into North Upi and South Upi through Presidential Decree (PD) No. 1046. North Upi retained the name Upi, while South Upi became known as Timanan.

As of 2004, Upi had a total Teduray population of 12,164 or nearly 30 per cent of local residents, while Timanan had 37,697 Tedurays about, 72 per cent of the total population. The ethnic groups of Ilocanos and Ilonggos forming the Christian group, the Magindanaons representing the Muslims, and the Tedurays who are acknowledged as the indigenous people in the area define what is called the Tri-people composition of the populations in Upi and Timanan. Together, the Tedurays

in the two towns constitute roughly 8% of the 662,180 total population of Maguindanao Province, now part of the Autonomous Region of Muslim Mindanao.

Like most indigenous groups in Mindanao, much of the Teduray geo-political history is kept and transmitted through oral form. Researchers have published a few studies on Teduray laws and conflict resolution processes in recent decades, while in 2002, a tribal initiative was undertaken to put into writing a brief history and the salient political features of what they called the Timuay Justice and Governance system. However, much of Teduray history remains undocumented.

The *Timuay* system

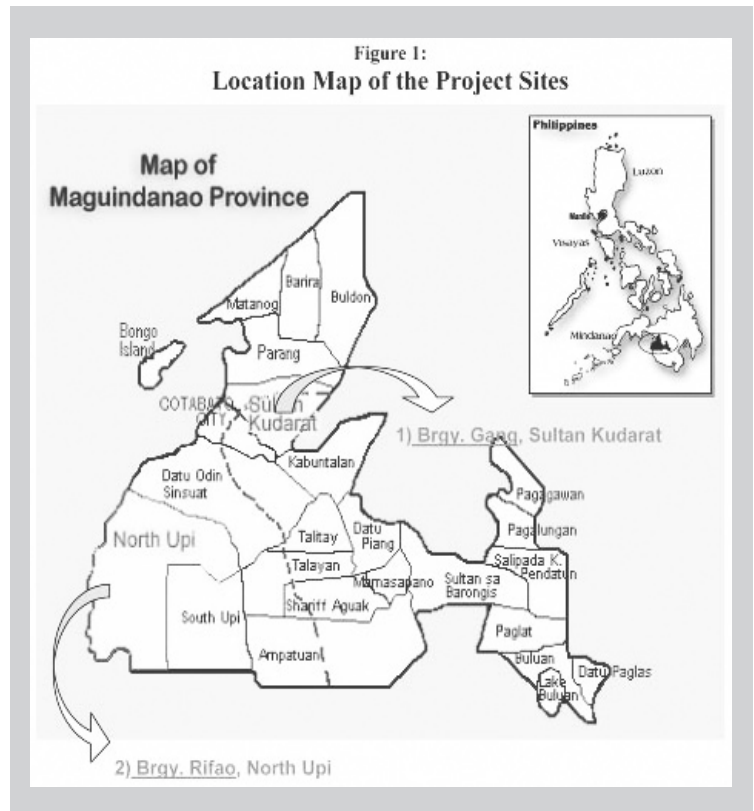
Teduray leaders and elders have asserted that before Islam and Christianity arrived in this part of the globe, eight indigenous tribes in South-Central Mindanao were practicing the *Timuay* system of governance. These tribes were the Subanen, Teduray, Lambangian (half Teduray), Dulangan Manobo, T'Boli, Blaan, Bagobo, and Arumanen Manuvu. The Sultanate, which is rooted in Islam, was introduced in Mindanao around 1450 while the Christian-inspired colonial government started making inroads around 1565. Before these foreign influences arrived, all indigenous societies in South-Central Mindanao followed the *Timuay* governance system, which was functioning effectively at the level of each individual tribe. This claim is validated in recent research that shows these groups still referring to the *Timuay* as their main political figure. The *Timuay* system was evolving towards the establishment of an inter-tribal governance structure when the introduction of the sultanate disrupted the process. Subsequent colonial governments also thwarted the maturing of the *Timuay* System.

This system of governance revolves around the *Timuay*, who is the recognized leader of the village, territory, and community. *Timuay* comes from the generic Manobo term, *timu*

(to gather). Literally, *Timuay* refers to the person whose social, economic, and political status provides him the moral ascendancy to gather people together.

The *Timuay* occupies the highest position in the traditional political hierarchy. He is always a male. In the past, the position was not confined to political functions, but also served as socio-political reference. The community perceived the *timuay* as an individual set apart for political leadership as prescribed in the *Adat*, the traditional set of standards of conduct and obligations of the Teduray.

There are two ways to become a *Timuay*: (a) by inheritance, i.e. being the eldest son of a *Timuay*, and (b) being personally chosen by the *Timuay*. The Teduray assert that the most outstanding



quality of a *Timuay* is his ability to lead the people. Communal identity is linked with him, and the people's geographic and political affiliations are oriented to the *Timuay* territorial sway of influence or *sakuf*. The Teduray arranged their *Fenuwo* (villages) and *Inged* (territories) at the most organic level within the sphere of the *Timuay*. Nevertheless, his relationship to his *sakuf* was neither servile nor feudal in character. Except for making sure that their territory was at peace with neighboring territories by maintaining friendly alliances, a *Timuay* was perceived as just another farmer in the village. Such a relationship was in harmony with the Teduray's egalitarian social character.



URC-Notra Dame University

Researcher hiking to Rifao with Teduray elders

The *Kefedewan*

In spite of the pre-eminence of his position, the *Timuay* is not the sole figurehead in Teduray society. Traditionally, individuals and parties looked up to the *Kefedewan* for representation during formal negotiation of agreements, such as marriage, and non-violent settlement of disputes. He was considered the legal authority and, together with other *Kefedewan*, comprised a respected group of individuals with the following extraordinary skills:

- (a) Good memory, especially of details regarding consummated agreements;
- (b) Comprehensive knowledge of the *Kitab Kaedatan* (customs);
- (c) Mastery of the *binuwaya* (euphemistic) style of speaking;
- (d) Persuasive but polite manner in articulating ideas; and
- (e) Consistent display of patience and calm even during the most heated negotiations.

In the current socio-political context, the Teduray still apply the same criteria in choosing their *Kefedewan* and still look up to him with the same regard. In a recent survey in the barangay of Rifao, respondents gave the following qualities of a *Kefedewan*: articulate speaker, does not show favoritism, knowledgeable in customary law, patient, and has a superb memory.

The term *Kefedewan* is derived from the root word *fedew*, which means feelings. He performs his noble service through a *tiyawan* (formal adjudicatory discussion), where he represents individuals and groups in the traditional conflict resolution process. In contemporary Philippine society, the *Kefedewan* would be comparable to a lawyer. His position is not preordained. Just like the ordinary court attorney, he gradually develops his skills and builds his name within the *Kefedewan* trade. But unlike the court attorney, the *Kefedewan* pays *tamuk* (blood price or fine) for his client when there is a demand for the latter to pay for a crime or transgression committed. A *Kefedewan* who is willing to do this is accorded high regard in the community. The reverse action makes a *Kefedewan* disdainful and untrustworthy in the eyes of the villagers.

The *Kefedewan* always aims to settle issues through a win-win solution, together with other *Kefedewan* involved in a *Tiyawan*. At the core of his concerns is the attainment of justice, which restores good *fedew* in terms of respect for rights and feelings of all people involved. In his book *Tiruray Justice*, Stuart Schlegel elaborates:

Kefedewan represent a particular person more accurately, a particular person and his kindred, but they do not contend in the manner of trial lawyers in adversary

proceedings. They do not try to win for their side. Together, all *Kefedewan* participating in a *Tiyawan* are expected to strive earnestly to achieve a situation where all benal has been recognized, where those responsible for the trouble have through their *Kefedewan* accepted their responsibility and fault and have been properly fined, so that all *fedew* have been made good (*fiyo*). *Kefedewan* act much more like a fraternity of judges than like an array of lawyers; they are committed as a group to an ultimate respect for just decisions that set every *fedew* right. Among *Kefedewan*, this commitment is all-important.

A person who entrusts his *fedew* to a particular *Kefedewan* becomes a *sakuf* of the latter. However, such a relationship is not political in nature. The *Kefedewan* is not bound to the personal interest of his *sakuf*, but to the task of maintaining harmony in the community. Primarily, the *Kefedewan* has no political power. Schlegel explains further:

Although the decisions of *Kefedewan* have authority, they cannot be backed by force. Legal leaders among the traditional Tiruray are authoritative; they are not powerful. A decision that someone was at fault and should be fined is made and accepted by men who are completely powerless to force acceptance of any decision. They cannot have anyone beaten, ostracized, imprisoned in any sense, or executed.

The arena within which the *Kefedewan* performs his unique function is the *Tiyawan* meaning, to converse, with the singular aim of arriving at a common decision. The activity where this purposive conversation is undertaken is called *setiyawan* literally meaning “to adjudicate together.

These considerations would make the concept of *Tiyawan* a form of surface litigation.

A Teduray who wants to forge a formal agreement with another person reports to his or her *Kefedewan*. Commonly, this takes the form of marriage arrangement or conflict resolution process. One’s *Kefedewan* approaches the *Kefedewan* of the other party (either personally or through a messenger) to set a date for the *Tiyawan*, after which the parties concerned are notified about the appointment.

The *Kefedewan* and *Tiyawan* are two major components of a synergistic mechanism within the Teduray socio-cultural system whose primary function is to harmonize all human transactions within the framework of the *Kitab Kaedatan* (customary law that prioritizes respect among members). These exist as a form of social control, and function symbiotically to maintain interpersonal harmony and peace. Sanctions for misbehavior are finalized in the *Tiyawan*. The entire community enforces the penalty, with ostracism as the ultimate punishment.

Today, Teduray communities still prefer the resolution of conflicts in the traditional manner, especially when the parties involved are all Teduray. According to one interviewee, contending parties are usually involved in making decisions regarding penalties and how these are enforced. Mode of payments may include money, clothing, or farm products. Individual problems still pass through the *Kefedewan* before reaching the level of the *Timuay*. If they fail to solve the problem, then the case is endorsed to *barangay* (smallest political unit) officials.



Teduray community in Rifao

***Timuay* Justice and Governance**

Aside from the *Timuay* and *Kefedewan*, another important person in the community is the *Bliyan* (or *Beliyan*), the clairvoyant medicine person. The *Bliyan* is not chosen by the people, but rather, is endowed with the knowledge and power to communicate with unseen entities. Aside from attending to the ailments of the villagers, the *Bliyan* is consulted on such matters as farming and ritual activities for thanksgiving, cleansing, wedding, and burial.

The *Timuay*, *Kefedewan*, and the *Bliyan* were the recognized key personalities in traditional Teduray communities. Among them, the *Timuay* occupied the most prominent position in the leadership structure. Later, the *Kefedewan* and the *Bliyan* also gained prominence among the villagers.

Things changed with the arrival of American colonizers in the early 1900s. *Timuay* Alim Bandara, a traditional leader, traces the changes as follows:

Originally, the *Timuay* was prominently recognized. (Our ancestors) Mamalu and Tabunaway were *Timuays* before the coming of Islam. The *Timuay* was known as the original leader in the community. As leader, he had assistants in running community affairs who were called *Kasarigan*. One of his *Kasarigan* was the *Bliyan*. He possessed the expertise in interpreting dreams, and reading celestial signs through the stars. The people consulted him about hunting, fishing, planting and healing when somebody got sick.

The *Kefedewan* was different from the *Timuay*. The *Kefedewan* was the doctor of feelings. He cures the hurt feelings of people. While the *Timuay* carried a political responsibility, the *Kefedewan* served in the conflict resolution mechanism of the community.

The Americans removed all these traditions. They took away the recognition of the *Timuay* and other community leaders. They changed the leadership positions with those of the mayor, barrio captain, and other official titles. They also changed the names of places. Instead of *fenuwo* and *inged*, they changed these into *munisipiyo* (municipality), and *barrio* (barangay). This was one of the reasons for the uprising in our territory in the 1920s. They changed the leadership set-up with a new system.

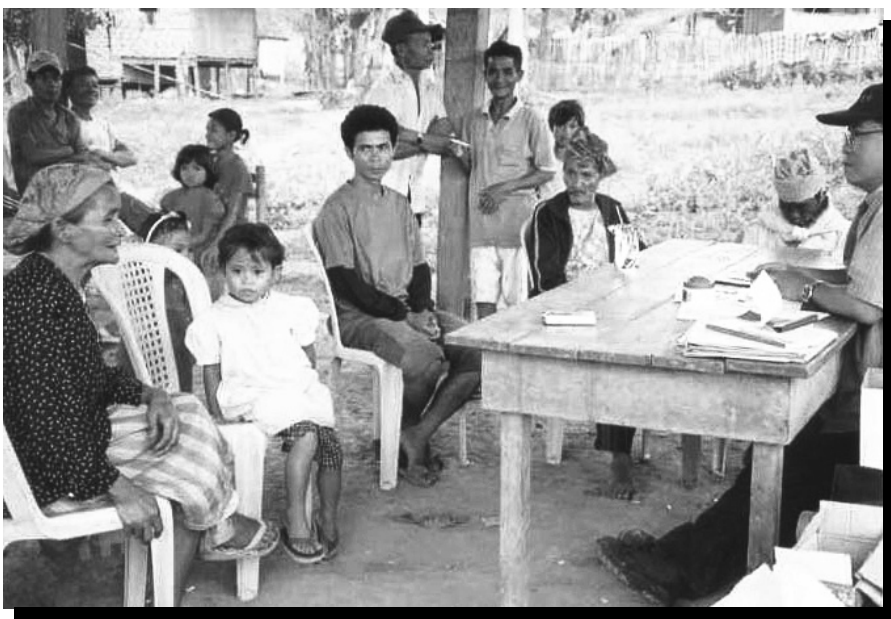
However, the Americans were not able to replace the activities of the *Kefedewan* and the *Bliyan*. The *Kefedewan* and the *Bliyan* remained very effective and functional in the community. The government had no substitute for the *Kefedewan* and the *Bliyan*. Over time, and until now, new generations have grown up with and have come to know them as the recognized leaders of the community.

In 1993, the larger Teduray communities in the municipalities of Upi and Timanan, including the settlements in Lebak, Kalamansig, Datu Odin Sinsuat, Talayan, Shariff Aguak, Kulaman, and Ezperanza gathered together and formed the Mamalo Descendants Organization. The group was named after the legendary ancestor of indigenous peoples in south-central Mindanao. Its basic goal was to unite Teduray communities under their common history, and bring back the traditional *Timuay* leadership structure.

In 2002, the Teduray people formalized the revival of the traditional leadership structure through a mechanism called *Timuay* Justice and Governance. *Timuay* Alim Bandara, who was named the *Timuay* Labi or Chief Executive of the group, explained that the primary reason for the move was “.... to raise people’s awareness about the traditional structure of the *Timuay* leadership. We explored ways on how Teduray governance could be recognized. We were coming from the fact that the *Timuay*, *Kefedewan*, and *Bliyan* are still very much alive in our collective consciousness despite the domineering presence of the mainstream governance system. And so, the collaborative effort to revive the traditional leadership structure was pursued in earnest. Our recognized community leaders,



elders who were illiterate but very wise, and our active and educated youth discussed, planned, and collaborated to draw up the current design of the Timuay Justice and Governance. Finally, we were able to establish the TJG. Presently, we are advocating and looking for ways to have it



Interviewing the community in Rifao

recognized in the regional government structure of the ARMM. (See Figure 2 on page 48)

Teduray leaders who are now occupying government positions highly recommend the recognition of the TJG in the ARMM. They foresee the formal deliberation of the process in the Regional Legislative Assembly, especially in the context of proposals to form federal states. Teduray officials believe this is an effective system of governance that fits the needs and aspirations of their society, and allows the implementation of Teduray self-governance.

Internally, the TJG is structured to facilitate greater community participation in the overall consultation process. According to a brochure explaining the TJG, it embodies the traditional Teduray concepts of leadership, laws, policies and programs of governance. Its characteristics are founded on the traditional principles of close affinity with the natural environment, communal ownership, collective leadership, equality of all human beings, *Kefiyo Fedew* (harmony), and *Lumot Minanga* (progressive pluralism).

Since the establishment of the TJG, the *Kefedewan* was assigned a specific position in the governance collaborative effort between the *Baglalan sa Fenuwo* (local council of *Timuays*) and the *Samfeton*.

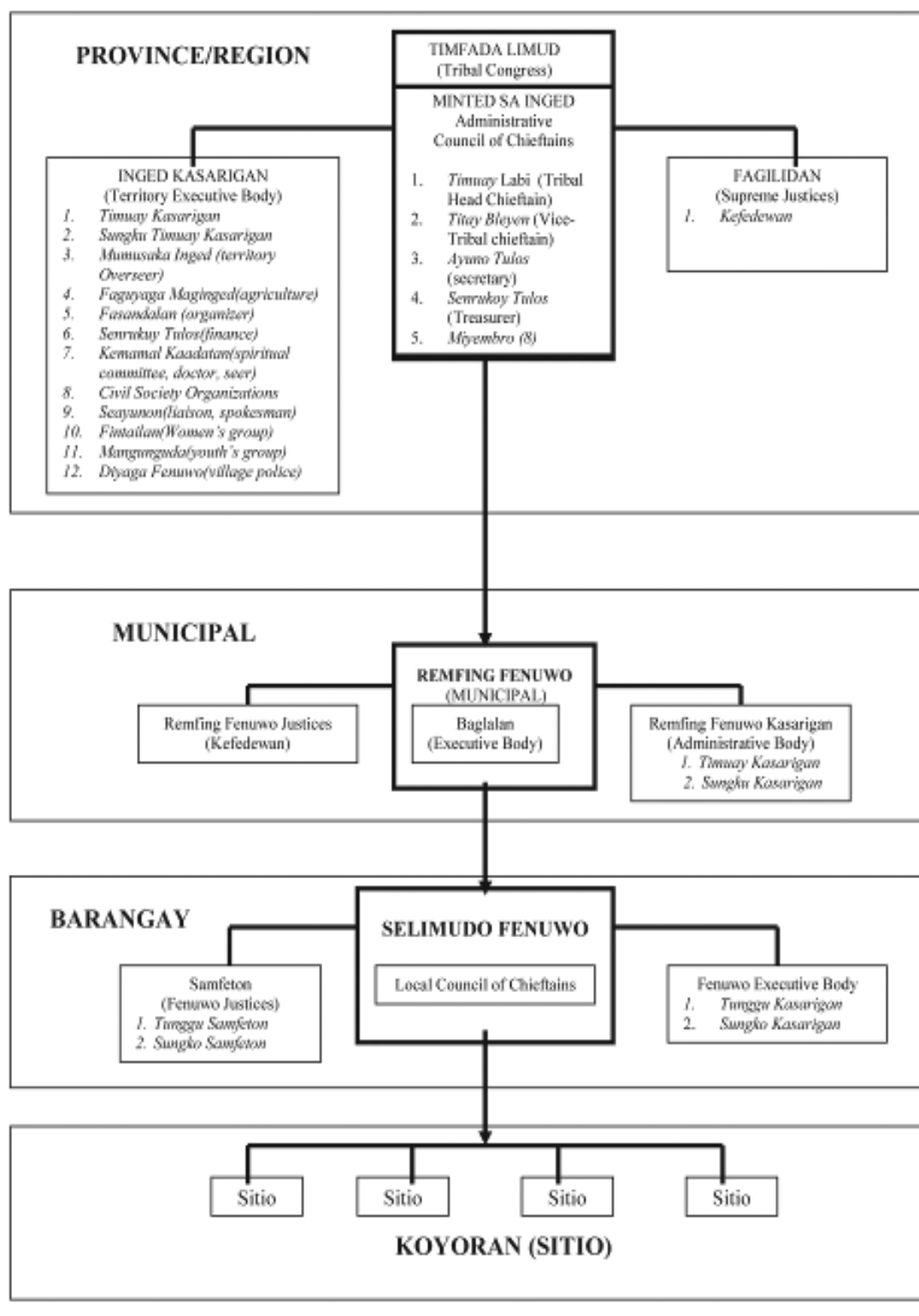
When the need arises, the Teduray turn to the *Kuyog* or tribal warriors who may attack other villages or serve as the village army during tribal wars. The *Diyaga Fenuwo* is an armed body that exists as internal defense force of the *Inged*. It is not engaged in inter-tribal wars, but basically maintains peace and order within the community.

The Teduray practice of self-governance is manifested in the case of Barangay Rifao, where the villagers collectively settled the disputes arising from illegal logging. They mobilized all resources within their means to demand immediate action on the problem from government authorities. This included the revival of the *Diyaga Fenuwo* that engaged the armed guards of the logging company operating in Barangay Rifao. (See Repelling Loggers in Rifao)

Teduray Governance: The Path to Political Ascendancy

At present, ordinary Teduray are aware that leaders in the mainstream governance system are chosen through elections. However, they also know that there was a different process in the

Figure 2: Structure of the Timuay Justice and Governance



past. Vivid memory and strong belief in the traditional process prompted one Teduray official to declare that, Elections are not compatible with the Teduray system.

Another *Timuay* said, In the past, there were no written documents. The process of choosing a leader was done through *Timuay* discussions because people were illiterate. There was no legal basis to follow. Basic criteria were simply based on skills and expertise. When you are recognized as *Timuay* or *Kefedewan*, you are never replaced until you die.

When the Municipality of Upi was first established in 1957, it had a Teduray as its first Mayor. After him, Muslim mayors, all from the Sinsuat clan, succeeded to the position one after the other. It was only in the last local elections that a Teduray mayor was elected again.

The Sinsuats who became Mayors under the mainstream government setup were at the same time Datus in the traditional Muslim social setup. However, the newly elected Teduray mayor is not a traditional leader; hence, he is finding it difficult to govern the municipality. A Key Informant explains why:

The Sinsuats sustained the same linkage between the Muslim Datus and Teduray *Timuays* when they sat as mayors of Upi. Hence, their role as mayors in the mainstream system was simply titular in nature. In truth, it was the *Datu-Timuay* linkage they were implementing.

It was all right for us, because it was the way we had been maintaining links with the leadership. Actually, until now, among Muslim municipalities like Shariff Aguak, it is the *Datu* system that prevails in community affairs. That is why there is truth to the saying that there is no election in Shariff Aguak. There is only selection.

That was the way things were done in the *Datu* and *Timuay* systems. They passed through the process where leaders were simply appointed and were not voted upon by the people. That was the system we followed for a long time, and it was fully understood by even the most ordinary people. That is why today, even when somebody has been elected as mayor or barangay chairman, people still perceive of him as a *Timuay* (or *Datu*).

“At present, our mayor is a Teduray. One of his difficulties lies in his inability to duplicate such kind of a relationship because he is not a *Datu* (or *Timuay*). In people’s minds, that was the standard transaction. It is not his fault if he could not satisfy such an expectation. He is sincere in trying to fulfill his responsibilities and duties in the mainstream system. Some people could not simply comprehend the mainstream system. As of now, he is very much pressured in finding a strategic approach to this problem.

Another thing, in Teduray society, we understand that we are all equal. There is no idea of constituency. The leader simply facilitates responses to the concerns of the people. There is no hierarchical position. This is the principal value in the establishment of the TJG all are equal including the leader.

Although many Teduray officials recognize that the electoral system is not compatible with their values, it is worth noting that many Teduray leaders have held government positions at one time or another. They do not see this as a source of conflict, but instead, as a way of sharing responsibilities. Minor problems in the community are still settled through the traditional *Kefedewan* system, while bigger issues such as logging operations are brought to the attention of municipal officials. To formalize this setup, Teduray officials have recommended the recognition of the Teduray system of political ascendancy, including the Teduray justice system.

The positions of the *Timuay*, *Kefedewan*, and *Bliyan* have been effectively sustained and kept alive through the years despite the imposition of the mainstream Philippine governance system. But its traditional socio-political schema has been dramatically altered. Today, the provinces, municipalities, and barangays that cover different areas supersede what used to be delineated as

Repelling Loggers in Rifao

Barangay Rifao is one of the barangays in the mountainous terrain of the municipality of Upi. Around 200 Teduray reside in the village. Their main occupation is farming – both swidden cultivation (*kaingin*) and plow agriculture. Rice and corn are the major crops. Some households raise livestock such as chicken, swine and goats. Others rely on hunting, wood gathering, and other livelihood to sustain their needs. The last forest frontier of Upi is found in Rifao, where there are about seven hectares of forest left.

In November 2002, residents of Rifao were surprised when groups of men arrived and started felling trees in their forest. Immediately, they suspected the activity as part of the logging operation in the area. Being territorial by nature, they immediately became alarmed, as they consider the forest an integral part of their entire existence. A barangay kagawad (village councilor) recalled, “Instinctively, we felt obliged to defend our forest.”

Their apprehension grew when they saw several armed men with the loggers. Later, gunfights broke out between the armed men and what the community called its “internal defense force,” which is composed of the revitalized *Diyaga Fenuwo* (village police), according to key informants.

The incident drew the attention of the Philippine Army, Department of Environment and Natural Resources (DENR), the Municipality of Upi, and local media, which immediately sent representatives to dialogue with the residents. The meeting was held inside the Day Care Center of the barangay. A DENR official explained that the tree cutters were part of the DENR working group implementing the Integrated Forest Management Agreement (IFMA) 005. This was supposedly a government project that is meant to protect and manage forest resources. The explanation somehow dispelled the fear of the residents, and they warily allowed the DENR to resume their forest activities. However, the residents observed that cutting trees became the main activity of the program rather than reforestation. One resident commented, “Instead of planting trees, they brought in 12 bulldozers, dump trucks, and 20 chainsaws. The cutting of trees went on. We perceived them as loggers clothed with IFMA 005.”

Alarmed once again, the community frantically planned their next course of action. The TJG local structure and barangay officials, who were also the respected elders of the community, discussed the problem. The deliberation was intense, but it did not take long for them to finalize a decision to defend the forest and their territory through legal means. They drafted a letter of complaint to the DENR Regional Office (ARMM) and requested for a dialogue with government officials. The letter expressed the collective demand of the community for the DENR to terminate the “logging operation” in Rifao. During the dialogue, the DENR officials insisted that the IFMA could not be cancelled because it is a national program, and refused to budge from its position.

After the meeting, the *Timuay* and the *Kefedewan* gathered the people to deliberate the matter once again. A *Timuay* recalled:

“All residents were summoned to attend in order to ensure that a consensus is reached. The *Timuay* and the *Kefedewan* talked most of the time, while the people simply listened to and agreed with the opinions of the leaders. Once in a while, a few brave individuals articulated their personal opinion. It was through this process that we were able to forge a decision to defend our territory. But we realized that we could not simply terminate the IFMA because it is a national government program. Instead, we decided to seek the exclusion of Rifao from the area covered by IFMA 005. Through the *Baglalan*, we immediately informed the Mayor and LDCI (a local NGO) about our decision. The Mayor himself made an ocular inspection in the area and facilitated the negotiation between the community and DENR. It was finally agreed that Rifao would be excluded from the area of coverage of IFMA 005. Immediately, the delineation of the boundary was undertaken.



Forty residents of Rifao assisted the DENR who used GPS (Global Positioning System) to delineate the boundary. Finally, the boundary was set on the edges of Rifao and Sinepak.”

However, the residents observed that IFMA people continuously encroached inside Rifao area. According to one *Timuay*:

“In spite of the agreement, IFMA personnel continuously encroached inside Rifao area and cut down trees. We put up a monitoring team to guard our area. It was a composite team composed of representatives from the Baglalan, civilian volunteers, LDCI, and LGU. Once again, the people, the *Baglalan* and the *Kefedewan* held a meeting. This time, some NGOs joined the discussion. We decided to write a letter to President Arroyo. Yet, even the Regional Government of ARMM ignored us. One day, a group that we call our “internal defense force” burned down several logging equipment. A gunfight also occurred. We came to know later that the IFMA area increased its security personnel. On our part, we requested for an Army detachment in Rifao in order to strengthen our monitoring of the area. As of now, the situation has not changed. It is difficult because we cannot be comfortable as long as the logging operation is there. There is no peace.”

A key informant clarified that the *Diyaga Fenuwo* does not move alone when it comes to armed activities. Operating side by side with the village force is the *Kuyog* or warriors. He explained: “The *kuyog* staged an uprising in the 1920s. They were the warriors and combatants who could attack the enemies even outside their territory if needed. Their modern-day equivalent would be the Marines. The *Diyaga Fenuwo* acted as local policemen who took care of peace and order in the community. Their function was more on the defensive side, and they could not operate beyond their territory.”

Inged (territories) and *Fenuwo* (villages) relative to adjacent domains of other groups such as the Arumanen, the Dulangan, and the *Magindanaon*. Consequently, the Teduray living within this set-up possess a mixed perception of the leadership structure. Very often, ordinary Teduray folks now inter-changeably refer to the *Timuay*, *Kefedewan*, *Fagilidan*, *Baglalan*, *Barangay Kapitan*, and *Kagawad* as The Leaders. This is reinforced in the way Teduray communities operationalize the present leadership set-up. Very often, the *Barangay Kapitan* (barangay chairman) and *Kagawad* (barangay council members) are also positions taken by *Timuays* or potential *Timuay*. Elected officials in municipalities and barangays dominated by the Teduray are also conferred with the *Timuay* titles. However, when pressed further about their traditional perception of leaders, only the *Timuay* and *Kefedewan* surfaced as the prominent generic traditional titles.

Teduray villagers stressed that the primary problem with the present system of electing leaders is the ‘*palakasan*’ (political patronage) system. A key informant said: Even those who are not qualified, as long as they are backed by big politicians, become leaders. This results in disunity. Many people refuse to cooperate with elected leaders, so the latter employs threats. In barangays with a mixed group of Teduray and settlers, if the local official is a settler, the Teduray often gets neglected. Often, the Teduray has no chance of winning the election. There is discrimination. Usually, the one who has money wins the election.

At present, the Teduray have a generally positive attitude towards local governance because the chief executive of the municipality of Upi is a Teduray. The municipality of Timanan also has a Teduray mayor, who was sworn into office after a heated contest in 2002.

However, there are fears that a change in leadership will once again mean problems for Teduray communities. A Key Informant pointed out, "As of now, the mayor is a Teduray so Teduray concerns are given attention. Once he is replaced by a non-Teduray, we will get sidelined again."

In addition, Teduray government officials pointed to the larger problem of non-recognition of the Indigenous Peoples Rights Act of 1997 (IPRA) in the ARMM. A Department of Education (DepEd)-ARMM official said one big obstacle to Teduray concerns is the lack of recognition and respect for indigenous rights within the autonomous region.

Teduray leaders believe the recognition of traditional laws in the mainstream governance system would help solve the problem of government neglect of the Tedurays. As one leader said, "I am convinced that the traditional way is more effective for us. I wish the government would recognize it. Another problem is the logging operation. Right now, they are still in the area, but we don't do anything to them as long as they don't encroach into our barangay."

The recognition of their system as stipulated in the TJG is seen as an opportunity to mainstream Teduray socio-cultural, political, and economic issues.

Timuay Governance and Muslim Leadership: Then and Now

Before the American era, the Teduray leadership structure had to coordinate with the *Datu* or *Sultan* of the Muslims. The latter had been able to firmly establish the Sultanate governance system, based on the principles of Islam, over a wide territory in Mindanao including the Teduray communities. With the Sultanate system superseding the *Timuay* system, Muslim leaders treated the Teduray people as constituents. However, the relationship between the Muslim and the Teduray leadership presented a unique expression to the idea of assistance, which is far from the government assistance in the form of projects that is prevalent today. A Key Informant explained:

Our only connection with Datus in the past was simply to maintain goodwill and peaceful interaction with one another. I remember that we used to give *sawit* (tribute) to them. It means that we let the *Datu* taste the produce from our farms. In exchange, they gave clothing and other materials that could, in turn, be given away as dowry. For example, the *Malong* (Muslim wraparound cloth) in the past carried high value as dowry. Presently, the *Malong* has almost no value anymore. It is just an ordinary fabric.

That was how we connected with the Sinsuats when they successively became Mayors. They were considered *Datu* under the traditional system, and they became mayors in the mainstream system. The only problem was, the *Datus* treated us as their constituents. They had the tendency to treat us as sidekicks. In the past, we allowed them to do that, but now, we have begun to resent this treatment. We have realized that the *Timuay* system is a structure outside of the *Datu* system, and we are not their constituents. In our view, we have a different governance structure from theirs.

With the establishment of the democratic system under the American rule, the Teduray's socio-political link with the traditional and Muslim leadership gradually weakened. A *Timuay* FGD participant declared, "In the past, the Teduray had no connection with the mainstream. Their attitude was to retreat away from Muslims and Christians. But they did not hide. They simply kept their distance, even as they maintained economic ties. *Timuay* functions and activities were suspended and paralyzed because barangay captains took over the management of the barrio. The Teduray could only perceive of their leaders as *Kefedewan* and Bliyen. It was through them that the Teduray participated in community affairs."



Even as the Datus' hold on indigenous populations waned, their system of governance remains prevalent in Muslim strongholds, such as Maguindanao province.

The MAGINDANAON of the Rio Grande

The Magindanaon inhabit the plains along the Pulangi River in the southwestern part of Mindanao. In relation to this great river (also known as the Rio Grande de Mindanao), the people were called the *tau-sa-ilud* (downriver people) and *tau-sa-raya* (upriver people). Since majority of the population lived along the banks of the river, they became farmers and fishermen. With the passage of time, the settlements of these two groups became the traditional seats of the Mindanao Sultanate and the Buayan Sultanate.

Before the arrival of Islam, Magindanaon social organization consisted of a number of localized groups descended from a common ancestor or *bangsa*, that were associated with particular autonomous or semi-autonomous *inged* or localities. The larger localized groups produced chiefs who were able to extend their power beyond their own *bangsa* and became chieftains, or in exceptional cases, rulers of harbor principalities.

The Magindanaon trace their ancestry to a legendary chieftain named Tabunaway. He was believed to have welcomed Sharif Kabungsuwan and became one of the first converts of the Arab missionary from Johore. Upon conversion to Islam of the Magindanaon, sovereignty passed from Tabunaway to Sharif Kabungsuwan, who set up the structure of the Sultanate. Under this tradition, Sharif Kabungsuwan was preeminent in representing the *datu* (ruling class) by virtue of his princely bloodline. The *datuship* of Magindanaon was therefore vested in Sharif Kabungsuwan, and his direct descendants became eligible for succession to the Magindanaon ruling dynasty. Tabunaway acknowledged the rule of Sharif Kabungsuwan with the understanding that, in exchange, neither he nor his descendants would pay tribute to any *datu*, and no *datu* could be proclaimed as sultan without the participation of a Tabunaway descendant.

Traditional Magindanaon Society

Early Magindanaon society consisted of the following distinct classes:

1. The *datus* were the rulers or the descendants of rulers. They were landlords, jurists, religious functionaries, and noblemen. Their prestige rested on their claim to royal blood, their wealth, and their talents as leaders.
2. The *dumatu* were the descendants of Tabunaway, a class that was neither ruler nor ruled. The *dumatus* have kept their own genealogical records (*Tarsila*) of the Tabunaway lineage, principally to preserve their privileges vis-a-vis the Magindanaon aristocracy. Their special status allowed them to maintain separate *bangsa* that were ancestor-focused, self-ruled, and relatively corporate. The *Dumatu* served during the ceremonial installation of the Sultan of Magindanaon. According to historian Michael Mastura, the custom called for the oldest Tabunaway descendant to procure the sacred white earth upon which the sultan-elect ceremoniously stepped for the confirmation of his sultanate. The role became ritualistic. It is the belief in Magindanaon society that no sultan would be successful unless he performed this rite. Whenever the white earth could not be found, the sultan had to step on the palm of the oldest *dumatu* as a substitute for the stepping-on-the-earth ceremony; it was symbolic of the procurement of the white earth for confirmation.
3. The *endatuan*, or the retinue class, were male Muslims who were called *kanakan* and were required to accompany their *datu* on expeditions. They were subjects of *datus*



rather than of the realm, and were considered residents of particular settlements. Unlike their rulers, they could not demonstrate sufficient kinship with Sharif Kabungsuwan so they could not qualify as *datu*.

4. The *ulipun* or disenfranchised people were debt-bondsmen whose status resulted from punishment for a legal offense, failure to pay tribute or repay a debt, or from being sold by relatives or by self-sale. This class was neither ascribed nor permanent, but could be inherited. The system inhibited self-redemption because *datus* favored maintaining a high proportion of followers that were bound to them.

This stratification acquired the force of *taritib* (order) and found its expression in the *Parualan* (the Maguindanao code of laws). An authoritarian relationship existed between the *datu* (ruler) and the *endatuan* (ruled). The datuship received the support of the Muslim population, despite some despotic tendencies and acts of oppression. This relationship between those in power and their dependents was, and still is, based on personal attachment and traditional authority.

Governance became an abiding interest to the *datu* class after the introduction of Islam in Mindanao. The second category class, the *pandita*, claimed spiritual influence over the masses. He was intimately related to the religious law (*shariah*) and customary law (*adat*). In theory and practice, members of the religious elite (the *pandita*) were the guardians of the Qur'anic law and the prophetic *hadith*. They were responsible for the spread of Islam, acted as functionaries in litigations, performed matrimonial ceremonies, administered prayers for the dead, maintained the *madrasah* (Islamic school) and conducted tutorial lessons.

The Datu System

Today, the *datu* system remains the basic form of traditional governance among the Magindanaon people. Although they recognize Philippine laws in varying degrees, they still adhere to customary laws because these are more suited to the communities' interest. Even as they recognize the power of their respective barangay captains, the *datu* maintains leadership and authority over his constituents, especially the members of his clan.

The *datu* system gives the power to rule to royal families or clans that have a *datu* who traces his ancestry to Sharif Kabungsuwan. The elders among families or clans form a council that helps the *datu* in governing the entire clan and the ethnic group. The council of elders serves as the repository of customary laws and traditions, and helps the *datu* in making decisions and resolving conflicts.

In the case of the few sultanates, it is the *sultan* who serves as the head of the ethnic group. Both the *datu* system and the sultanate are highly feudal in character and form. Royal bloodline, family ties, and wealth are the main factors that determine the head of the system and the council of elders. While the sultans appear to be little more than the relics of bygone days, however, the *datu* system has remained vigorous until today.

The *datu* system dominates every social, political, and economic aspect of life. The *datu* is expected to be the provider of livelihood and employment, and assistance in time of need. Because the *datu* system and the local government meshed into one system during the 20th century, the *datus* and the leaders of royal families and clans have also become the elected officials. The council of elders from the various clans generally decides the outcome of local elections. When the decisions of the councils are divided, conflicts are resolved in the councils of the *datu* system rather than in the formal institutions of government.

The Magindanaon of Barangay Gang

Barangay Gang is located in the western part of the municipality of Sultan Kudarat in the province of Maguindanao. Created in 1960, it has a total land area of 177 hectares. It is strategically



located along the national highway and is just a few kilometers away from the regional hub of Cotabato City. The population of Barangay Gang is 100 per cent Magindanaon. Some women who were formerly Christians converted to Islam after they took Magindanaon husbands, according to Barangay Chairman Abdulbasit Edza.

Based on its 2004 socio-economic profile, Barangay Gang has about 2,250 residents. After ten years, the population increased to 3,500 people. Historically, the barangay was controlled by only four prominent *datu*s who were related to one another by blood—*Datu Ama ni oki Egal*, *Hadji Buto Bada*, *Hadji Ali*, and *Datu Hadji Karim Mastura*. The last *datu* is the son of the Sultan of Magindanaon. It is not surprising therefore, as mentioned by Barangay Chairman Edza, that most people in Gang today are related to one another by consanguinity or by affinity.

Majority of inhabitants derive their income from farming. Because of its proximity to Cotabato City, a substantial number of the labor force goes to the city to work as hired hands in construction companies, or as vendors in the wet market. Several families are engaged in furniture making, which appears to be one of the emerging cottage industries in the area.

The barangay has 18 mosques, three madrasah schools, and one public elementary school with 20 teachers. Barangay Gang has produced more than a hundred professionals—medical doctors, engineers, nurses, commerce graduates, teachers, and others.

Choosing Magindanaon Leaders in Modern Times

Interviews with residents reveal that the Magindanaon of today choose their leaders through elections, following the pattern in the larger dominant society. Instead of inheriting their positions or getting appointed by the reigning sultan, the *datu*s now they have to go through the election process. However, the voters do not like the use of the *palakasan* (patronage) system

in the elections. Whoever is the choice of the majority party wins, largely because of the machinery and the money that is spent to ensure the victory of its candidate.

Despite the uneven contest, the Magindanaon are able to practice some of their traditional practices in choosing leaders whom they believe will best serve their interests. As one respondent put it: We have managed to neutralize the negative effects of elections in our community. We agree to choose our leaders from among the different families. Each family is represented. Bad and ineffective leaders are asked to leave the post. We ask any member of our community who disobey our social order and values to get out of our place or else, they get ostracized.

The people of Gang cited the importance given to the Council of Elders, or simply the elders who belong to the *datu* class in the community, in making decisions. The Barangay Chairman, who



A Tiruray elder in Rifao

has held his post for 17 years, admitted that he had to consult with the elders every time a major decision had to be done. This is still very much in keeping with their *Adat Bedat* (customary laws). One of these elders, Hadji Alibasa, who holds the title *Sheik a Datu sa Maguindanao* said: The people look up to me—if I give my approval they too will say ‘yes’ to the project ... As a rule, the community turns to me for any concern because I am the oldest and at the same time the Chairman of the Council of Elders.

In a study conducted by graduate student Abubacar Datumanong among selected *datus* in Maguindanao Province, specifically in the municipalities of Sultan Kudarat, Mamasapano, and Kabuntalan, he found out the importance of *datus* in maintaining harmony in their respective communities. They often constitute the Council of Elders, which serves as a third party entrusted to discern the underlying causes and balance the long-term interests of the community with the weight, motives, and context of any conflict. The Council upholds traditions and social values, shoulders responsibility, assigns tasks, coordinates activities, makes decisions, and exercises foresight in often volatile situations.

The Council of Elders signifies power, authority, and order as well as the continuation of the community itself. The Council stands as the preserver of the cord that binds each member to another, and the upholders of the law, according to Datumanong.

Characteristics of Magindanaon Leaders

Since the Magindanaon see their *datu* as legitimate sovereign, they expect him to be intelligent, just, courageous, approachable, and most of all, religious. For the Muslims, there is no dichotomy between secular and religious aspects of life; hence, their leaders are expected not only to be knowledgeable in running the day-to-day affairs of their communities, but also to be their religious guides along with the *imams* and the *ustadjes*. As one key informant states: A *datu* is a leader by virtue of his birth, whether he is an elected leader or not. Whatever he does, a *datu* is a *datu* which means that he is trustworthy, patient, and fair in dealing with every body.

Another key informant succinctly describes their leaders as those who are respected in the community, not those feared because they have wealth or arms. Not all those who are feared are respected, because these leaders may have followers only because of their might. Once they lose it, their followers also disappear.

Problems in Choosing Leaders

Residents in Barangay Gang believe that the electoral process is fraught with problems because this system of choosing leaders is alien to the culture of the Magindanaon. They have observed that money and goons are the main factors that determine one's success at the polls. Therefore, one could not expect to win if one is not supported by the administration, which has all the



Magindanaon leaders in Sultan Kudarat

URC-Notre Dame University

resources to guarantee its protégée's victory.

Their traditional practice is to select leaders from among elders who have been chosen by their respective families as their representatives. These elders in turn choose the most respected and honored among them, not to rule over them but to lead them. Thus, there is trust and confidence between the people and the leaders, because they are chosen by consensus of the elders. There is no money involved in the process. This is the reason why majority of the respondents in this study recommended that they go back to the traditional system of choosing their leaders.

Making Decisions

Despite the entry of Western-type of leadership, Muslim communities have adhered to their own ideology and system of laws based on traditional and Islamic teachings. Policies and programs encompassing all aspects of life—political, economic, social, religious, and cultural—are based on the Qur'an and the traditions of the Prophet. Hence, in the Magindanaon system of governance, there is no need to come up with policies, laws, institutions or programs because these are already built into the system. Since every Muslim is obliged to learn Islamic teachings by heart, there should be no problem for leaders or followers with regards to discharging their responsibilities as individuals and as members of their communities. Problems only arise when Western-type laws are enforced, for as far as Muslims are concerned, these are either shallow or contrary to customary laws.

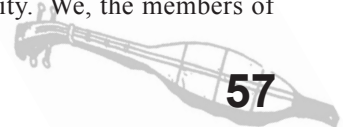
According to a Magindanaon Islamic studies professor at Notre Dame University in Cotabato City, there are institutions in the Muslim community that can be tapped for any policy or program. As far as family matters are concerned, the authorities are the elders since they are the ones who are familiar with the *adat taritib* in the family. For religious concerns, there are the *ustadjes*, the *imams*, and other religious leaders who can be consulted. Since Islam is a way of life, the *ulama* are involved because they are the experts in *shar'iah* law. Each sector in Muslim society has a representative. Among the *ulama*, one of them handles the most serious cases and is the final arbiter. In a family or clan, one of the elders is the most respected. This is true in all other social institutions. In all these matters, consultations take place. No impositions are made on any member of the community since all are part of the decision-making process.

Respondents attest to the fact that Islam is basically consultative in nature. Hence, before a new project is implemented, the leader or leaders—the barangay chairman and his council in the case of Barangay Gang—consult with the elders first, then with the community. It is only when their consent is given that the barangay leaders implement the project. Barangay Chairman Edza explains the process further: Before I embark on any project in the barangay, the first thing I do is get the advice of the Council of Elders, especially that of its chairman, because he knows a lot about our customary laws. Then I call a meeting of the Barangay Council to prepare a resolution pertinent to the project. Once the appropriate resolution or ordinance is arrived at, we consult the community. Each *Barangay Kagawad* is responsible for disseminating the information among his/her constituents. Sometimes we use the public address system because it is faster. The religious leaders, or the *imam*, also help in informing the populace through the Friday congregational prayer.

The information shared by a youth leader reveals a lot about the traditional way the young people deal with their elders. He said he would consult with the Barangay Chairman every time they have a new project. After the Barangay Chairman gives his approval, the Barangay Chairman himself, not the youth leader, presents the plan to the elders. It would not be appropriate for the youth leader to go directly to the elders. Once the elders give their nod, the youth leader could already go to the parents to get their consent. This seems to be a circuitous process, but he said this is how the Maguindanaon youth implement projects.

A female village councilor also shared her experience: If a new project is to be implemented, we usually have consultations first with the elders, then with the community. We, the members of

TIMUAY AT DATU



the Barangay Council, endorse the project to the Barangay Chairman. As a kagawad, I serve as the representative of my *purok* (village). I am the voice of my constituents. The people go to me in case there are problems in the area. With regards to projects, I get the people's approval first. So far, whatever is laid before them has been positively received.

As a rule then, the barangay leaders present policies and laws to the community first before these are implemented. Family problems are not the concerns of community leaders. However, barangay officials do step into conflicts arising from land or property disputes. These are brought to the attention of the Barangay Chairman, who in turn elevates them to the municipal level. Likewise, political disputes are brought before the Office of the Municipal Mayor.

In Barangay Gang, it appears that all sectors support one another because almost everybody is related by blood. Consequently, consultations are easy and decisions are arrived at without much difficulty. Minor differences are set aside, and problems are elevated to the sectors that can best address them, remarked a key informant.

Enhancing local capability

Although many local officials felt they have only made modest contributions in policy making and program development, they believe that they have been effective in some community projects. These include the establishment of a madrasah, installation of about 50 units of jetmatic water pumps, construction of public latrines in every village, and sponsorship of cleanliness and sanitation campaigns. In a newly established municipality near Sultan Kudarat, the local government distributed Philhealth insurance cards to needy constituents as one way of addressing the health needs of the people.

However, some residents expressed concern over the confusion they have experienced regarding which laws to follow that of the mainstream government or the traditional laws on governance. They complained that local government executives implement Western-style laws that are not acceptable to Muslim communities, such as election laws.

Another mainstream practice that the Maguindanaon resent is the justice system, which they find at odds with their traditional practices. The American-inspired justice system in the Philippines requires a judge who determines who is right and who is wrong; the parties hire lawyers, and the outcome is a win-lose situation. But among the Magindanaon, amicable settlement is preferred because its aim is to settle conflict in a manner acceptable to the contending parties. This normally results in a win-win situation, which is very much in keeping with their traditional ways of resolving disputes. The parties involved do not only try to solve a problem but also to repair damaged relationships and re-establish trust, which is required to produce a satisfactory and long-lasting agreement.

In many cases, the people would approach the Council of Elders first because it is accessible and there are no complex bureaucratic procedures, no filing fees, hearing session deposits, and other related charges. In a study by Abubakar Datumanong, it was noted that even the Office of the Sangguniang Barangay would endorse cases to the Council of Elders for disposition because it is more competent in resolving conflicts based on Shar'iah and the customary laws. In recent years, cases involving heinous crimes were forwarded to the Shari'ah court of the Moro Islamic Liberation Force (MILF) for adjudication, the study said.

As a whole, the traditional Maguindanao justice system is seen as an institution that imposes *kapamagumping* (unity) and *kakumpen* (control), and teaches *kebensa* (discipline) to individuals who do not conform to the rules and regulations of the community. This justice system is important because it can maintain *kapamagayon* (harmony), which will contribute to *kalilintad* (peace) and *kapangengetuan* (development) of the community, according to Datumanong's study.

Local governance based on customary laws is holistic and is anchored on spiritual beliefs and practices. Residents of Barangay Gang, especially Barangay Chairman Edza, believe that if

religion is removed from the lives of the people, things would really go wrong. The Maguindanaon were unanimous in saying that to be truly effective, they should be given the chance to govern themselves through the traditional ways of Islam. For as long as the people are governed by a provisional law (referring to the Organic Law of the ARMM), local leaders will not be effective in making traditional governance work.

One area of concern among some residents is the lack of public trust in some leaders who win elections only because they have plenty of money and not because they are the choice of the people. A key informant said trust is necessary for people to support their leaders. The credibility of the leaders, regardless of their educational attainment or economic status, is crucial in ensuring the success of any development program. For instance, some residents pointed out that funds earmarked for certain projects would disappear and their leaders could not explain where the money went. They said lifestyle checks among local government officials are needed to curtail graft and corruption.

In terms of development projects, the Maguindanaon of Barangay Gang are clamoring for the construction of more farm-to-market roads to facilitate the transport of products to urban areas, assistance in terms of farm inputs such as fertilizer and, more solar dryers. The women are seeking financial capital so they could engage in small-scale business ventures and apply what they have learned from various livelihood training they have attended. The youth need better school buildings, as well as scholarships especially for those in high school and college.

Most of all, the Maguindanaon are hoping that peace would reign once more in their homes and in the community. They want the talks between the Philippine government and the Moro Islamic Liberation Front (MILF) to continue so that a final peace agreement could be signed, and the Christians and the Muslims could live together in harmony.

Merging the Old with the New

As the world marches on, so must the Teduray and the Maguindanaon people. From their experiences, it is evident that they have learned to merge their traditional practices with mainstream forms of governance as best as they can, with varying results.

The *Timuay* Justice and Governance established by the Teduray communities aims to put up a structure that is interface-ready

with the government structure. However, it is not clear how the mechanism will promote peoples' participation and the consultation process. Mainly, it has reformatted the traditional leadership structure that used to be heavily anchored on the *Timuay* and the *Kefedewan*. For example, the group of *Timuays* or *Kefedewans* in the past was not formed into a council, a concept that did not exist then. Although it maintains the key concepts of traditional Teduray governance, the TJG formalized the positions of the assistants, secretary, treasurer, and the whole idea of a council that were unheard of in the past.

In the community level, it is still the generic perception of *Timuay* and *Kefedewan* that pervades the Teduray meaning of leadership. For instance, they still expect elected local officials to provide for the needs of their constituents the way the *Timuay* of old did to the village folk. It is still through traditional titles that they connect clearly with the meaning of leadership. The process of conferring the *Timuay* title even to elected government officials is a deliberate interfacing dynamics to link the traditional understanding of leadership with the mainstream scheme. Obviously, much remains to be done in terms of interfacing the two schemes, but the Teduray society has started their part of the political bargain.

Immediately, it may be deduced that the *Timuay* embodies a concept of representation for the people. But while the *Timuay* is considered the political leader, it is within the arena laid down by the *Kefedewan* and the *Tiyawan* that the meaning of people's representation is to be understood in

its most substantial sense. As *Timuay* affiliation carries the political aspect of the individual's identity, *Kefedewan* affiliation presents the social identity of the Teduray.

Previous research on the Teduray reveals an information gap on the scope of the *Timuay*'s traditional roles and functions. Until the mid-1980s, the *Timuay* position seems to have been relegated to titular status. The *Kefedewan* and the *Bliyan* appear to have taken a greater role of sustaining and maintaining socio-cultural, political, and religious order in the community. It was only with the very recent favorable development in the mainstream governance system that the *Timuay* gradually regained recognition in the overall leadership structure. Yet, it is the original Teduray concept of *Kefedewan*, *Tiyawan* and the *Bliyan* that is still deeply understood and embodied by the Teduray society.

In the TJG, the *Kefedewan* is assigned to the task of maintaining the mechanisms of conflict resolution in Teduray society. It is a consciously crafted design that is congruent with the government's democratic framework, especially in the IPRA law. Interestingly, one sees the formal and calculated effort of an indigenous system aggressively interfacing for representation within the more dominant and officially discoursed system. It is worth noting also that in spite of this structural adjustment, still the moods, motivations, and sentiments among ordinary Teduray folks as regards legal and moral authority of leaders deeply remain with the original concept of the *Kefedewan* and the *Tiyawan*.

The TJG is quiet about the existence of the *Diyaga Fenuwo* (village internal defense) and *Kuyog* (tribal warriors), which effectively functions as internal defense force of the community. It is the traditional warrior class of Teduray society. Recently, they were clandestinely organized and armed against what the community perceived as an intrusion of a logging company within their territory. Eventually, the government will have to confront this armed entity in the overall dynamics of national governance.

On the other hand, the traditional Teduray governance system, especially their manner of pursuing justice, appears incomprehensible to the mainstream democratic mental frame. A senior employee in the municipal government office in North Upi commented: They simply settle disputes among themselves. No one really gets punished. This is the reason why many of them are ignorant of our legal system. Although this is the observation of just one individual, such a perception may present a big challenge to the implementation of IPRA if it is found to be the collective mood and sentiment of non-indigenous Filipinos.

In the larger socio-political arena, the mainstream democratic governance system has yet to put substance to IPRA within the ARMM framework as a way to accommodate the TJG and other indigenous governance systems. It may entail the fine-tuning of IPRA provisions in terms of the meaning of consultation and representation, considering the fact that indigenous societies persistently embody political sentiments that hark back to traditional leadership. Traditionally, Teduray society did not exhibit a solid concept of Council of Elders. The idea was the product of an IPRA campaign that found its way into communal awareness. Perhaps, it is better to design a mechanism where the moods, motivations, and sentiments embodied in the *Tiyawan* can be given space in the dynamics of mainstream governance.

According to Teduray local officials, the lukewarm treatment accorded to IPRA within the autonomous region borders between snobbery and non-recognition. Hence, they perceive two layers of interrelated problems. In the larger arena, they are struggling to establish stronger connection with the national discourse. At the local level, they are also struggling for a breakthrough in the socio-political and religious issues of the Magindanaon Muslims with the national government, which has resulted in the shelving of their application for a Certificate of Ancestral Domain Title (CADT) under the IPRA. Undaunted, the Teduray are making use of the TJG as an instrument for collective representation in the ARMM. It is a consciously employed strategy to accommodate proposals for State Federalism, which is perceived as an effective system of governance that fits the needs and aspirations of Teduray society. As one respondent said, federalism allows the implementation of Teduray self-governance.

On the part of the Magindanaon, their communities exhibit a strong socio-cultural and political sentiment favoring the traditional *datu* system. Even though they are under the administration of their respective barangay chairmen, the *datu* maintains leadership and authority over his constituents. Since *datu*s are leaders by virtue of their birth, they are given more credence than elected officials. As a result, Magindanaon municipalities whose local chief executive is at the same time the recognized *datu* exhibit obvious vitality in their political, economic, security, religious, and education programs compared to other towns.

In both the Teduray and Magindanaon traditional governance set-up, the concepts of representation and consultation processes take on a unique character. Socio-cultural aspects remain powerfully entrenched in their collective consciousness such that current modes of local governance, even as considerably appropriated, are largely implemented through the traditional mode. A World Bank study has suggested the training of traditional leaders as development managers along the framework of mainstream society. The proposal sounds reasonable, but its implied assimilationist character needs to be abandoned.

Moving Forward

In the very few places where they are the majority, the Teduray still cling to the traditional ways not just of governance, but in everything they do. They believe that while they need to abide by the mainstream government's style of leadership, they are able to survive as a people largely because of the presence of their own system of laws that has served their needs and those of their ancestors as far back as they could remember. Within the communities, their traditional governance system is effectively sustained and implemented in maintaining internal order, and as a control mechanism in maintaining peaceful relations and interaction with their Muslim and Christian neighbors.

The initiative that the Teduray have taken to codify their customary laws and practices as reflected in the booklet *An Orientation to the Timuay Justice and Governance* (2002) has shown that they have realized the need for assert their rights and identity as a people. However, there is still a need to encourage the involvement of as many people as possible in formulating policies and programs, particularly on the use of community resources or decisions regarding the introduction of projects such as water, health and sanitation.

Traditional leaders and support groups may need to spearhead the setting up of a system to operationalize the IPRA through lobbying and advocacy. A group called Teduray-Lambangian-Dulangan Manobo Ancestral Domain Claimants (TLAMDMADC) has been organized to expedite the granting of their CADT, but their efforts will only be in vain without strong backing from their leaders and indigenous rights' advocates.

For the Magindanaon, their current system of electing political leaders appears to be working because the latter come from respected families. By using traditional ways, they avoid putting into office people who are not acceptable to their constituents. At the same time, their decision-making process encourages consultation, which for them is very Islamic, and entails getting the sentiments of other sectors of community such as women, the youth, and the professionals. To improve local governance therefore, they only need to study and promote local institutions and policies that conform to the beliefs and culture of the people. Also, both the leaders and his constituents need to be trained on how to monitor development projects in their respective areas to avoid waste of resources.

With regards to ancestral domain issues, the Magindanaon have to study their customary laws on governance further based on their understanding of the principle of self-governance. The Philippine government and the MILF need to settle the issue of the Bangsa Moro ancestral domain as a pre-requisite for the formal negotiations on the political and economic solutions to the conflict in Mindanao, because territory and governance cannot be isolated from each other.



The experience of the Teduray and the Maguindanaon shows that indigenous leadership structure and governance system can be given space in the mainstream set-up. For instance, the indigenous manner of selecting leaders outside of the electoral process could be considered. Understandably, this poses a big challenge to the principles of democracy. Nevertheless, it is not impossible to accomplish, especially if community initiatives to put up interfacing mechanisms with local governments are valued and recognized.

Note: All quotes have been translated to English from their original Filipino versions.

Professor Rey Danilo C. Lacson and Dr. Ester O. Sevilla are professors at the Notre Dame University in Cotabato City.

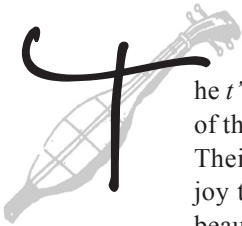
Copyright for the T'nalak: Protecting the Intellectual Property Rights of Indigenous Communities

By Sedfrey M. Candelaria



Bo'in Hu was a T'boli woman who was the first weaver of the T'nalak. One day, she fell in love with a warrior who lived in the Sky and decided to live with him. She left all her materials for making the T'nalak here on Earth. When the couple reached the "8th level" of the Sky, she suddenly got worried that her work will no longer be continued on Earth. She wanted to go back. However, there was no way of returning anymore. Because of this, she threw pieces of wood, which turns into Fu birds, towards the Earth every once in a while. The sound made by the birds became a reminder for the T'bolis on Earth to continue the tradition of making the T'nalak. Thus, weaving the T'nalak continued over the years and up to this time.

- T'boli myth



he *t'nalak* is a woven fabric closely associated with the colorful and unique culture of the T'boli people, an indigenous community in the province of South Cotabato. Their clothing, which is made mostly from *t'nalak*, is a great source of pride and joy to them. The T'boli people wear it with a wide variety of accessories such as beautiful earrings, bracelets, rings, turbans, and large circular hats.

In her paper entitled ***Copyright Protection of Indigenous Expression***, Maricris Jan Tobias writes: "In Lake Sebu, South Cotabato, the T'boli people have a tradition of *t'nalak* weaving, the art of making fabric from abaca fibers. These fabrics are intended to be used for traditional dresses and the design comes to the weavers in the form of dreams. So sacred are the designs that the weavers believe that no scissors should be used on the unfinished fabric. Instead, the weavers use their teeth to separate the bolt of cloth from the loom."

Weaving the cloth takes great precision and goes through many tedious and traditional processes that can take several months. The abaca fibers used to make them are uneven yet very resilient. The fiber is originally colorless or white, symbolizing the pure hearts and clear intentions of the T'boli people. Natural vegetable dyes are used to create the rich black and red-brownish colors of the geometric patterns. The color black symbolizes the strength and power of T'boli pioneers when they undertook various struggles in the past. The color red symbolizes their bravery, commitment, and everlasting love. The black dye is derived from the *Kanalung* wood while red dye comes from the *Loco* wood.

The Philippine government acknowledged the importance of the tradition when former President Fidel Ramos officially recognized a famous maker of the *t'nalak* cloth, **Be Lang Dulay** of Lake Sebu, as a Living Treasure on *T'nalak* Weaving. The National Commission for Culture and



T'boli man and women with a *hegalong*, a native guitar

the Arts gives out the Gawad sa Manlilikha ng Bayan (National Artists Award) for outstanding indigenous artists.

The making of the *t'nalak* is a spiritual process. Not all T'boli women are allowed to weave the cloth. Only those who are gifted with the appropriate skills and spiritual capabilities can execute the designs, which are not made randomly. Some designs for certain occasions even have beliefs attached to them. For instance, for wedding occasions, the weaver is said to be prohibited from making love to her partner for the entire duration of the *t'nalak* weaving

process. Otherwise, the design made for that purpose would not come out properly. Other beliefs in making the *t'nalak* include the following:

- Non-weavers, as well as members of their families, are prohibited from touching or crossing over the unfinished *t'nalak*;
- The *t'nalak* cloth is not meant to be cut for it is believed to contain its own spirit;
- When traditions are not followed, or when prohibitions are violated, the responsible T'boli may be punished by the spirits, incurring sickness and other misfortune.

Originally, *t'nalaks* were made for clothing purposes. There are different designs for different occasions. According to T'boli weavers, it usually takes a minimum of one month to finish one *t'nalak*. Their work with their *t'nalak* is done only during their free time, or whenever they feel like continuing it.

The T'boli of Lake Sebu

A number of minority populations in the Philippines managed to escape the influence of Spanish colonization, and one of these are the T'boli people. This made the T'boli communities relatively unknown to the rest of the Philippines until the 1970s, when the government made an effort to find out more about them. The Presidential Assistant on National Minorities undertook an organized investigation of the T'bolis and other minority groups; however, its office was destroyed in a series of fires in 1983, destroying its research materials. With the dearth of information, T'boli community leaders found themselves in a difficult position, struggling to defend their land and culture due to lack of recognition compared with the bigger communities.

The T'boli are a highly developed group. They speak a Malayo-Polynesian language called the *T'boli*, as well as the languages of neighboring communities and migrant settlers like Hiligaynon and B'laan. They have their own religious beliefs and practices; for instance, they believe in nature spirits that can cause harm or good depending on how one treats them.



For centuries, the T'bolis have staked their claim on the shores of Lake Sebu and adjacent mountain settlements in South Cotabato province. They live in segregated shacks made of bamboo and nipa straw. They cultivate corn, potatoes, and cassava, catch fish, and harvest wild bananas and other vegetables and fruits.

T'boli weavers are regarded highly in the community. In fact, marrying a *t'nalak* weaver would cost the prospective husband quite a fortune. In contrast to the usual dowry for a non-weaver of two horses and two cows, the minimum offer to marry a *t'nalak* weaver would amount to 10 horses and two cows. The dowry can go as high as 20 horses if the weaver is introduced to a new family that has no weaver at all.

In recent years, the cool climate and healthy environment of Lake Sebu have enticed lowlanders to move into the area. Entrepreneurs started to gain interest on the *t'nalak* and began employing T'boli weavers to teach their employees how to make them. However, this strategy did not succeed, as it is very difficult to learn the art of making the *t'nalak*. For this reason, investors started employing the T'boli women themselves to weave for them, using the latter's own designs. When this started, in 1981, the women were paid highly at P2,000.00 per finished roll of *t'nalak* (averaging 4-5 meters long).

Since then, the sacred tradition of the T'boli people has been subjected to commercial appropriation. Once intended solely for the traditional attire of the T'boli, the *t'nalak* is now used as accents on commercial products such as bags, shoes, linen, wall hangings, household items and souvenirs.

When the employed T'boli weavers were asked whether they feared punishment or other misfortune from the spirits for going against their traditions, they answered that in a way they were, but because of new beliefs introduced by the Christian religion, as well as their economic needs, they became more willing to take risks. Some of the punishments that they experienced include sickness, bruises, and losing weight.

On the other hand, when the elders were asked how they felt about the commercialization of the *t'nalak*, they said that the practice hurts their feelings, as *t'nalak* weaving holds a sentimental value for them. However, they acknowledged that they did not resent the weaving business due to the need to meet their economic needs, but were dismayed with the rampant copying of the original *t'nalak* designs, which are sacred to them.

It may be perceived that the T'bolis have begun to open themselves to novel ideas and innovative practices that would enable them to adapt to the changing times. This is seen in the T'bolis' decision to pass on the *t'nalak* craft to non-natives so they could earn a decent livelihood. At the same time, they are determined not to compromise the cultural beliefs that the T'boli people have kept sacred for centuries, which are threatened by the replication of their original designs. It is in this context that the intellectual property rights of the T'boli to their *t'nalak* weaving tradition is examined in this case study.

Intellectual Property Rights: A Primer

Intellectual Property Rights generally refer to the exclusive right granted by law to the author over his/her creation over a particular period of time. This is meant to ensure that intellectual works remain in the public domain in order to promote learning, and to protect the author's rights. Since there is no substantial distinction between indigenous communities and other citizens, both should be afforded the same rights in the protection of their artistic or intellectual creation. However, since there are peculiarities involving indigenous ways of life, the law must provide room to accommodate such distinctions.

The legal obligation to make indigenous and local community knowledge the focus of national policy and law-making efforts has many sources.

In the field of international law, Article 8 of the United Nations' Convention on Biological Diversity (CBD) requires signatories to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices."

Another UN instrument, the Draft Declaration on the Rights of Indigenous Peoples, represents the highest expression of their aspirations. It states that indigenous peoples "are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop, and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts."

The proposed Inter-American Declaration on the Rights of Indigenous Peoples includes similar obligations regarding their "right to special measures to control, develop and protect, and full compensation for the use of their sciences and technologies."

The International Labour Organisation's Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) urges signatories to promote "the full realization of social, economic and cultural rights of (indigenous and tribal peoples) with respect to their social and cultural identity, their customs and traditions, and their institutions" in Article 2. ILO Recommendation 104 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-tribal populations in independent countries provides in Part V, 22 (b) "the protection of designs and of special aesthetic features of products." Unfortunately, ILO Convention 107 that resulted from this recommendation no longer contained this phrase.

The Philippines is a signatory to the CBD and thereby binds itself to the protection of the intellectual property rights of indigenous peoples. The 1987 Philippine Constitution also provides that "the State recognizes and promotes the rights of indigenous communities within the framework of national unity and development." Since intellectual rights are considered property rights, it is worth noting that Article III, Section I of the Constitution states that: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." This provides legal basis to demand State protection for the property rights of indigenous peoples.



Mabuhay Magazine, Philippine Airlines.

Copyright may be applied to indigenous designs such as this woman's attire

THE ROAD TO EMPOWERMENT
VOLUME I - Old Ways, New Challenges

In 1997, the Indigenous Peoples Rights Act (IPRA) was passed in keeping with the mandate of the Constitution. The general policy on the intellectual property rights of indigenous peoples is set forth under Section 29 of IPRA, which provides that: “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.”

Consistent with this is the concept of Community Intellectual Rights recognized under Section 32 of the same law. This guarantees the respect for Cultural Integrity, which is defined in IPRA’s Implementing Rules and Regulations as “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.” It includes the following:

- a) Protection of indigenous culture, traditions and institutions;
- b) Right to establish and control educational and learning systems;
- c) Recognition of cultural diversity;
- d) Right to name, identity and history;
- e) Community intellectual property rights;
- f) Protection of Religious, Cultural Sites and Ceremonies
- g) Right to indigenous spiritual beliefs and traditions;
- h) Protection of Indigenous Sacred Places
- i) Right to protection of indigenous knowledge systems and practices; and
- j) Right to science and technology.

The law also provides that the following items are subject to the protection of Community Intellectual Property:

- The past, present and future manifestations of their cultures, such as but not limited to, archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;
- Science and Technology including, but not limited to, human and other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of flora and fauna, and scientific discoveries; and,
- Language, Music, Dances, Script, Histories, Oral Traditions, Conflict Resolution Mechanisms, Peace Building Processes, Life Philosophy and Perspectives and Teaching and Learning Systems.

The indigenous concept of ownership generally holds that ancestral domains are the private albeit community property of ICCs/IPs that belongs to all generations and therefore cannot be sold, disposed or destroyed, as the law recognizes.

However, the IPRA law does not clearly define the scope of IP rights as owners of their communal intellectual property, and only mentions the right to own, control and protect community intellectual rights. “Control is different from ownership,” as commentator Thomas Greaves wrote. The right to control may be understood on different levels: first, control over who among the members of the community may be chosen as custodian of certain items of knowledge; second, control over cultivation, use, and development of the knowledge within the community; and third, control that specifies restrictions on the use of indigenous knowledge by third persons, according to a legal researcher, Atty. Sabrina Paner.

Because of the nature and character of knowledge, it may easily be passed on and utilized by persons other than the owner if there are no measures that would guarantee the owner’s effective control over the knowledge. As the laws stand now, the only manifestation of control over the use of knowledge by third persons is the acquisition of free and prior informed consent from indigenous

communities. However, the definitions of free and prior informed consent are not explicit as to the right to qualify the consent of the IP community concerned and whether it would be possible for them to add restrictions. It thus appears that once such is given, IPs have exhausted their right to control and cannot interfere in the subsequent utilization of the collected knowledge.

Gaps between indigenous knowledge and the intellectual property regime

The Philippines has acceded to the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, which came into effect on 1 January 1995. It is a comprehensive multilateral agreement that covers the areas of patents, industrial designs, copyrights, trademarks, geographical indications, layout designs of integrated circuits and undisclosed information such as trade secrets and test data. The agreement basically sets out the minimum standards of protection and general principles with respect to enforcement of intellectual property rights.

According to Michael Finger, another commentator on the subject, the WTO-TRIPS agreement is all about "the knowledge that exists in developed countries, about developing countries' access to that knowledge, and particularly about developing countries paying for that access." Such an orientation leaves out the need to protect traditional or indigenous knowledge from getting exploited by developed countries. During a Roundtable Discussion conducted by the World Intellectual Property Office in 1998, the indigenous peoples shared a general perception that the current intellectual property system gives more protection to the sector of society that has technology and financial means. The same is true with respect to the Intellectual Property Code of the Philippines, which came into effect on 1 January 1998. The following sections outline the existing gaps within the intellectual property system of the Philippines that fails to address the unique features of indigenous knowledge systems, and the measures that the T'boli can utilize to protect their intellectual property rights over the *T'nalak*.

Patents

The law defines patentable inventions as "any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable. To be considered novel, an invention must not form part of a prior art." Prior art refers to "everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention" and "the whole contents of an application for a patent, utility model, or industrial design registration... filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application." These are the requirements for registering a patent application under the Intellectual Property Code.

In her Juris Doctor thesis, Atty. Sabrina Paner presented several gaps between indigenous knowledge system and the law on patents.

First, by their very nature, indigenous knowledge systems cannot meet the conditions of patentability and would thus be disqualified from protection. For example, since indigenous knowledge has been passed on from generation to generation, they may no longer be considered as novel. Furthermore, there may be instances where the indigenous knowledge is very simple that it is very obvious to a person skilled in the art. Moreover, there may be instances of indigenous knowledge that are non-patentable inventions under Section 22 of the Intellectual Property Code, such as plant varieties or animal breeds. The law recognizes that Congress must enact a separate law allowing ownership of such inventions under a community intellectual rights protection system.



Second, there is no single identifiable inventor with indigenous knowledge, which is owned by the community as a whole. In the intellectual property system, a patent holder must be a “person.” Patent law does not provide for collective ownership as conceived by indigenous peoples.

Third, due to the presumably limited legal knowledge of the indigenous peoples, they might find the patent application process too complicated and cumbersome. Paner described this situation as follows: “Indigenous peoples in general are poorly equipped to handle the process of patenting their knowledge on their own. They will have a difficult time writing down the details concerning the knowledge that was passed on orally. They cannot accomplish the necessary requirements and draw the patent claims by themselves. How would indigenous peoples have enough resources to hire a good patent lawyer who could assist them? They would also need to file patent applications abroad to ensure protection of indigenous scientific knowledge especially in those states where bioprospectors would most likely seek patent protection. It is possible that indigenous peoples would find themselves going through all the examinations, foreign patent applications, and other measures to be too daunting.”

Fourth, application and maintenance of a patent may be too costly for the indigenous peoples. The filing fee alone ranges from P1,800 to P3,600, a request for right of priority costs from P900 to P1,800, and a request for extension of time to file priority documents is between P650 to P1,300 depending on the size of the item to be patented. A request for substantive examination is either P1,750 or P 3,500 while the fee for maintenance of a patent can go as high as P54,300 for big patents. This may not be worth the effort for the T’boli people, especially since the duration of protection under the Intellectual Property Code where the owner has exclusive rights to the patent is limited to twenty years.

In the context of patentable inventions, what would be feasible for the T’boli is to get the process of *t’nalak* weaving patented in order to restrain, prohibit and prevent other entities from making, using for sale, selling, or importing the product using the process. Non-T’bolis may also be banned from manufacturing, using, or selling any product obtained from such process. In addition, a civil action for infringement may be instituted, with awards including damages, attorney’s fees and reasonable royalty.

However, there are certain problems in the patent registration process that the T’boli community would have to contend with, as follows:



Indigenous women weaving another type of cloth

Mabuhay Magazine, Philippine Airlines.

1. The Problem of Novelty

T'nalak weaving consists of traditional knowledge that has been in existence since time immemorial and passed on from generation to generation, usually by demonstration of mothers to daughters, or teachers to their students. As such, this may constitute legal grounds for denial of the patent registration.

2. The Issue on Legal Standing

Section 28 of the Intellectual Property Code provides that only the “inventor, his heirs, or assigns” are given the right to a patent. However, the law specifies that only “persons” have the right to a patent, and the word “persons” has a legal meaning under the Civil Code.

The traditional knowledge on *t'nalak* weaving may be considered “communal knowledge” with no single identifiable inventor. Hence, this would not meet the requirement for a patent holder, who must be a “person.” Patent law does not provide for collective ownership as conceived by indigenous peoples.

Industrial Design

This is defined as “any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors” with the proviso that “such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft.” To be entitled to registration, an industrial design must be new or original and should not be contrary to law or public order.

Handicrafts made by indigenous peoples and weaving patterns such as the *t'nalak* weaving of the T'boli people may fall under industrial designs. However, as in the case of patents, indigenous designs may not satisfy the requirement of newness or originality as these have been developed over a long period of time. The issue on legal standing will also crop up, as the entire community collectively owns the indigenous designs and not just one person. Moreover, the period of protection of an industrial design is only five years from the filing date of registration, renewable for two consecutive periods of five years upon payment of the renewal fee. This may run counter to the needs of indigenous people for perpetual protection of their designs, especially if it has religious significance to them.

Thus, considering the possible legal impediments vis-à-vis the potential benefits of registering the *t'nalak* common weave pattern, this strategy may not be feasible.

Trademarks

The Intellectual Property Code defines a “mark” as “any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.” On the other hand, a “trade name” is the “name or designation identifying or distinguishing an enterprise.” In one ruling, the Supreme Court enumerated the following functions of trademarks: first, to indicate the origin or ownership of the articles to which they are attached; second, to guarantee that those articles come up to a certain standard of quality; and third, to advertise the articles they symbolize.

The importance of the rules on trademarks with respect to indigenous peoples is different from the issue on patents and industrial designs, which are mainly concerned on the question of how they can seek protection from the Intellectual Property Code by registering their creation. With respect to trademarks, the main issue is whether the name, symbol, sign or any identifying mark of an indigenous community can be registered as a trademark of a non-member of the community. Is there sufficient ground to deny registration of a trademark or service mark if it relates to a mark that identifies an indigenous community?



To a certain extent, indigenous peoples can utilize the Intellectual Property Code to protect their names or symbols from appropriation by outsiders for their business. There is no need for an indigenous community to register their mark since registration is required only to obtain the right to use a mark for commercial purposes. An application for registration of a mark or name that is similar to the one used by an indigenous community may be denied on the grounds that it disparages or falsely suggests a connection with persons living or dead, or if it relates exclusively to the geographical origin of the goods.



T'nalak cloth

INDISCO

However, indigenous peoples are not very familiar with the procedures under the Intellectual Property Code. The expenses for hiring a lawyer to oppose an application for registration might also be too much for them. Moreover, notwithstanding the publication requirement, indigenous peoples may have no way of knowing that outsiders are using their marks for business purposes. Likewise, due to lack of information, the Intellectual Property Office might not have the means of knowing if the mark undergoing registration process belongs to an indigenous community.

There is a possibility that an outsider may appropriate the name or symbol of an indigenous community under the doctrine of secondary meaning. This means that the law allows the registration of a common name or geographical location if it is shown that the term has been in use for at least five years and the public has associated the products of the applicant with this common term. While there is no case yet involving a conflict between the doctrine of secondary use under the Intellectual Property Code and the right to name of the indigenous peoples, the probability of conflict is not impossible. If it does happen, the doctrine of secondary meaning should not apply in case it will violate the cultural integrity of the ICCs/IPs, as the people who are identified with the geographical area may be prejudiced by the use of the name of the place where they belong. The application of the doctrine would be tantamount to a violation of the IPRA.

Within the legal framework, the T'boli people may utilize the Intellectual Property Code to register "*t'nalak*" as a trade name, referring to their unique weaving pattern, in order to protect it from appropriation by outsiders for their business. Although legal standing would still be an issue, the provision on trademarks does away with the legal impediments on originality or novelty, as in the case of patents and industrial designs. Hence, the registration of the name "*t'nalak*" would be most feasible given the different paradigms in the current intellectual property regime.

Copyrights

A copyright is "an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and selling them." Section 172 of the Intellectual Property Code enumerates the various literary and artistic works that are protected, which may come from indigenous sources as well. These include writings, dramatic or musical compositions, works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art, original ornamental designs, and other literary and artistic works.

COPYRIGHT FOR T'NALAK



What distinguishes copyrights from other forms of intellectual property protection is that registration is not required in order to obtain legal protection. The law provides that “works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as their content, quality and purpose.” Thus, the Intellectual Property Code does provide protection to literary works and artistic creations of indigenous peoples.

However, there are some gaps between the rights granted to individual artists and writers under the Intellectual Property Code, and the rights of indigenous peoples to their artistic and literary works.

First, to be entitled to copyright, the artistic or literary work must be original. Indigenous arts or literature might not be considered “original” because these art forms have existed since time immemorial and passed on from one generation to the other.

Second, copyrights belong to the “author” of the work. Under Section 171.1, an “author is the natural person who has created the work.” In the case of indigenous peoples, literary and artistic works were inherited from their ancestors and the authorship of these works cannot be attributed to one person.

Third, since copyright belongs to the author of the work, only the author as defined by the law and his/her heirs can bring an action for infringement. Since there is no definite author of many indigenous works, no one may bring an action for infringement. Thus, with respect to copyrights, only actual authors who happen to be members of an indigenous community may avail of the Intellectual Property Code. Such right is granted by the fact of actual authorship and membership in an indigenous community becomes incidental.

Furthermore, while a copyright exists until the death of the author and fifty years thereafter, it is difficult to put a time frame on the copyright of ICCs/IPs as the authors of indigenous literature are unknown. If the authorship of these works is attributed to the indigenous community as a whole, then it cannot be said that the author will eventually die since the community perpetuates itself.

A design created by a *t’nalak* weaver is protected from the moment of creation by a copyright. Thus, it may be argued that the Intellectual Property Code provides protection to the *t’nalak*, since the T’bolis do not have to register it to be protected under the law.

Resolving the Gaps between IPRA and the Intellectual Property Code

How should IPRA be construed in relation to the Intellectual Property Code?

Significantly, IPRA uses the phrase “community intellectual rights” when it referred to the duty of the State to protect the indigenous peoples’ cultural integrity. In his sponsorship speech for the IPRA bill, Senator Juan Flavio Vercoren had used the term “intellectual *property* rights.” However, Senator Miriam Defensor Santiago subsequently amended the bill, arguing that “intellectual property” principally refers to copyrights and patents. The Santiago amendment, which the Senate accepted without objection, created a wall that divides the regime under the Intellectual Property Code and the protection of the intellectual rights of the indigenous peoples under IPRA. The removal of the word “property” in what became Section 32 of IPRA was justified on the ground that it is not the intent of the law to make the rights of indigenous peoples similar to the rights granted under the Intellectual Property Code. Hence, Section 32 provides for the following:

“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.”

The essence of protection under the intellectual property regime is the system of registration. With the exception of copyrights, registration is the operative act that gives intellectual property holders the rights and remedies under the law. Apparently, the legislative intent of IPRA under Section 32 is not intended to affect the registration system under the Intellectual Property Code. Moreover, the Intellectual Property Code enumerates the requirements for items that can be registered, while IPRA is silent on this matter.

The Santiago amendment was accepted on the grounds that the use of the word “property” is not necessary because it is not the intent of Section 32 to refer to copyrights and patents as envisaged under the Intellectual Property Code. However, there is a question on whether this same argument applies to Section 34 of IPRA, which provides:

“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, designs, and visual and performing arts.”

It may be discerned that Section 32 has a different intent from Section 34. While Section 32 was not intended to have any effect on the intellectual property regime, Section 34 grants the ICCs/IPs two rights that might have such an effect. The first is their right to the recognition of their full ownership and control and protection of their cultural and intellectual rights, and the second is the right to special measures to control, develop, and protect these rights. It is understandable that the Santiago amendment removing the term “property” from intellectual property rights in Section 32 was approved since the right provided there is different from what is provided under the intellectual property regime. However, the same may not be said of Section 34. The right of indigenous peoples to obtain “special measures to control, develop and protect their sciences, technologies and cultural manifestations” under IPRA is not different from the policy of the state to “protect and secure the exclusive rights of scientists, investors, artists, and other gifted citizens to their intellectual property and creations” under the Intellectual Property Code. Hence, the Santiago amendment of Sections 32 and 34 shows the intention to remove the intellectual rights of the indigenous peoples, as it is understood under the Intellectual Property Code.

In order to resolve the gap between the intellectual rights of the indigenous peoples and the current intellectual property regime, the authors submit two propositions. First, adequate protection of the intellectual rights of the indigenous peoples may be established under the current legal regime through subordinate legislation and coordination between the NCIP and IPO. Second, Congress must develop a *sui generis* (a class by itself) system of registration that penetrates the Intellectual Property regime.

These measures would resolve the Senate’s legislative intent for IPRA not to have an amendatory effect upon the Intellectual Property Code. Nevertheless, this does not mean that the provisions of IPRA on intellectual rights do not effectively grant any rights to indigenous peoples. When IPRA recognized the Community Intellectual Property of the indigenous peoples, it must be presumed that these rights would be recognized as enforceable rights and not mere lip service.

However, since these provisions were not intended to affect the Intellectual Property Code, the enforcement of these rights must be sought elsewhere.

The NCIP, as the “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...,” may be considered as the entity that is responsible for enforcing the intellectual rights of IPs. Moreover, the jurisdiction of the NCIP includes “all claims and disputes involving rights of ICCs/IPs,” subject to exhaustion of remedies provided under their customary laws.

After IPRA became effective, the NCIP promulgated its implementing rules and regulations. Notably, the rules did not follow the nomenclature of IPRA through the Santiago amendment but instead used the term “community intellectual property.” Nevertheless, since an implementing rule cannot change the law it implements, the use of the term “property” cannot be construed to mean that it changes the requirements of registration with the Intellectual Property Office. Rule VI, Section 10 of the Implementing Rules provides:

“In partnership with ICCs/IPs, the NCIP shall establish effective mechanisms for protecting the indigenous peoples’ community intellectual property rights along the principle of first impression first claim, the Convention on Bio-Diversity, the Universal Declaration of Indigenous Peoples’ Rights, and the Universal Declaration of Human Rights.”

Strangely, the implementing rule mandates the NCIP to establish effective mechanisms for protecting the indigenous peoples’ community intellectual property, even as Section 34 of IPRA already gives the indigenous peoples the right to “special measures” to control, develop, and protect their intellectual rights. It would have been better if the NCIP readily provided in its implementing rules and regulations the special mechanisms to protect the intellectual rights of indigenous communities.

However, the implementing rules are not completely devoid of any special measures to control, develop and protect the intellectual rights of indigenous peoples. For instance, commercialization of indigenous cultures is prohibited without the free and prior informed consent of the concerned indigenous community. They also have the right to exercise control and obtain equitable share in the proceeds of an indigenous performance. Lastly, commercial exploitation of the biological and genetic resources of the ICCs/IPs requires their free and prior informed consent.

In terms of enforcement mechanisms to protect the intellectual rights of indigenous peoples, Section 72 of IPRA provides maximum penalties of 12 years in prison or up to P500,000.00 in fines for violations in general. The law gives jurisdiction and the procedure for the enforcement of rights to the NCIP. The general rule is that all disputes involving ICCs/IPs shall be resolved using customary law. Thus, in case of violation of the intellectual rights of the ICCs/IPs, the violator shall be punished in accordance with the customary practices of the ICCs/IPs concerned with the limitation that no penalty shall be cruel, degrading, or inhuman and neither shall death penalty nor excessive fines be imposed. In case the ICC/IP concerned fails to enforce their decision punishing the violator, they may seek the enforcement of their decision with the NCIP Regional Office.

Another enforcement mechanism is the right to claim damages from the violator of their intellectual rights. It is important to note that Section 72 is without prejudice to the right of the ICCs/IPs whose rights were violated to avail of the protection of existing laws. However, this provision does not refer to the remedies provided under the Intellectual Property Code because indigenous communities have no standing under this law, except for limited instances such as an indigenous author who is a copyright holder. Instead, indigenous communities may seek redress under the Civil Code, which provides for the payment of damages on all obligations arising from juridical sources such as laws and contracts. Under the IPRA law, violations of intellectual rights entitle the indigenous people concerned the right to claim the applicable damages. However, it may be difficult to prove damages in this regard, and the law on damages might not be fully applicable as well.



In cases of violation of the intellectual property rights of a patent holder, damages come in the form of lost profit or reasonable royalties, which are relatively easier to prove under the Intellectual Property Code. However, in case of violation of the intellectual rights of the indigenous peoples, economic damage does not always arise especially if the indigenous community did not commercially utilize any knowledge that was appropriated by an outsider. Moreover, unlike the Intellectual Property Code that awards reasonable royalty in cases where damages cannot be readily ascertained, the law on damages under the Civil Code requires proof of the damage suffered before it can be awarded. The only exception is the award of nominal damages, which is given to vindicate the rights of the plaintiff. Furthermore, it might be problematic to prove who suffered damages in case of a community, although standing may be given to the community as a class suit under the Rules of Court.

While the IPRA law declares as unlawful the violation of *any* of its provisions, it cannot be ascertained from the other provisions concerning intellectual property how these can be violated. The implementing rules and regulations punish only two acts with respect to cultural integrity of the indigenous peoples, to wit:

- a) “Exploring, excavating, or making diggings on archaeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural value without the free and prior informed consent of the community concerned; and
- b) Defacing, removing or otherwise destroying artifacts which are of great importance and significance to the ICCs/IPs for the preservation of their cultural heritage.”

One of the foundations of the criminal law system is the principle of *nullum crimen nulla poena sine lege* (there is no crime where there is no law punishing an act). Moreover, the requirement of an exact enumeration of the elements of an offense is part of due process. As a consequence of the limited coverage of the penal provision of IPRA, imprisonment or a fine cannot be imposed as penalties for infringement of the intellectual rights of the ICCs/IPs. On the other hand, infringement of the rights of the registered holder of protected intellectual property can be penalized under the various provisions of the Intellectual Property Code.

Moreover, Section 32 of IPRA recognizes the rights of the indigenous communities to 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.” The term restitution has a technical meaning under criminal law. For the ICCs/IPs, this basically means that they have the right to demand the return of culturally significant properties taken without their consent or against their customs and traditions. However, it is difficult to conceive how intangible property such as intellectual property can be “restored.” Moreover, the implementing rules did not mention anything about the right to restitution. Thus, how this right will operate remains an open question.

In case of violation of the intellectual rights of the ICCs/IPs, they can also seek an injunction to “enjoin any or all acts involving or arising from any case pending before 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.” The injunctive power of the NCIP may be invoked if there is a pending case before it. Thus, in case an indigenous community sues another for violation of their intellectual rights such as commercialization of indigenous designs, the ICC/IP concerned can file a case for damages before the NCIP and ask the court to enjoin the sale and distribution in commerce of said goods. In case the person enjoined refuses or fails to follow this order, he/she may be held in contempt by the NCIP.

Since IPRA does not intend to alter the intellectual property regime under the Intellectual Property Code, the provisions of the latter do not apply to cases involving the former. Thus, the remedies in case of violation of such rights are different.

A closer examination would show that there are more remedies under the Intellectual Property Code than IPRA. For example, the Intellectual Property Code authorizes the confiscation and

destruction without compensation of goods and instruments that infringe on other people's rights. This is not expressly provided under IPRA.

However, it may be argued that the NCIP may promulgate rules allowing the confiscation and destruction of the infringing materials as a "special measure" to protect the intellectual rights of the indigenous communities. This power can be justified under the power of subordinate legislation, which has two requisites: first, the law must be complete and must set forth the policy to be carried out; and, second, the law itself must fix a standard.

It is submitted that IPRA is complete in itself, and its policy is set out in various provisions such as the state policy to "recognize, respect and *protect* the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions," the protection of the ICCs/IPs rights to their "cultural integrity, and to ensure that members of ICCs/IPs benefit on equal footing from the rights and opportunities which national laws and regulations grant to other members of the population." Furthermore, the law commands the State to "institute and establish the *necessary* mechanisms to enforce and guarantee the realization of these rights." Moreover, the Supreme Court has ruled that the "standard" need not be explicit and that it may be declared from the policy of the law and totality of the delegating statute. Thus, it is possible for the NCIP to promulgate rules concerning confiscation because this is an effective measure of stopping the infringement of the intellectual rights of the ICCs/IPs.

Jurisdiction Issues

Another problem that may arise from the gaps outlined here is the issue of jurisdiction between two implementing bodies, namely the Intellectual Property Office and the National Commission on Indigenous Peoples.

Under the IPRA, all cases involving community intellectual rights fall under the term "other matters" which falls within the jurisdiction of the Council of Elders of the community concerned. This means the Council may resolve the conflict before any case is filed before the NCIP. For issues involving violations of the requirement of free and prior informed consent, the case of infringement is filed with the NCIP Regional Hearing Officer.

On the other hand, actions for recovery for damages, which are within the ambit of the Intellectual Property Code, can be filed before the regular court. The IPO has specific jurisdiction on the cancellation of patents, design registration and registration of a mark.

However, some issues are not as clear-cut, such as the following: Should the filing of a case before the NCIP preclude the exercise of jurisdiction by the IPO? Should the judgment of the NCIP be binding on the IPO? What will happen if the NCIP issues a decision indicting a patent holder for violating the intellectual rights of an indigenous community?

Since the IPRA is more specific than the intellectual property code, the intention of the IPRA should govern. The Intellectual Property Code is a general law while IPRA is a special law that addresses community intellectual rights. Consequently, decisions of the NCIP have the force of law.

To resolve the dilemma on how the two quasi-judicial bodies can act together to protect community intellectual rights even before a violation occurs, it is proposed that an approach similar to the requirement for a certification under the IPRA law be followed in case of applications with the Intellectual Property Office. This is in keeping with the logic behind the protection of the ancestral domain of indigenous peoples. Both their ancestral domain and intellectual rights are closely intertwined with their cultural integrity. Therefore, it makes sense that before a patent, industrial design, trademark or trade name is registered, the IPO must require a certification from the NCIP that the application does not violate the intellectual rights of any indigenous community. In case the application refers to a



derivative of indigenous knowledge, the free and prior informed consent of the ICC/IP must be obtained. This would not add a new requirement under the Intellectual Property Code, since the law requires novelty or originality anyway. In effect, this merely facilitates the substantive examination of applications with the Intellectual Property Office.

Developing a *Sui Generis* System of Registration

With the global intellectual property framework mainly oriented towards developed countries, the exploitation of community intellectual property persists in many areas.

The stealing of genetic material and knowledge from communities in the gene-rich developing countries, known as biopiracy, goes back to the colonial era. Countries like England and the Netherlands took control of crop resources in Asia to build up their trade empires around cotton, sugar, tea, rubber, pepper, and the like. This has continued until the present, and indigenous communities have not been spared. Traditional healers have relied on Banaba, a well-known herbal medicine used in the Cordillera highlands and other parts of the Philippines, to cure many illnesses including diarrhea and diabetes. Unfortunately, the Japanese company Itoen KK has patented the anti-diabetic properties of banaba.

Many expressions of indigenous culture are often used without permission, and worse at times in ways offensive to the cultural group. This results to substantial profit for companies without any corresponding benefit for the indigenous community. While the IPRA recognizes the intellectual property rights of IPs, it does not specifically provide an enforcement mechanism in case of violation

Commercialization of indigenous literature is another problem. Lawyer Zosimo Evangelista, an intellectual property right practitioner, cites as one example the manner in which films, videos, and music capitalize on indigenous motifs to sell their products. He recalls how San Miguel Corporation used a lullaby of an indigenous tribe to sell beer products. This resulted to profits for the corporation without giving any commensurate credit to the community from where it was derived.

In order to protect the intellectual rights of the ICCs/IPs, legislative action is one possible avenue for advocacy. Three such examples are provided here.

Community Intellectual Rights Property Act

With many gaps to be filled on the matter of protecting communal intellectual property, indigenous peoples rights advocates are debating the possibility of having a *sui generis* system of registration to protect indigenous knowledge systems. It is in this light that Senator Flavier introduced a bill known as “An Act Providing for the Establishment of a System of Community Intellectual Property Rights Protection” (CIRPA).

It is significant to note that Senator Juan Flavier is also the principal sponsor of IPRA. This bill confirms the theory that IPRA has no legislative intent to affect the Intellectual Property Code. It defines community intellectual property and considers it the property of the community at all times and in all perpetuity, making the indigenous peoples the holders of its primary and residuary title.

The bill provides the following:

Sec. 4. Communal Intellectual Property- x x x x x x x

- a. parent strains and genetic materials discovered or selected and conserved by local communities, which were used in the development of new plant varieties, and which can be harnessed for other potential uses
- b. seeds and reproductive material selected, cultivated, domesticated and developed by local communities in situ;
- c. agricultural practices and devices developed from indigenous material, customs, and knowledge;

- d. medical products and processes developed from the identification, selection, cultivation, preparation, storage and application of medicinal herbs by local communities and indigenous peoples;
- e. cultural products from local communities, such as weaving patterns, pottery, painting, poetry, folklore, music and the like;
- f. all other products or processes not made by a single person or juridical personality, which was discovered through a community process, or when the individual making the innovation does not claim the knowledge as his own, provided that any individual or juridical personality making such a claim should present proof of innovation or a history leading to the discovery that would justify his claim.

The bill proposes that the indigenous community should register as a tribal council, foundation, cooperative, people's organization, or any other form of organization that would effectively represent its interest. However, their failure to do so does not prejudice their status as a custodian and steward of traditional knowledge.

It further requires that the traditional knowledge or product be registered, and only when it is entered either in the National Commission on Plant Genetic Resources, National Museum, Bureau of Patents, Trademarks and Technology Transfer does the indigenous community become general owners. The community shall then be entitled to collect a justifiable percentage from *all* profits derived from the commercial use of their knowledge, for a period of ten years starting from the date of registration.

It is important to stress that CIRPA fails to address important issues such as traditional knowledge pertaining to sacred indigenous images. The dissemination and re-use of these images is often detrimental to the community. Usually, such knowledge requires protection for more than ten years. Under the IPRA, the indigenous peoples have the right to control community property rights, which should be construed as the ability to prevent the appropriation and manipulation of their sacred images.

Guidelines on Bioprospecting

Access to biological and genetic resources *per se* is not prohibited. However, in compliance with the UN Convention on Biological Diversity that research and collection of species and genes be regulated, President Fidel Ramos issued Executive Order 247 "Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their by-products and Derivatives, for Scientific and Commercial Purposes; and for other Purposes."

It should be noted that EO No. 247, which was signed in 1995, preceded IPRA. Even then, the concept of a free and prior informed consent was already recognized: "Prospecting of biological and genetic resources shall be allowed within the ancestral lands and domains of indigenous cultural communities only with the prior informed consent of such communities, obtained in accordance with the customary laws of the concerned community."

The Department of Environment and Natural Resources, which issued the Implementing Rules and Regulations for EO 247, defined "prior informed consent" as "consent obtained by the applicant from the Local Community, IP, PAMB or Private Land Owner concerned, after disclosing fully the intent and scope of the bioprospecting activity, in a language and process understandable to the community, and before any bioprospecting activity is undertaken." It also provided additional measures such as public notification and sector consultation.

The guidelines are set forth in DENR Administrative Order No. 96-20 providing safeguards of the rights of IPs to their indigenous knowledge systems and practices:

- (a) The ICCs/IPs have the right to regulate the entry of researchers into their ancestral domains/lands or territories. Researchers, research institutions, institutions of learning,



- laboratories, their agents or representatives and other like entities shall secure the free and prior informed consent of the ICCs/IPs, before access to indigenous peoples and resources could be allowed;
- (b) A written agreement shall be entered into with the ICCs/IPs concerned regarding the research, including its purpose, design and expected outputs;
 - (c) All data provided by the indigenous peoples shall be acknowledged in whatever writings, publications, or journals authored or produced as a result of such research. The indigenous peoples will be definitively named as sources in all such papers;
 - (d) Copies of the outputs of all such researches shall be freely provided the ICC/IP community; and
 - (e) The ICC/IP community concerned shall be entitled to royalty from the income derived from any of the researches conducted and resulting publication

The African Model

Recognizing the need for an intellectual property protection system that is compatible with WTO, the Organization for African Unity came up with a proposal in 1999 for the protection of the rights of local communities, farmers and breeders and for the regulation of access to biological resources. Major elements of the African Model Legislation are:

- a. The right of a community to their biological resources, traditional knowledge and technologies over rights based on individual or corporate monopoly interests.
- b. The right of African states and people to ensure the conservation, evaluation and sustainable use of their biological resources, traditional knowledge and technologies, and to govern access to them.
- c. The right of local communities to have access, use, exchange or share their biological resources as established by customary law and practice.
- d. The right of African states to protect farmers' rights and community intellectual property to biological resources according to customary law and practice.
- e. The right to forbid the patenting of life in any of its forms.

In this model, individual or corporate applicants would have to identify specific resources, the purpose for which they request access, the benefits foreseen and how they would be shared with the state and community. The applicants also have to provide an environmental and socio-economic impact assessment of their activities and agree not to apply for patents over community innovation or knowledge. This means that the State recognizes the right of the communities to control their biological resources, innovations, practices, knowledge and technology. However, there are no legal obstacles for communities to share and exchange genetic resources. The State also ensures that at least fifty percent of benefits obtained from the commercial use of biological resources are channeled to the local community.

Section 35 of IPRA provides that "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." In the same vein, Section 19 the African Model law gives local communities the right to refuse consent and access, withdraw consent already given, or place restrictions on activities relating to access "where such access will be detrimental to the integrity of their natural or cultural heritage."

If legislative action is pursued, existing rules protecting the intellectual rights and cultural integrity of the indigenous peoples should be codified. Laws in other countries may also be examined for gainful insights that may be applied in the Philippine context. This could facilitate the harmonization of the rules and procedures for protecting the intellectual rights of indigenous peoples.

Such an approach may help reconcile the intellectual property regime under WTO-TRIPS and indigenous knowledge systems. It is also advantageous in resolving jurisdictional issues that may arise between the IPO and NCIP.

The Uniqueness of Indigenous Knowledge

Indigenous peoples are no different from the mainstream population. They are people who are entitled to the same rights given to others. Thus, if intellectual property rights are given to mainstream society, the same rights of the indigenous peoples must be recognized.

At the same time, they are also different because of the unique features of indigenous knowledge. The Supreme Court has recognized the unique features of the indigenous concept of ownership, and their knowledge system cannot fit into the current intellectual property regime. Scientists, artists, and inventors in mainstream society can seek protection of the creation of their minds from unauthorized use. Indigenous peoples deserve the same, if not greater, protection since they are more vulnerable to exploitation given their lack of awareness and vulnerability.

It has been said that the level of development of a country is reflected by its ability to protect the marginalized sectors of society. The indigenous peoples are one of the marginalized sectors in the Philippines. This is why IPRA is considered the landmark legislation on indigenous peoples. It seeks to address the inability of mainstream society to legally recognize the uniqueness of indigenous peoples.

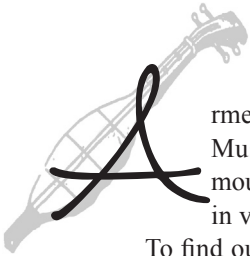
The IPRA is famous mostly for its recognition of native title and the primacy of customary laws. Unfortunately, not much attention was given to Chapter VI on cultural integrity, where the provisions on the intellectual rights of indigenous peoples can be found. At the time when the Senate was deliberating the IPRA bill, they were also deliberating on the Intellectual Property Code. Unfortunately, the interrelationship between the two laws was not addressed and was conveniently set aside for another day.

Recognizing the need to protect indigenous knowledge and culture is not giving charity to the indigenous peoples. Special attention must be given to protect their indigenous intellectual rights not because they are weak, but in recognition of the valuable contribution of indigenous knowledge systems to society. Paradoxically, a large amount of modern knowledge is derived from indigenous knowledge systems, but the predominant system of protecting intellectual property ignores the source of such knowledge. Indigenous knowledge systems have become a source of many medical breakthroughs, agricultural technologies, and environmental preservation techniques that are recognized today. It is about time that mainstream society gives back to the indigenous peoples the recognition due them.

Atty. Sedfrey M. Candelaria heads the ATENEO HUMAN RIGHTS CENTER-KATUTUBO DESK at the Ateneo de Manila University. This case study was done with the assistance of principal researchers Mary Ann Gretchen U. Aquino, Ricardo Pilares III, Rogelio Puno, Jr. and Rosalie Ramirez.

Caught in the Crossfire: How Indigenous Peoples Cope with Human Rights Violations

By Carlos P. Medina, Jr.



armed struggles in the Philippines, particularly those waged by communist rebels and Muslim secessionists against the government, are carried out mainly in rural and mountainous areas where indigenous communities are found. These conflicts often result in violations of human rights and principles of international humanitarian law.

To find out the extent of human rights violations against indigenous Filipinos and how they are coping with armed conflicts, the situation of three communities representing the major geographical divisions and various groups of indigenous peoples in the country was made the focus of this study. The study sites were chosen based on the presence of different armed groups in the area, and the contrasting character of the selected communities in coping with conflicts. In addition, focused group discussions at the national level included participants from other indigenous communities who articulated concerns that were similar to those of the IPs in the study sites.

Since this is not a comprehensive study of the situation in all armed conflict areas, some of the information may not be applicable to indigenous communities in other areas. But even though this is an initial venture into a highly complex situation, it is hoped that the recommendations in this study would contribute to various efforts to assist most indigenous peoples affected by situations of armed conflict around the country.

Human Rights and International Humanitarian Law

The Universal Declaration of Human Rights (UDHR) is the basic international statement of the inalienable and inviolable rights of people all over the world. It was adopted and proclaimed by the United Nations General Assembly on December 10, 1948. It is the basis of most, if not all, international human rights treaties to which the Philippines is a state party, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In the Philippines, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the government and the rebel group Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF) may likewise serve as a yardstick. The agreement is the product of the national peace process and became effective on August 7, 1998. Most of its provisions are based on the 1987 Philippine Constitution, particularly the Bill of Rights, and international human rights instruments as well as customary international law that are binding on the Philippines. Hence, CARHRIHL provisions may also be considered applicable in areas where the Moro Islamic Liberation Front (MILF) operates.

The UDHR proclaims two broad category of rights: (a) civil and political rights; and (b) economic, social and cultural rights. Specifically, these rights are the following:

- Life, liberty and security of person
- Freedom from slavery or servitude
- Freedom from torture, cruel, inhuman or degrading treatment or punishment
- Recognition everywhere as a person before the law
- Equal protection of the law

- Effective remedy for human rights violations
- No arbitrary arrest, detention or exile
- Fair and public hearing; presumption of innocence
- Privacy
- Movement and residence, to leave any country or return to one's own country
- Asylum from (in case of?) persecution
- Nationality
- Marriage and family
- Thought, conscience and religion
- Opinion and expression
- Property
- Peaceful assembly and association
- Participate in governance
- Equal access to public service
- Periodic and genuine elections
- Social security
- Work
- Food, clothing and shelter
- Education
- Participate in cultural life

In addition, CARHRIHL provides for a broad range of rights and guarantees that are relevant to the situation of indigenous peoples in areas where there are armed conflicts. These rights include the following:

- Self-determination
- Just, democratic and peaceful society
- Right of victims and their families to seek justice for violations, including adequate compensation or indemnification, restitution and rehabilitation
- Right to life, especially against summary executions, involuntary disappearances, massacres and indiscriminate bombardment of communities
- Right to liberty and for persons to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures
- Right not to be subjected to torture, rape and sexual abuse, and other inhuman, cruel or degrading treatment
- Right against involuntary servitude or forced labor
- Right to equal protection of the law and against any form of discrimination
- Freedom of thought and expression, political and religious beliefs and practices
- Free speech, press, association and assembly, and to seek redress of grievances
- Free choice of domicile, movement and travel
- Right against forced evacuations, food and other forms of blockades and indiscriminate bombings, shelling, gunfire and use of landmines
- Right to information on matters of public concern and access to records and papers
- Right to own property
- Right to gainful employment, livelihood and job security
- Right to universal education, access to basic services, and health care
- Equal rights of women
- Right of children and disabled persons to protection, care and a home
- Rights of minority communities to autonomy, to their ancestral lands and the natural resources in these lands



- Protection against incursions from projects
- Promotion of collective and individual rights, including those of ethnic minorities
- Respect for ancestral rights of indigenous peoples

Under the UDHR, all rights are applicable in times of peace or war. However, during armed conflicts, international humanitarian principles also apply. Again, CARHRIHL may be used as reference since it embodies principles and rights found in the Geneva Conventions of 1949 and in the Additional Protocol II of 1977, which is applicable to internal armed conflicts, and other international instruments to which the Philippines is a state party. Aside from universal human rights, CARHRIHL further provides the following guarantees:

1. Prohibited acts:
 - a. Violence to life and person
 - b. Punishment without due process
 - c. Desecration of remains of those who have died
 - d. Forcible evacuations or forcible re-concentration (displacement), and destruction of lives and property of civilians
 - e. Maintaining, supporting and tolerating paramilitary groups
 - f. Allowing participation of civilians in military field operations and campaigns
2. Applicability of the following international humanitarian principles:
 - a. Non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity, and shall be protected and treated humanely without adverse distinction
 - b. Care for the wounded and the sick
 - c. Respect and protection of neutral persons and medical personnel
 - d. Civilians should be distinguished from combatants and, together with their property, shall not be the object of attack, and shall be protected against indiscriminate forms of destruction of lives and property
 - e. Civilians have the right to demand disciplinary actions against abuses arising from the failure of parties to observe international humanitarian principles
 - f. Humane treatment of detained persons
 - g. Internally displaced families and communities have the right to return to their places of abode and livelihood, to demand assistance necessary to restore them to their normal lives, and to be indemnified for damages suffered due to injuries and loss of lives
 - h. Special attention to women and children; children shall not be allowed to take part in hostilities
 - i. Civilians have the right to be protected against risks and dangers posed by the presence of military camps.

Indigenous Peoples' Concept of Rights and Violations

The communities covered in the study did not articulate their understanding of rights in the same language and breadth as national standards of human rights and international humanitarian law. Many do not have a clear understanding of what their rights are as human beings and IPs, in times of peace or in situations of conflict. They find it difficult to define rights since they do not appear to have equivalent words for human rights. However, they are generally aware that there are certain things they are entitled to, but which are denied them, abused, suppressed or limited by

parties to the armed conflict or by their present situation. Some of these rights include freedom of movement, security of their persons (like when a member is hurt or injured), security of their properties, and culture. They see rights as any act that they are entitled to do as long as these do not harm others or negatively affect others. To the extent that there is denial of, abuse or limitations on these entitlements, they feel a violation.



Ritual in Nueva Vizcaya

However, what is very clear is that their understanding of human rights and humanitarian law principles, and what constitute their violations, is closely associated with their view of land. For IPs, their lands are sacred and are the source of life and livelihood. Their lives, customs and practices revolve around their lands. Hence, when their lands are disrespected and their territorial integrity violated, their rights are also violated.

The right to life, for instance, is seen within the larger context of land as life, which includes their culture, customs and traditions. Violating the sacredness of their land is a violation of their right to life. Their right to land is therefore a priority. They may not be aware of their specific rights under existing laws, but they are aware of a general right to their ancestral land or ancestral domain.

Above all, they believe that the right to their land exists without the need for recognition by any law, or even before this right was recognized in the Indigenous Peoples' Rights Act (IPRA), as it is based on their customary law. Hence, in one case where a mining company obtained a permit to operate in a piece of land belonging to Cordillera IPs before the passage of IPRA, but started operations only after the law was enacted, the IPs still asserted their right over the land and on the requirement of free and prior informed consent

before entry. Moreover, they do not believe that other people have the right to take their lands just because the IPs do not have papers to prove ownership.

Indigenous communities are not necessarily against any development project in land they deem sacred. They are simply upholding their right to self-determination, and they want to define what development means for them. Most of them are aware of the passage of time and the accompanying progress and development in present society so they are not opposed to development in general. However, they are against development without consultation often termed as development aggression, since their rights are affected.

The experience of indigenous communities in the three study sites confirmed the existence of violations of their rights under human rights instruments and international humanitarian law. These violations were either directly committed by the parties to the armed conflicts or resulted from the situation of conflict in IP areas. There are some violations that were not necessarily articulated by IPs themselves, but are recognized as such by non-IPs such as civil society groups and law enforcers based on their knowledge and understanding of human rights principles.

Summary of the Memorandum of Agreement Among the Mangyans of Occidental Mindoro, the Armed Forces of the Philippines and the Provincial Government of Occidental Mindoro (Signed July 10, 2005)

AFTER the 80th Infantry Battalion of the Philippine Army replaced the 16th IB, officials of PASAKAMI met with the new Philippine Army leadership through the help of the church to discuss their previous agreement with the Army signed on Sept. 6, 2003. The old agreement was reviewed and a series of consultations and dialogues was held between Mangyans and Army officials. As a result of these activities, the parties agreed on the following, among others:

- a. The military acknowledges that the issues raised by the Mangyans are based on concrete experiences.
- b. The concept of militarization was clarified based on the perspectives of the Mangyans, the military and local government officials.
- c. The Mangyans made it clear that they are against the war, that it is not in their culture, that they are not taking any side, but that they are caught in the middle of the conflict between the government and the NPA.
- d. Security is the responsibility of all parties, hence the need for cooperation.
- e. Dialogue is important as a confidence-building measure.

Specific agreements concerning the entry and behaviour of soldiers in Mangyan areas include the following:

- a. Soldiers will coordinate with Mangyan leaders at all times, except in “hot pursuit” operations.
- b. Soldiers will not force the Mangyans to serve as guides or to help the military.
- c. Soldiers will not use violence in dealing with Mangyans; however, there is also a need to explain to the Mangyans certain aspects of military language or behaviour that may sound violent to civilians but are accepted as normal in military life.
- d. Soldiers will not point guns and intimidate Mangyans while talking to them; however, there is a need to explain that the soldiers normally carry their long firearms with a sling, which may be pointed in front and downwards, but not directly at people.
- e. Soldiers will respect Mangyan culture, including sacred places like cemeteries, seedling huts or certain parts of a river, and will enter these areas only with community consent. At the same time, the Mangyans would have to understand that these may not be possible in all cases, especially in situations of military necessity like “hot pursuit” operations. In case property is destroyed because of a military operation, the military will rehabilitate the destroyed property.
- f. Soldiers will respect the Mangyans, but there is also a need to inform the Mangyans not to run away when they see soldiers to avoid suspicions by the military.
- g. A captured or surrendered NPA who is a member of the Mangyan community will be turned over to tribal leaders to face sanctions under customary law, but only after the military has done its interrogation work.
- h. Mangyan leaders will conduct a census of their members and inform the military about the results.
- i. The Mangyans will undertake efforts not to be influenced by leftist groups.
- j. The Mangyans will encourage their members who have joined the NPA to return to the fold of the law.

The Mangyans in Occidental Mindoro

Mindoro Island in Southern Luzon is divided into two provinces: Occidental Mindoro and Oriental Mindoro. Collectively, the indigenous peoples living in Mindoro Island are known as the Mangyans. Although they are a shy and peace-loving people, the Mangyans have not been spared by the armed conflict between government forces and NPA rebels.

Since the 1980s, the NPA has been active in the island, which is considered a hotbed of the insurgency. In recent years, several clashes between the government and the NPA have occurred, leading to a rash of interventions from government and non-government organizations in response to allegations of violations of human rights committed against ordinary people, including the Mangyans, by both the military and the NPA. Among these violations are the following:

Disrespect for their land. Whenever the military or the NPA sets up camp or conducts a military operation within Mangyan territory, it is seen as a violation of what the indigenous communities consider as sacred ground.

Limited movement due to unsafe environment. The presence of the military and the NPA in their areas limit their freedom of movement. They are afraid to go far from their settlements since they fear for their physical security and safety, especially getting caught in the crossfire. They only leave their settlements to buy food in the town proper or to plant or harvest crops from their swidden farms.

No information on military operations. Mangyans are not informed whenever military operations are conducted in their areas, in violation of an earlier agreement with the military. (However, the new military commander has agreed to abide by the agreement.)

Appropriation of Mangyan culture. As a warfare strategy, the military and the NPA sometimes pretend to look like Mangyans by using their attire and speaking their language. This is done without the permission of Mangyans, who oppose this practice. They are concerned with its use in the armed conflict since it makes them appear as participants in the conflict and draws them into it.

Suspicious and threats from the warring parties. There are instances when Mangyans are suspected by the military to be NPAs and subjected to interrogation. For example, when they buy supplies for themselves, the military sometimes accuses them of buying supplies for the NPA. The military also warns them against entertaining strangers who might pass by their settlements. This puts them in a difficult situation, since they are similarly fearful of the NPAs whenever the rebels drop by their settlements.

Displacement. Whenever there are military offensives against the NPA, the Mangyans are forced to leave their homes in the mountains and seek shelter in evacuation centers, usually in the village halls. They are not compensated for this forced displacement and many would like, but are afraid, to return to their settlements for security reasons. However, there are others who refuse to leave their homes and therefore risk getting caught in the crossfire.

Loss or deprivation of livelihood. Whenever displacement takes place due to military operations, Mangyans are unable to engage in livelihood activities.

Destruction of property. During clashes between the military and the NPA in their areas, the properties of the Mangyans often get destroyed. In one dialogue, the Mangyans alleged that the military destroyed their sacred tools used in healing and other rituals, and the supply hose of their water system, an operation. The armed forces denied that soldiers were responsible for the destruction.

Feelings of hopelessness and insecurity. Many Mangyans do not feel at ease about their livelihood, and they are wondering how the armed conflict began and when it will end.

In response to the long-running conflict and deal with the violations of their rights, the Mangyans have developed various coping mechanisms in their everyday life. Among these responses are the following:

Self-introspection. Many Mangyans are asking themselves if they were responsible for the conflict situation. They want to know how best to address the conflict from within their community, and not just wait for solutions from outside.

Feelings of sadness and insecurity. Mangyans are saddened about the violation of their rights, and the fact that they live in fear in their own land both for their physical safety in their homes and while tending their farms. Many say they are unable to avoid armed encounters since they do not know when and where these would occur. Many fear getting used as human shields in the conflict.

Aspirations. Faced with a conflict situation, the Mangyans are aspiring for, among others: peace, freedom, and end of hostilities; a bountiful life; the preservation of their culture; the continued education of their children; and non-displacement from their lands.

White flags. When there is a military operation or an armed encounter between the warring parties, some Mangyans either refuse to leave and simply stay in their houses or run for cover nearby, returning to their houses only when they no longer hear gunfire. As an added safety measure, Mangyans have proposed putting up white flags outside their homes for their easy recognition as civilians during encounters between the military and the NPA. The military has already agreed to respect the white flags as a result of a dialogue with Mangyan leaders.

Hoarding of food. Because of the conflict, most Mangyans cannot properly attend to their farms or hunt far from their settlements, so they are forced to do their farming in areas that are closer to their homes. They also try to gather food nearby and save as much food as they can.

Evacuation. When the situation worsens, most of them evacuate to a pre-designated safer place like the village hall and leave their houses, personal belongings, animals and crops behind. Relief goods are usually brought to the village hall, where they await orders from the military if it is already safe to return to their settlements.

Self-organization and education. To help them deal with their problems better, the Mangyans have strengthened cooperation among the different tribes and organized themselves into the association of the Mangyan Tribes in Occidental Mindoro or PASAKAMI (*Pantribong Samahan sa Kanlurang Mindoro*). The association brings their concerns to the attention of government officials, civil society groups, the military, and whenever possible, the NPA. Part of their strategy is to engage in education efforts for their members.

Criticize violations and seek assistance. Mangyans can be critical of conduct that violates their rights. To address their needs and concerns, such as food and medicine, they often seek assistance from their local officials, national government agencies, church groups and non-government organizations. They also turn to them for help in talking with the military and the NPA; however, the Mangyans say outside groups or individuals are unable to respond effectively with regard to the rebels.

In the past, whenever there were military operations against the NPA, depending on the gravity of the situation, the Mangyans would leave the area for fear that the NPA would think the Mangyans reported them to the military. (However, according to a military officer, Mangyans do not normally report the NPAs directly to the military). In recent years, the church-backed Mangyan Mission and PASAKAMI deal with both the government and the NPA. They also elevate Mangyan concerns to local government officials and provide basic services to the communities. They have also been able to persuade the local government in one municipality, Abra de Ilog, to provide Mangyans with settlement areas and livelihood opportunities.

Dialogues and agreements. The Mangyans engage the warring parties in dialogues and enter into agreements with them. Their series of dialogues with the military, made possible through the intervention of the church, have resulted not only in the holding of cultural sensitivity seminars for the military, but more importantly, in the signing of a Memorandum of Agreement on September 6, 2003, among the Mangyans, the Armed Forces of the Philippines (AFP) and the provincial government of Occidental Mindoro. When the military leadership in the province changed, the agreement was reviewed, revised and renewed with the signing of a new one on July 10, 2005.

In the new agreement, the Mangyans outlined military activities and conduct that they found offensive, and the AFP responded to each of these concerns. According to a local church leader, the signing of the agreement has caused some concern among the NPA because the Mangyans now see the AFP in a better light, and their relations with one another have improved. As a result, the NPA has indicated that it is also, in principle, open to the efforts of Mangyans to have similar dialogues and a separate agreement with the NPA. The dialogues with the NPA are particularly urgent since many Mangyans are fearful of, or have been threatened with, retaliation by the NPA for their joining the dialogues with the AFP. (*See Summary of the Memorandum of Agreement Among the Mangyans*)

The Tinggians of Abra in the Cordillera Region

Abra is one of the six provinces that make up the Cordillera region in Northern Luzon. The mountainous area is home to several indigenous tribes; aside from the Tinggians, there are the Kankanaeys, Ibaloys, Kalingas, Ifugaos, Isneg, and Bago. Communist rebels are known to operate in the area, particularly in the province of Abra. In the past, there were many armed encounters between the military and the NPA, but in recent years, these clashes do not occur as often anymore.

Unlike the Mangyans of Mindoro, indigenous communities in the Cordillera are no strangers to conflict and are mostly armed because of tribal wars. Many of them have joined the NPA due to poverty and their resistance to big development projects such as mining, logging, and dams in their areas. Because of these protests, many areas in the Cordillera have become militarized, and IPs are used to the sight of the military and the NPA in their areas. However, many IPs have also joined the Citizens Armed Force Geographical Units (CAFGU), especially these associated with the Cordillera People's Liberation Army, an IP-based armed group that has entered into a peace settlement with the government. Thus, the IP in the Cordillera are faced with a situation where indigenous peoples are fighting one another. This has compromised tribal trust, unity and integrity, and has often led to tribal wars.

Some of the human rights that the Tinggians have reported are as follows:

Limited freedom of movement. Since they have become used to the sight of soldiers and rebels, there appears to be no problem of displacement of IPs in the Cordillera as they usually remain



IP evacuee points to land where her house once stood

in their settlements despite the armed conflict. However, they still feel physically threatened by the patrols and encounters between the military and the NPA in their vicinity. They are afraid to roam their lands freely, and they are in constant fear of clashes between the armed groups.

Inability to work. Due to their fears and limited movement, they are not able to work in remote farms and engage in various livelihood activities.

Forced recruitment. There have been cases where the soldiers force the IPs to join paramilitary forces like the CAFGU, or ask the IPs to serve as guides in their operations.

Recruitment of minors. The military has alleged that the NPA recruits minors from among the IPs, particularly bright high school students.

Tribal tension and wars. The presence of IPs in both the CAFGUs and the NPA, and the military's use of IPs in its operations, has resulted in tribal tension and wars. In one case, the military asked a member of one tribe to guide them during a military operation in another tribal area. An encounter occurred and tribal members died. This led to tribal tension between the two tribes, since there was a peace pact between the tribes at that time. There are many cases of this nature. This situation leads to distrust and disunity among the different tribes.

Sexual abuse and abandoned single mothers. In areas with extended military presence, many cases of sexual abuse and abandonment have been reported. Many soldiers also enter into relationships with IP women who end up as single mothers after the soldiers are transferred, leaving them behind. This increases the vulnerability of IP women.

Forced taxation. The NPA continues to impose revolutionary taxes on IP communities in the form of money and food, but people are resisting the practice due to poverty.

Forced sale of property. There are instances when soldiers would buy the livestock of IPs at very low prices. Because the IPs feel intimidated, they have no choice but to yield to the wishes of the soldiers.

Prohibition on giving support. While many IPs are against the NPA, there are also some IPs who consider it a violation of their rights when the military warns them against giving any kind of support to the NPA. They see nothing wrong with helping the NPAs since many of the rebels come from their communities and sympathize with them.

Indiscriminate attacks. Many indigenous communities have suffered from indiscriminate attacks during clashes between the military and the NPA. In one instance, according to a military officer, NPA rebels attacked a CAFGU patrol base and, in order to divert the attention of the CAFGU and the military defenders, used grenades to attack a barangay session hall, killing non-combatant IPs in the process. Grenades were also used in another incident, wounding civilians who were with soldiers at the time of the NPA attack.



Displaced indigenous families in refugee camp

NITF Task Force

Involvement of civilians in military operations. In one incident, a Tinggian farmer working in his field was taken along by passing soldiers who were pursuing several NPA rebels. The farmer died due to alleged mortar fire by the NPAs on the soldiers. The IPs had accused the soldiers of using the farmer as a human shield.

Misinformation and disinformation. In carrying out their war against each other, the parties to the armed conflict are engaged in propaganda and counter-propaganda activities. For instance, according to a military officer, the NPA denied responsibility for the attack that killed civilians in the example mentioned earlier, and insist that the military was responsible for the civilian deaths.

Amid these numerous violations, there are widespread feelings of anger, fear, intimidation and hopelessness among the Tinggians and other IPs in the Cordillera region. They are constantly concerned with how best to proceed when a human rights violation is committed against them. Some of them do not know what to do at all and feel hopeless. This includes the single mothers abandoned by transferred soldiers, who do not know whom to approach and how to deal with their situation. Many feel oppressed by the military as a group; yet they do not do anything about it since they fear retaliation, and they are angry at how they are cowed and intimidated by the military.

However, other Tinggians are coping with human rights violations as follows:

Armed defense of rights. There are many who are prepared to defend their rights and lands against violations through armed response, such as when a development project that is seen as destructive enters their territory.

Remain in their settlements. IPs in the Cordillera and Tinggians in Abra, in particular, are used to armed encounters in their areas. When there is a clash between government troops and the NPA, they usually just stay in their houses as their livelihood activities are near their settlements. Only in extreme circumstances do they leave their houses and move to other communities or to the mountains.

Farm nearby. Since their movement is limited when there is an armed conflict, their livelihood activities are also limited to gathering crops in nearby farms. They avoid going to other farms for fear they might be caught in the crossfire.

Self-organization. Most IP communities in the Cordillera are organized and they consult one another on how best to deal with the situations that confront them.

Seek assistance. They invite non-government organizations, such as the Cordillera People's Alliance and Cordillera Human Rights Alliance, to help them implement their courses of action. They consider NGOs as allies in investigating human rights violations and in publicizing them so that the public will become aware about their plight. They also approach the Commission on Human Rights for the investigation of human rights violations, and seek the help of local officials for relief goods and other kinds of assistance. Moreover, according to the military commander in Abra, some IP leaders have approached the military to complain against the forced taxation of the NPA.

Petition local government. The IPs often request local government units to act on their concerns. In one case, they sought the transfer of a military detachment to another place due to the drunken behaviour of soldiers and acts of sexual abuse.

Use of justice system. Many IPs go to the *Katarungang Pambarangay* (village justice) and regular courts to remedy human rights violations. However, due to the inaccessibility of the courts, the lengthy proceedings and the costs involved, others prefer to use customary modes of settling disputes or the *bodong* system. Customary law is resorted to whether the violator is with the police, military or the NPA. In one instance, as related by a military officer, the tribal leaders convened to discuss the punishment to be imposed on the parents of the NPA rebels who attacked a CAFGU patrol base and threw grenades at soldiers but wounded civilians instead. However, there is always the question of non-recognition of IP customary law by the parties. In other instance, many complainants are afraid of intimidation and retaliation by respondents so they do not file complaints against violators of their rights.



The Manobos of Carmen, North Cotabato

In Mindanao, indigenous peoples are called *lumad* and the municipality of Carmen in North Cotabato province is home to several clans of the *lumad* tribe called Manobo. They have lived in the area since time immemorial, and when Christian and Muslim settlers came, the three groups lived in peaceful coexistence.

In 1999, a land dispute between Muslim and Christian settlers led to armed conflict in the area. The Manobo had allowed some Christian settlers to occupy parts of their land. However, some Muslims were claiming the same piece of land so they entered the area and occupied it by force. When the military attempted to force the Muslim settlers out, the secessionist group Moro Islamic Liberation Force (MILF) came and fighting began.

The conflict lasted for three straight months, from November 1999 to February 2000. During this time, armed clashes between the MILF and the military occurred every night. The conflict ended when the military successfully forced the Muslims to leave the disputed land and return to their former areas. A tri-people (*Lumad-Christian-Muslim*) agreement was put in place and has been followed ever since. Boundaries were clearly drawn and a military outpost was established to keep the peace. Some areas were declared zones of peace, and inter-faith dialogues continue among Muslims, the *Lumad* and Christian settlers. In the last six years, only a few isolated incidents of armed violence have happened. In general, the Manobo say they are living relatively peaceful lives, and most have been able to return to their lands.

Although the current peace and order situation is stable, the effect of the past conflict on their lives is apparent to this day. During the period of the conflict, the Manobo reported that they suffered the following human rights violations:

Loss of sleep. During the fighting between the military and MILF, the Manobo were unable to sleep well at night for fear of their safety.

Displacement. The Manobo were forced to leave their land and stay in evacuation centers. Although many have returned to their land, some of them are still displaced. (Where are they now?)

Loss of livelihood. During the conflict, they tried to continue working whenever possible. But their income was minimal as it was difficult to care for their crops. Sometimes, they could not work due to fatigue and sleepless nights. When they stayed in evacuation centers, they could not engage in farming so they tried to find other work on a day-to-day basis or mortgaged their lands to get money for food. Many of those who did not recover their mortgaged property ended up working for the settlers who now own their land.

Loss of land and property. During clashes between the government and MILF, many of their houses were destroyed and their possessions, animals and crops stolen. Five years after the conflict, many have still been unable to recover their land, animals and other valuables. Government loans that were intended to enable them to start anew are not enough to pay their debts and to sustain them until the next harvest. Those who managed to keep their lands remain poor and do not have sufficient means to buy basic necessities such as medicine and food.

Although the fighting in Carmen has largely ended, and the Manobo now live a relatively peaceful life, they still remember how they faced and dealt with the violations of human rights. Their responses during the conflict included the following:

Felt helpless and hopeless. Most of the Manobo are uneducated, but a number of them have heard about human rights and are aware of their rights. However, they chose to remain quiet about violations during the armed conflict since they felt helpless and hopeless about their situation. They did not have the confidence to ask for help, as they were not sure whom to approach. They feared they would not be noticed because they are poor. They did not expect to obtain justice due to

past experiences, when they suffered from terrorism after they filed cases against violators. What was, and still is, more important for them was their day-to-day survival.

Appreciation of peace talks. The Manobo people support the peace talks between the government and the MILF, as the negotiations have put a stop to the fighting.

Remained in their settlements. At the height of the fighting between government troops and the MILF, many Manobo farmers wanted to leave their settlements, but they had nowhere to go. Hence, they decided to stay put and just moved to places where there were no clashes. They developed a system where someone would always be on guard to alert the community of any trouble. Some men would guard their homes even at night, while women and children were evacuated.

Evacuation. Many Manobos left their settlements during the conflict and moved to different places like the church, the village official's house, schools and evacuation centers. Others stayed with relatives in nearby cities and towns. Among those who stayed in evacuation centers, some returned to their homes during the day. Others slowly returned to their homes even though the conflict was not yet over because government assistance in the evacuation centers was inadequate. However, many returned only after the rebels left the Manobo areas. According to a former mayor of Carmen, 85 per cent of the Manobo who evacuated have already returned to their lands.

Armed defense of communities. Some of the Manobo learned to fight and defend their communities as members of civilian volunteer groups. Many also joined the CAFGU for protection, particularly when the military left their areas.

Sought assistance. During the conflict, the Manobos asked the local and national government for protection, assistance in building houses, food, and relief goods.

Peace zone. Through peace-building efforts with the help of NGOs, the Manobo and other ethnic communities in Carmen have learned to live with each other after declaring the area a peace zone.

Sold their property, borrowed money, and foraged for food. Many Manobos became dependent on relief goods during the conflict, but when these were not enough, they sold their possessions or mortgaged their lands to survive. Others borrowed money or looked for wild cassava to eat.

Work. Many Manobos could not cultivate their farms during the conflict, so they planted on idle lands near evacuation centers or tried to find other kinds of work. Those who could still work in their farms earned very little since it was difficult to tend their crops while fighting was going on.

Violation of Indigenous Peoples' Rights

The three selected cases clearly show violations of civil, political, economic, social and cultural rights of indigenous Filipinos at the level of the individual and of the community. The violations of individual and collective rights are linked and affect the entire range of rights of indigenous peoples.

For instance, whenever there is a military operation or a clash between government troops and the NPA in IP territory, the rights of individual members of the community and the rights of the entire community are violated. Their lives, their livelihood, and their property are put at risk. They are unable to sleep well at night, move around for fear of their personal safety, and work in their farms. Their property may be damaged and they may have to evacuate the area and become displaced, and possibly lose all that they leave behind including their houses, animals and crops.

At the same time, indigenous communities perceive any clash between warring parties on their ancestral domain as a disrespect of what they hold to be sacred their land, and along with it, their culture. It is therefore an intrusion not only of their territorial integrity but also of their socio-cultural existence, a violation of their rights as a people.



Based on the findings in this study, a summary of the rights of indigenous peoples under the UDHR and CARHRIHL that are deemed to have been or continue to be violated as a result of conflict situations in their territories is presented below.

- Disrespect for ancestral domains, which takes place whenever warring parties set up their camps or fight within IP territory, violates the following:
 - a. Right to life, as disrespect of their lands is equivalent to disrespect of their lives for IPs;
 - b. Rights of IPs to autonomy, to their ancestral lands and the natural resources in these lands;
 - c. Non-combatants are entitled to respect for their lives and their moral and physical integrity; and
 - d. Civilians have the right to be protected against risks and dangers posed by the presence of military camps
- The limited freedom of movement that IPs often suffer, for fear of getting caught in the crossfire, violates the following:
 - a. Right to life, liberty and security of person; and
 - b. Right to move freely and to travel.
- The lack of information on military operations that would have enabled IPs to prepare for clashes, and the misinformation and disinformation that are part of the propaganda and counter-propaganda activities of the warring parties violate the right to information of IPs on matters of public concern.
- The use by the warring parties of indigenous language, attire and practices as a method of warfare, particularly in Occidental Mindoro, violates the following:
 - a. Right to life, liberty and security of person; and
 - b. Civilians should be distinguished from combatants.
- When IPs are suspected by the warring parties to be siding with the enemy and warned against associating with either the military or the NPA, these are in violation of:
 - a. Life, liberty and security of person; and
 - b. The principle that non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity and shall be protected and treated humanely without adverse distinction.
- The displacement of IPs as a result of the armed conflicts violates the following:
 - a. Right to freedom of movement and residence;
 - b. Right to shelter;
 - c. Right and prohibition against forced evacuations or forcible reconcentration (displacement);
 - d. Non-combatants are entitled to respect for their lives, and moral and physical integrity; and



Jofelle Tesoro

Pala'wan and Molbog leaders ask the government to prioritize them instead of a pearl farm

- e. Internally displaced families and communities have the right to return to their places of abode and livelihood, to demand assistance necessary to restore them to their normal lives, and to be indemnified for damages suffered due to injuries and loss of lives.
- The loss or deprivation of the livelihood of IPs due to the armed clashes violates the following:
 - a. Rights to life and to property;
 - b. Right to work, gainful employment, livelihood and job security; and
 - c. Civilians should be distinguished from combatants and, together with their property, shall not be the object of attack, and shall be protected against indiscriminate forms of destruction.
- The loss or destruction of the property of IPs, including their lands, houses, crops and animals, due to the armed clashes is in violation of the following:
 - a. Right to property;
 - b. Right to food, clothing and shelter;
 - c. Right of children to protection, care and a home;
 - d. The prohibition against destruction of property of civilians; and
 - e. Civilians should be distinguished from combatants and, together with their property, shall not be the object of attack, and shall be protected against indiscriminate forms of destroying lives and property.
- The hopelessness and insecurity felt by indigenous Filipinos as a result of the armed conflicts may be considered to be in violation of the following:
 - a. Right to life, liberty and security of person; and
 - b. Right to a just, democratic and peaceful society.
- The forced recruitment of IPs by warring parties and their involvement in military operations are in violation of the following:
 - a. Right to life, liberty and security of person;
 - b. Right to freedom from forced labor;
 - c. Right to freedom of movement and residence;
 - d. Marriage and family rights;
 - e. The prohibition against allowing participation of civilians in military field operations and campaigns; and
 - f. Non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity and shall be protected and treated humanely without adverse distinction.
- The alleged recruitment of IP minors by the NPA is in violation of the following:
 - a. Right to life, liberty and security of person;
 - b. Right to freedom from forced labor;
 - c. Right to freedom of movement and residence;
 - d. Marriage and family rights;
 - e. Right of children to protection, care and a home;
 - f. The prohibition against allowing participation of civilians in military field operations and campaigns;
 - g. Non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity and shall be protected and treated humanely without adverse distinction; and
 - h. Children shall not be allowed to take part in hostilities.
- The tribal tension, disunity and wars resulting from the involvement of IPs in the armed conflict, particularly in the Cordilleras, may be considered a violation of the right to a peaceful society.



- The sexual abuse of IP women and abandonment of single mothers by soldiers are in violation of the following:
 - a. Right to life, liberty and security of person;
 - b. Marriage and family rights;
 - c. Right not to be subjected to sexual abuse;
 - d. The prohibition against violence to life and person; and
 - e. The principle that special attention be given to women.
- The NPA practice of imposing revolutionary taxes on IPs violates the following:
 - a. Right to life, liberty and security of person;
 - b. Right to property; and
 - c. The principle that non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity.
- The forced sale of IP livestock at very cheap prices to soldiers is in violation of the following:
 - a. Right to life, liberty and security of person;
 - b. Right to property; and
 - c. The principle that non-combatants are entitled to respect for their lives, political convictions and moral and physical integrity.
- Indiscriminate attacks by the warring parties against one another, causing death or injury to civilian IPs, are in violation of the following:
 - a. Right to life, liberty and security of person;
 - b. Right against indiscriminate bombings, shelling, and gunfire;
 - c. The prohibition against acts of violence to life and person; and
 - d. The principle that civilians should be distinguished from combatants and, together with their property, shall not be the object of attack, and shall be protected against indiscriminate forms of destroying lives and property.
- The loss of sleep that indigenous peoples suffer due to fear for their safety during armed encounters between the warring parties is in violation of the right of IPs to life, liberty and security of person.

In most of these violations, the perpetrators are largely unpunished, despite the efforts of some IPs to seek remedies. Hence, many IPs feel helpless and hopeless in the face of these violations of their rights. This situation of impunity or lack of accountability and remedies for the violations of their rights is in itself also a violation of the following:

- a. Right to effective remedy for human rights violations;
- b. Right of victims and their families to seek justice for violations, including adequate compensation or indemnification, restitution and rehabilitation; and
- c. The principle that civilians have the right to demand disciplinary actions against abuses arising from the failure of parties to observe principles of international humanitarian law.

Support from Government and Civil Society

In dealing with the multitude of violations of their rights, IPs in armed conflict areas rely on various coping strategies and mechanisms. One thing they have realized is that they cannot address their needs and concerns alone. Hence, they actively seek the assistance and intervention of government agencies and civil society groups. External support is necessary for the continued survival of IPs in areas affected by armed conflicts. Otherwise, the situation of affected communities could worsen, which in turn could aggravate the armed conflicts since many IPs may opt to join the armed groups to remedy their situation and seek justice.

Outside interventions take the form of policies, programs, procedures, mechanisms and activities designed to help the IPs cope with their situation. The next section outlines the various forms of support for indigenous communities from other sectors.

Military

According to the officers interviewed, the military is generally aware of the existence of IPs in its areas of operation. They stressed that as an institution, the AFP is against violations of the rights of IPs and would like to deal with armed conflicts in a manner that would least affect the lives of IPs. Therefore, the military tries to comply with principles of human rights and international humanitarian law in its operations as much as possible.

Except for the recruitment of five percent of soldiers from IPs, the military has no other set of policies specifically dealing with IPs, according to one military officer. He said it is easy to file complaints against military personnel if the last name is known or if there is a picture. There is an AFP and police desk that receives complaints of IPs, and the military tries to settle cases and pay fines to aggrieved parties.

In the three study sites, the military strives to promote and protect the rights of IPs in the following ways:

Provide security and protection. To address the security concerns of IPs, the military positions its forces in areas where it can influence the situation more effectively. In general, the military seeks to develop the Integrated Territorial Defense System under the local officials and the police, and involve the people as part of a security arrangement.

According to the military commander in Abra, when IPs approached the military to complain about forced taxation by the NPA, the military intensified its patrols to prevent the rebels from getting close to the villagers, and to deny them the opportunity to recruit IPs. However, this is temporary as the army is a maneuver unit and not a territorial force like the police and CAFGU. The army goes where the rebels go.

Relay IP concerns. Because of continued military presence in IP areas due to numerous military operations in the mountains in Abra, the IPs use the military as conduits or messengers to relay their plight to NGOs, local officials and government agencies.

Offer of amnesty and scholarships. In Abra, to address the problem of NPA recruitment of IPs in high school, the military offers amnesty to those who have joined the rebels. The military also facilitates scholarship grants to the students so they will return to their parents and to mainstream society. In addition, the military educates the parents of students who have not joined the rebel movement.

Cultural sensitivity programs and symposia. In Occidental Mindoro, the AFP assigns teams of soldiers to selected Mangyan tribes to learn about their ways of life and culture. The military has also participated in various symposia with local government officials to discuss matters affecting IPs.

Dialogues and agreements. Also in Occidental Mindoro, the military has participated in dialogues with IPs upon the initiative of church groups. These talks eventually led to the signing of the agreement among the Mangyans, the AFP and the provincial government that was mentioned earlier. With the compliance of the AFP to the agreement, a church leader said relations between the AFP and Mangyans have improved. Communication lines have been opened, and there is less fear of soldiers by Mangyans.

Cooperation with church, NGOs and local officials. The military is cooperating with the Mangyan Mission and local officials to provide livelihood to the Mangyans in Occidental Mindoro. In Abra, the military interacts with NGOs such as the Concerned Citizens of Abra for Good Government, to find out how best to address the concerns of the IPs.



Community service and other projects. The AFP identified the need for health services after conducting community work in selected municipalities in Occidental Mindoro and informed the provincial government, which provided resources to address the problem. According to a military officer, the health services project was successful. The military often brings in line agencies of government for development projects that provide livelihood opportunities to the IPs because its presence in these areas is limited.

Local Government

Often, the first people that IPs run to for help when there is an armed conflict are local government officials. In response, local government units have intervened in these situations in the following ways:

Provide evacuation centers, relief services and assistance. Displaced indigenous peoples usually obtain food, medicine, housing, livelihood assistance, and loans from the local government whenever they have to flee their homes as a result of clashes between the military and rebel groups.

Provide employment. Some mayors in Occidental Mindoro have hired displaced Mangyans in order to give them employment.

Provide funds. In Occidental Mindoro, the governor shouldered the expenses for the repair of the water system and the replacement of sacred tools destroyed during clashes between the AFP and the NPA in IP areas. The governor also provided resources for a health services project for the Mangyans.

Facilitate or organize dialogues and symposia. The provincial government has been instrumental in facilitating dialogues between the military and the Mangyans, and in holding symposia on IP concerns in Occidental Mindoro.

Respond to IP complaints. In one case in Abra, the local government acted in favor of IPs when they sought the transfer of a military detachment to another place due to abusive behaviour of soldiers.

Cooperate with other groups. Local governments often cooperate with the church, NGOs and other government agencies in addressing the concerns of displaced IPs.

National Government

At the national level, government agencies have addressed the concerns of affected IPs in the following ways:

Provide relief services and other assistance. The Department of Social Welfare and Development (DSWD) and the National Commission for Indigenous Peoples (NCIP) are primarily responsible for providing relief services and other forms of assistance to IP communities that have been affected by armed conflicts. In Carmen, North Cotabato, the DSWD provided the displaced Manobos with animals, dryers, sealers, and other farming equipment. The DSWD also provided healing therapy for traumatized Manobo children.

Respond to concerns of IPs. The Office of the Presidential Adviser on the Peace Process (OPAPP) and other government agencies also try to address the plight of IPs in armed conflict areas by facilitating and providing services, disseminating information, and relaying their concerns to other groups.

Investigate alleged abuses. The Commission on Human Rights (CHR) and OPAPP, among others, are investigating alleged violations of the rights of IPs in conflict areas.

According to many IPs interviewed for this study, they are not satisfied with the actions of local and national government agencies in response to their situation. For instance, they found the relief goods insufficient; hence, many displaced IPs did not stay long in evacuation centers and chose to return to their settlements even though the armed encounters were still going on. Moreover, some of the IPs said government agencies like the DSWD were unreliable. In one example in the

Cordilleras, the DSWD left out a number of IPs in the distribution of relief goods because it failed to count displaced IPs who, instead of proceeding to the relocation sites, followed customary practice and went to the house of the nearest local leader. In another instance, in Carmen, the Philippine Coconut Authority was supposed to provide seedlings to the Manobos but failed to do so.

When it comes to action on their complaints or on cases of human rights violations, the IPs found that government responses are either inadequate or delayed. In particular, it is the perception of Mangyans that the government acts only on minor cases but not on big cases of human rights violations involving the military, such as massacres. Many Mangyans have lost hope for government action on this type of cases.

Some IPs, along with NGO leaders, are critical of the inconsistencies, conflicts and contradictions in government policies and positions on IPs. According to them, while the NCIP is bent on implementing the Indigenous People's Rights Act (IPRA), other government agencies like the Department of Environment and Natural Resources (DENR) allow activities that are inconsistent with IPRA. For instance, the DENR allows mining and logging to be carried out in IP areas, in violation of the rights of IPs to their ancestral domains.

With respect to the investigation of alleged violations of human rights of IPs, NGOs are not happy with the situation where NGOs and the CHR conduct their investigations separately, as they would rather have joint investigations instead.

Civil Society

Many church-based organizations and NGOs have provided assistance to IPs in conflict areas. They intervene or have intervened in the following ways:

Provide relief services and other assistance. When armed encounters take place and IPs get displaced, various groups including international organizations like the Red Cross and Oxfam undertake relief operations. They facilitate the transfer of IPs to evacuation centers, bring in doctors, and provide IPs with food, clothing, and other relief goods. Some assist the IPs in building new houses and putting up livelihood projects. For example, in Carmen, North Cotabato, Tabang Mindanaw (Help Mindanao) and Kadtuntaya Foundation distributed work and farm animals such as goats, pigs and carabaos. The micro-finance group Kidangkorkor lent money to enable displaced Manobos to start farming again. The Christian Family Services International provided facilities and equipment for basic services like meeting centers, deep wells and water pumps.

Information, education and training. In Mindoro, the Mangyan Mission and the Social Action Office of the Vicariate of Occidental Mindoro conduct education and training on human rights, particularly on CARHRIHL. Other groups like the GMA and ABS-CBN foundations provide scholarships to Mangyans for vocational courses. In the Cordillera region, the Cordillera People's Alliance, the Cordillera Human Rights Alliance and the Concerned Citizens of Abra for Good Government also undertake human rights education activities, with particular attention given to the right to self-determination of IPs. They also train paralegals assistants in IP communities. In Carmen, North Cotabato, the lawyers' organization PANLIPI undertakes human rights education work. The Kadtuntaya Foundation initiated a training program on women's rights and conducted primary health care education.

Monitoring, investigation and documentation. In Occidental Mindoro, church groups document encounters and track displacement figures, while the Red Cross sometimes conducts investigations. In Abra, the Cordillera People's Alliance and the Cordillera Human Rights Alliance provide documentation support of alleged human rights abuses, while the Concerned Citizens of Abra for Good Government help in monitoring abuses.

Legal support for seeking redress. There are NGOs that provide legal services to IPs seeking redress for violations of their rights before government agencies and the courts. Among these groups are PANLIPI, the Cordillera People's Alliance, and the Cordillera Human Rights Alliance.



Community organizing. To help them address their concerns, NGOs organize IPs in various areas. The Kadtuntaya Foundation in Carmen, North Cotabato, for instance, helped organize IP women to set up small businesses.

Articulate IP concerns. Many NGOs are helping indigenous communities to air their concerns to local governments, national government agencies, and to the parties in conflict in order to obtain results. In one municipality in Occidental Mindoro, the local government provided settlement areas with livelihood opportunities for displaced Mangyans because of the intervention of the Mangyan Mission.

Facilitate dialogues and agreements. Many NGOs are engaged in peace-building efforts to bridge the gap not only between IPs and the parties in conflict, but also between IP groups. In Occidental Mindoro, the church is at the forefront of these efforts. It has initiated dialogues between IPs and the military, organized cultural sensitivity seminars for the military, and sponsored discussions between IP elders and the military on respect for the rights and culture of the IPs. These have resulted in signed agreements between Mangyans and the AFP, particularly on the conduct of military operations in IP areas. A similar agreement is being considered with the NPA. In the Cordillera region, the Cordillera People's Alliance and the Cordillera Human Rights Alliance intervene in conflicts between tribes to prevent tribal wars. The Concerned Citizens of Abra for Good Government is also engaged in peace dialogues. In Carmen, North Cotabato, peace-building activities of the Christian Family Services International and Kadtuntaya Foundation, including peace zones and culture of peace seminars, have helped the people learn more about how the conflict started and how it has affected various groups. These groups have also facilitated meetings among leaders of different factions, and their initiatives have resulted in the absence of conflict in the last five years.

Support campaigns. Some NGOs, like the Cordillera People's Alliance and the Cordillera Human Rights Alliance, provide support to various advocacy campaigns for the benefit of IPs. In particular, these NGOs consider the implementation of the CARHRIHL as an important step towards the protection of the rights of IPs in armed conflict situations. On the other hand, the church in Occidental Mindoro would also like to see the IPRA law fully implemented.

Fund raising. There are NGOs, like the Christian Family Services International in North Cotabato, that help raise funds for the needs of IPs displaced in armed conflicts.

So far, the effectiveness of interventions regarding livelihood support has not been clearly seen, except in one case. When the Kadtuntaya Foundation provided assistance to help IPs set up small businesses in Carmen, half of the projects failed. This may be attributed to the limited time allocated to helping the community prepare in managing a business, which requires certain skills and attitudes that are new to many IP communities.

Among the other interventions, it appears that the peace-building efforts of NGOs in Occidental Mindoro and in Carmen, North Cotabato, have been the most effective ones. The Mangyans are generally pleased with their agreement with the military. The Manobos, on the other hand, continue to live in relative peace, although they remain in need of continuous psychological treatment, especially for their traumatized children who still hide at the sound of helicopters.

Relief efforts and other forms of assistance for displaced IPs need to be made more sustainable. For instance, the animals provided by Tabang Mindanaw to Manobos were not enough. Twenty people had to share two carabaos, and the pigs and chicken provided to them were of the hybrid

variety that required special feeds. The IPs could not afford to feed the swine and poultry, since their feeds cost more than the daily food intake of the IPs themselves, and the animals eventually died. Another case concerns the loans from Quedancor, which did not guarantee buyers for their harvest. Because their products could not compete with those of other farmer that were sold at cheaper prices, the Manobos were largely unable to pay their debts, and they found it difficult even to sustain themselves until the next harvest.

What Can Be Done

Since the findings of violations in this study are representative, they do not necessarily reflect the true extent of the situation in various areas across the country where armed conflicts persist to this day. For instance, although no torture, cruel or inhuman treatment, or arbitrary arrest was mentioned by any of those interviewed for this research study, it does not mean there was no such violation at all.

Many of the interventions from government and civil society have brought peace and other benefits to affected communities, but much more needs to be done to address the plight of indigenous peoples in armed conflict areas around the country. Based on the findings of this study, the following specific recommendations are proposed:

1. Government policies and procedures:

- The Philippine National Police (PNP) and the AFP should come up with policies and procedures that specifically apply to IPs in armed conflict areas. At present, they only have general policies and procedures that are applicable to all civilians. In particular, while military presence may at times be necessary, they should limit such presence in order to avoid the increasing militarization of IP areas.
- The government must be consistent in its implementation of laws and policies concerning IPs. More specifically, it should not allow activities like mining and logging in IP areas, which is a violation of the IPRA law.

2. Education and training:

- Police, military and other concerned government personnel should be educated on the culture of IPs, particularly in their areas of operation. They must become culturally sensitive. This can be done before they get assigned to IP areas and while they are already in their areas of work through seminars, dialogues and other interactive means. It would also help to have a reference material or handbook regarding the IPs living in the area so that police and military personnel in each area affected by the armed conflict may become aware about local culture. Education efforts should also target non-IP civilians in armed conflict areas.
- Education on human rights and principles of international humanitarian law should be enhanced for IPs, police, military and other government personnel, and the general public in areas affected by the armed conflict. Special attention should be given to the rights of IPs under the IPRA, and to the CARHRIHL particularly in areas where the NPA is active.
- Indigenous communities need to be educated about the national justice system, including barangay justice, so they will appreciate the context of their own system. IP groups that are exposed to mainstream society need to be capacitated to enable them to apply both their customary law and the national justice system.
- Indigenous peoples will appreciate the national legal system better if they know not only what their rights are, but also how violations may effectively be redressed under existing laws. They should also learn more about the programs and operations of government agencies that can directly address their concerns. In-depth knowledge of government institutions, systems and procedures is important since there are many ways of dealing with violations of the rights of IPs. Hence, IPs should learn which works best and under what circumstances. For instance, in dealing with abuses of soldiers, aggrieved IPs may first proceed informally and seek the intervention of the barangay captain, the mayor, or the commanding officer, or they may file a formal complaint with the police and go to court. According to a



military officer, the process may take longer if the aggrieved party goes to the police first instead of directly to the military commanding officer. The aggrieved party may also go to the AFP's Office of the Inspector General or the Trouble Marshall where complaints against erring military personnel may be filed. Research on such systems and procedures should be undertaken for the benefit of IPs in conflict areas.

- Indigenous peoples should learn about the nature of police and military work, especially about acts that are deemed illegal. They must realize that it is the mission of the PNP and AFP to uphold the rule of law, to maintain peace and order, and to go after armed groups. This means possessing firearms without license invites police and military action, so IPs should not carry unlicensed firearms themselves and they should avoid armed groups. Otherwise, they could be arrested, or get caught in the crossfire since the police or military will pursue armed groups anywhere with or without the help of IPs. Knowledge of police and military practices will make IPs understand better the reasons for police and military actions in IP areas. For instance, it will help for IPs to know that the length of stay of soldiers in IP areas depends on the nature of their mission, which could be for a peace activity, a development project or a combat operation. Indigenous communities should also be aware that there is no military order of battle for mere sympathizers of the NPA.

3. Entry into IP territory:

In recognition of IP rights over ancestral domains, a system should be developed that will enable NGOs, police, military and other government personnel to comply with the IPRA requirement of free and prior informed consent of IPs whenever non-IPs enter any IP territory for whatever purpose.

4. Representation and participation of IPs:

Indigenous peoples should participate or be represented in any decision-making process, at any level, on matters affecting their rights and their lands. This is to ensure that programs for the benefit of IPs really focus on IP concerns, and not on what government agencies and NGOs think is best for them.

5. Allocation of resources for IPs:

Financial and other resources allocated for IPs affected or displaced by the armed conflict should be increased, considering that many IPs live in poverty. Many have no lands and no capital for sustainable livelihood activities.

6. Livelihood assistance and services:

- Government agencies and NGOs must move quickly after military operations or encounters to address compensation and assist IPs caught in the crossfire. This will require good governance and cooperation among LGUs and NGOs.
- Livelihood assistance projects for displaced IPs should be adequate and sustainable, with monitoring and follow-up mechanisms in place to avoid a repeat of the fiasco with hybrid animals.
- Psychosocial trauma healing programs, especially for children, should be set up in conflict areas such as Carmen, North Cotabato, where the residents have not fully recovered from their experience.
- Health and education are among the most affected services in conflict areas. In particular, IPs have mentioned their need for schools for their children and accessible health centers with enough medical supplies.

7. Harmonize justice systems:

The national justice system, including barangay justice, should be harmonize with the customary law of indigenous peoples.

8. Investigation of violations:

- All violations of human rights and IHL principles should be investigated and the violators held accountable. Violators must realize that they cannot commit violations with impunity.
- The Commission on Human Rights and human rights NGOs should consider having joint fact-finding missions to investigate alleged human rights violations committed against IPs. There is a need to study the mechanics closely since they may possibly not agree on their findings and assessments.

9. Peace-building efforts:

- Dialogues among the IPs, government, and armed groups in conflict areas should be encouraged and supported. While it is the IP leaders themselves who should directly hold dialogues with the protagonists, safety nets and support mechanisms must be set up by NGOs, the church, LGUs and national government agencies like OPAPP. The dialogues should lead not only to deeper understanding and appreciation by the parties of each other's culture and practices, but also to arrangements that are embodied in agreements like what the Mangyans in Occidental Mindoro have, which promote and protect the interests of the parties, particularly the IPs. Based on the experience in Occidental Mindoro, it is important that when there are changes in military commands, new officers should immediately be informed of existing agreements, which should constantly be reviewed and updated to fit the current situation.
- One situation that requires further study is the practice of some IPs of carrying guns as part of their culture. They use it for hunting, for defense and for maintaining tribal peace. In most cases, they have no permits to carry guns, and they do not want the government to know the type and number of guns they have. At the same time, they find the registration fees prohibitive and the procedure tedious. Therefore, there is a need to develop a registration system that will address the interests and concerns of both the government and the IPs, with minimal fees and a simplified procedure.
- The government should support initiatives by IPs, together with NGOs and LGUs, to set up peace and development zones, especially in conflict areas.
- Local Peace and Order Councils should be convened especially in conflict areas. Many such councils, like the one in Abra, have not yet been convened. These councils could serve as venues for IPs to air concerns about the peace situation.
- There should be greater involvement of the media in peace efforts.

10. Follow-up study or conference:

It is important to have a more extensive follow-up study on the subject of this research, covering more areas and IP groups. The results could be presented in a national conference attended not only by IPs but also by all stakeholders and interested parties, including members of relevant executive agencies and the legislature. The study and the conference could pave the way for the formulation of a comprehensive national plan of action specifically for IPs in armed conflict areas around the country.

Atty. Carlos P. Medina, Jr. is the Executive Director of the Ateneo Human Rights Center and a faculty member of the School of Law of the Ateneo de Manila University. The assistance of Atty. Ray Paolo Santiago and Ms. Regina Lapid-Juan in the preparation and writing of this report is gratefully acknowledged.

The Power of Language: A Conversation Analysis of an Iraya Mangyan Conflict Resolution Process

By Victoria P. Dinopol



angyan” is the collective name of seven ethnolinguistic groups inhabiting most of the highland region of Mindoro, the seventh largest island in the Philippine archipelago. An introductory account found in the *CCP Encyclopedia of Philippine Art: Peoples of the Philippines* says that “the exact etymology of the word Mangyan has not been identified or traced.” It had been in use for a long time before anthropologists realized that there were actually several diverse groups making up the Mangyan population on the island.

One of these groups is the Iraya, which has a population of about 35,000 found mostly in the northern part of Mindoro. The Iraya of Abra de Ilog, in the province of Occidental Mindoro, is a sub-group of the Iraya who occupy the northwestern part of the island. The name “Iraya” means “people from upstream” and indeed, this group lives up the mountains of Abra de Ilog.

Most lowlanders describe the “Mangyan” as “illiterate” in terms of mainstream legal practices, but the Iraya justice system, as expressed in their “*usapin*” or deliberations in settling disputes, defies this perception. Their tacit knowledge and wisdom in resolving a dispute within the bounds of their customary laws are commendable.

This case study looks at an indigenous conflict resolution practices of the Iraya community in the village of Atipan, about two kilometers from Abra de Ilog, as shown in their language use during deliberations. There are 36 families in the village, which was chosen as the study site because it was the venue of an “*usapin*” during the time this research was conducted. This Iraya sub-group’s proximity to the province of Batangas in mainland Luzon, and some parts of the Visayas, allows them to predominantly speak the Tagalog language with some Visayan vocabulary.

Political structures of the Mangyan are described as fluid, unlike the rigid structures of lowlanders. Most groups recognize at least one leader who is deemed to have both mythical and religious powers. The leader often leads the celebration of an agricultural ritual. Other groups recognize the leadership of a council of elders, who pass on the customary law from previous generations.

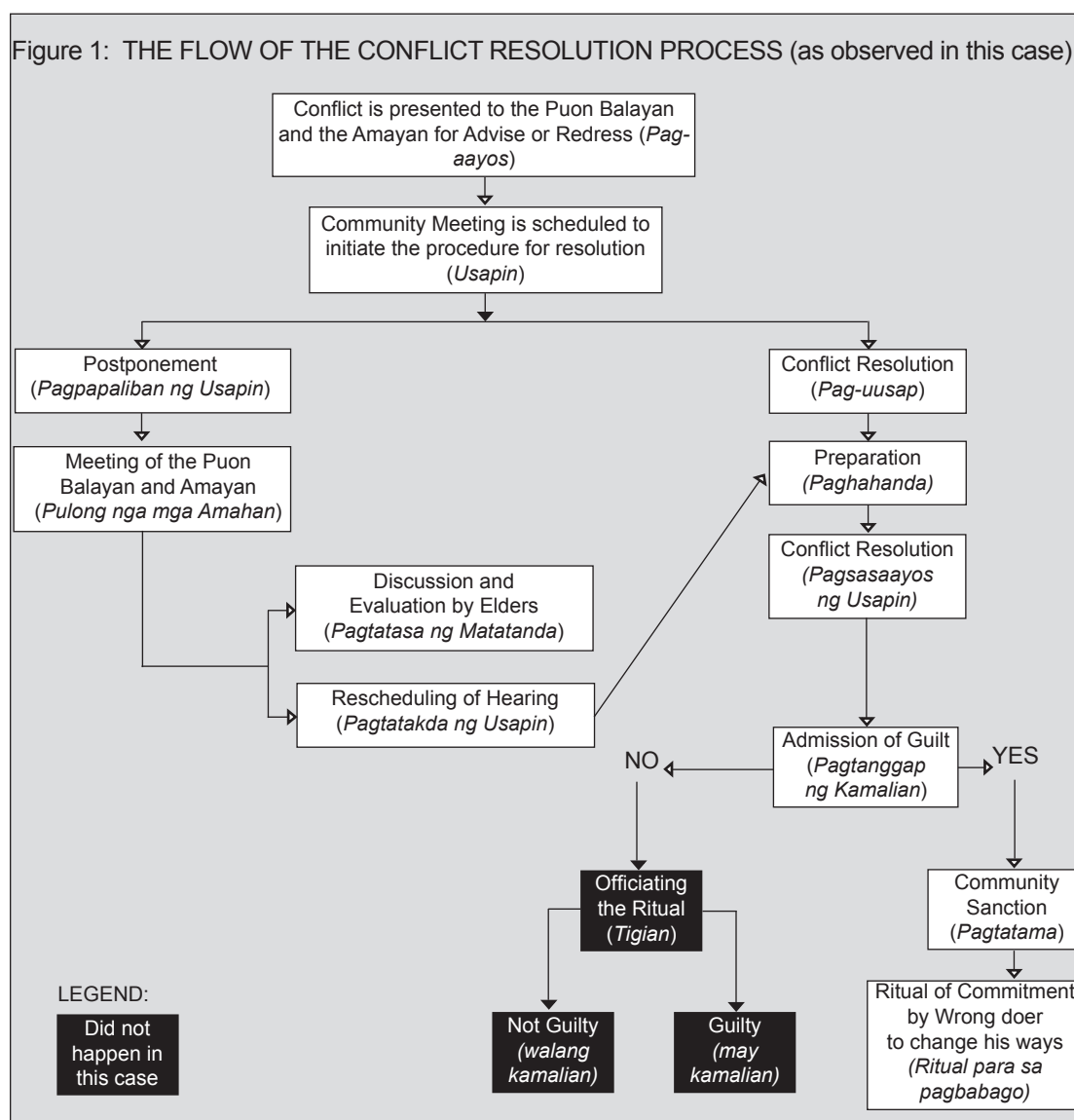
Among the Iraya of Atipan, there is a *Puon Balayan* who heads the community and acts like the village mayor. He was chosen by nomination, not by election. The organizational hierarchy consists of four other officials: the *Amayan* (male elder), the *Inayan* (female elder), the *Pasadyaan* (expert on customary law), and the *Suguan* (equivalent to the police). All these leaders play important roles in the resolution of disputes in the village. All of the families in the village chose these officials from the tribal leaders and elders.

The incident (*Usapin*) discussed in this case study revolves around an offense of a parent against a child (*pang-aapi ng magulang sa anak*). The *Usapin* or conflict resolution process is initiated by the calling of a community meeting by the *Puon Balayan*. At this meeting, the *Puon Balayan*, a number of *Amayan* and *Inayan*, the people involved in the *Usapin* and community members, all congregate at a certain place in the community. They sit around without any particular order, just like in any other gathering. The attention of the crowd is drawn to whoever is the speaker.

Conversation Analysis: An Introduction

In the context of legal adjudication in the mainstream Philippine society as well as conflict resolution negotiations among indigenous peoples, **language** is the primary means by which participants convey information about the events that are the subject of the case. Dramatically, different accounts of the events can emerge in the talk-in-interaction. The pre-dominant goal of **persuasion** is common knowledge across cultures, but it has been a neglected fact that in different cultures, persuasion might mean different things and is conducted in various ways. This study does not use stereotypes to define the target indigenous community, but uses the Iraya's own discourse structure within their conflict resolution genre, their own deliberation structures and language features, their own gender roles to identify their own customary laws and justice systems, and their own linguistic realizations that display their uniqueness as a people. Studying the language of their peace-building process might therefore be useful in studying the language of persuasion within the

Figure 1: THE FLOW OF THE CONFLICT RESOLUTION PROCESS (as observed in this case)



community. This may provide support for the promotion of the rights of indigenous peoples, who are among the many vulnerable groups in the country today.

In order to objectively study the conflict resolution practices of the Iraya of Abra de Ilog, this research examined the **language use in the conflict resolution process** using the *in situ* or natural occurrence study of interaction of Conversation Analysis (CA). This analytic instrument investigates talk as action; therefore, it offers a way to see how social order is produced through communication. By tape-recording the institutional interaction in real time and real space, the analyst undertakes a “discovery process” through detailed description of how language is used regardless of the participants’ identity, their motives, and the context of the interaction.

This method of study is in line with the advocacy of researcher J.H. Stanfield II to radically change the paradigms of cultural and ethnic studies. Stanfield believes that there is a need to study human experiences within their unique cultural contexts rather than employing alien cognitive maps for research designs and data interpretation. “Oral communication research strategies are often more valuable for understanding the nature of people within the oral based cultures than are methodologies dependent upon written responses,” Stanfield wrote. The Iraya still predominantly belong to the oral-based cultures among the indigenous peoples in the Philippines.

To tighten the grounding of the study’s analysis and interpretation, it is triangulated with “Applied Conversation Analysis”, a branch of CA that studies institutional interaction. The assumption here is that the deliberation process in this case study does not belong to simple and daily conversation interaction. An institutional interaction, like that of the conflict resolution practices of the indigenous peoples, is non-conversation due to the status and power relationships of the participants. Experts would describe such an interaction as highly asymmetrical, situation-and setting-specific, goal-specific with pre-allocated turns, and carries inferential frameworks specific to the institutional contexts.

In studies of institutional setting, two types of interaction may be analyzed: formal and informal settings. In formal settings, participation is focused on particular tasks, the order of participation is fairly rigid, and the kind of turns expected of participants is limited or even pre-allocated to a certain extent. On the other hand, the informal setting has a loosely structured and fluid organizational structure of normative expectations. The Iraya’s conflict resolution practices fall within the informal institutional setting.

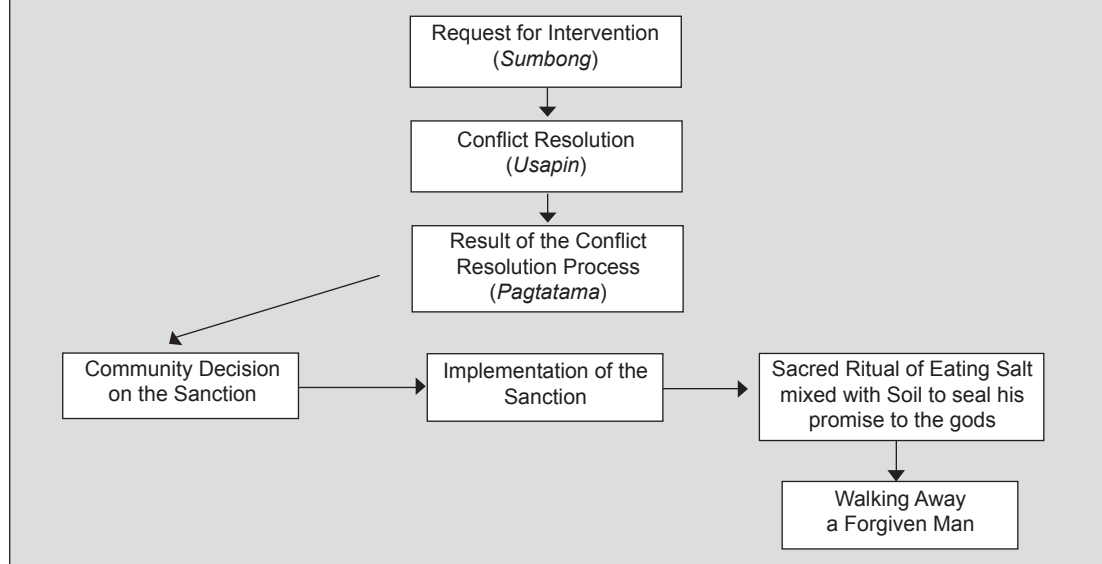
Pre-conditions

During a preliminary meeting with Iraya leaders, they were initially hesitant to allow the researcher to observe and record their language use in the conflict resolution process. Specifically, they were concerned about documenting the sacred rituals of their justice system called *tigi*, which is used in determining the innocence or guilt of the accused. After understanding the significance of the research towards the implementation of the Indigenous Peoples Rights Act (IPRA), however, they gave their free and prior informed consent for the study on the following conditions:

1. that the researcher, being a non-Mangyan, is not allowed to witness, record, take pictures, or hear the chants, prayers, and invocations made by the elders prior to the penultimate act of conducting the *tigi*.
2. that the researcher has to have her transcription and translation validated by a Mangyan to ensure accuracy
3. that the researcher may only record allowable parts of the proceedings, through a Mangyan participant-informant, subject to the determination of the elders.

Hence, only the question-answer proceedings of the communal hearing are included in the study. The pre-hearing activities, the implementation of the ‘sanction’ on the offender, and the

Figure 2: SCHEMA OF TIGI (Sacred Ritual)



'*pangaral*' of the *Puon Balayan* to the accused are not included. Pictures of the proceedings were also not allowed. However, the study obtained favor in the final taping when the elders allowed the participant-informant to tape the prayer of the accused and the symbolic eating of the mixture of salt and soil as a compact with his god.

Turns at talk which includes the organization and sequence patterns of instances of talk were analyzed to reveal the use of persuasion, the principles and beliefs pertaining to justice and society, the power holders and shifting of power during the discourse, gender roles, and the language features of the sacred rituals. The whole discourse was divided into Conversation Episodes and the number of turns-at talk during these episodes was recorded. Within each episode, data fragments were analyzed.

Overall, the total number of turn-takings recorded on tape is 530. The list of the number of turn-takings per *Conversational Episode* is given below.

<i>Conversational Episodes (C Ep)</i>	<i>No. of Turns</i>
C Ep # 1 [Preliminary Investigation]	42
C Ep # 2 [Discussion of the Case Among Elders & Community]	34
C Ep # 3 [Questioning: Wife as Supporter of Accused]	154
C Ep # 4 [Elders/Community Persuade Wife to tell the truth]	35
C Ep # 5 [Investigation: Grandchild-Elders/Community]	37
C Ep # 6 [Investigation: Admission of Accuser of Mistake]	29
C Ep # 7 [Complaint of Grandchild]	12
C Ep # 8 [Wife's Complaint]	9
C Ep # 9 [Interrogation of the Accused]	43
C Ep # 10 [Punishment & Asking for Pardon]	112
C Ep # 11 [Ritual after the Punishment]	23
TOTAL	530

The Role of Language in Conflict Resolution

The Iraya of Abra de Ilog entitled this case as “*Pang-aapi ng Magulang sa Anak*” or “Oppression of a Parent on his Child”. It was found that among the Iraya, there is no specific term for crime. Anything done against anybody is covered by the word “*Pang-aapi*” or Oppression.

The *Usapin* or the conflict resolution process is initiated by the calling of a community meeting by the *Puon Balayan*. At this meeting the *Puon Balayan*, a number of *Amayan* and *Inayan*, the people involved in the *Usapin* and community members congregate at a certain place in the community. They sit around without any particular order. Just like in any other gathering, the attention of the crowd is drawn to whoever is the speaker.

In the following sections, the research questions are addressed using the data fragments displaying the interaction. The excerpts are identified according to conversational episodes and the annotations explain significant **turns** within the chosen data fragment.

Question # 1: How is the language of persuasion used during the conflict resolution process?

Extract 1 shows a long interaction that demonstrates the various types of linguistic realization used in persuading the Accused to admit his guilt. The focus in the evaluation of persuasion here are the concepts or the pragmatic acts of language use. According to Lindsley, the starting points for evaluating persuasive statements in an adversarial situation are the prior beliefs, attitudes, and values that affect human behavior. (NOTE: Numbers signifying pauses in interaction were removed for purposes of readability.)

As shown in the interaction, the use of the Iraya’s **spiritual beliefs** along with **community values of what is right and what is wrong** strongly persuaded the Accused to relent and admit his wrongdoing. These can be seen in the repetition of the recurrent theme, which is “the order of boiling water to determine innocence or guilt” in T5 and T18. This theme is reinforced by the community’s call for a ‘dare’ to do the ‘boiling water test’ from T9 to T12.

Another tool is the **social or community judgment device** on what is right and wrong. This device also persuaded the Accused to admit his wrongdoing and to mend his ways. This theme is seen in T14 and also in various parts of the deliberation where the community reacted strongly against the denials of the Accused.

Finally, a most interesting linguistic device used by the participants and most predominantly used by the Accused is the **non-naming of the specific crime**, as shown in T1 to T4, and T13 to T16. Throughout the lengthy interaction, the offense was never specifically named, mentioned or identified. Only hedging or referential words were used. One inference that could be given for this linguistic realization was to reduce or remove the stigma of a wrongdoing, or an effort to lighten the severity of the offensive act. However, looking at where the Irayas are coming from, it could be said that they are simply being consistent with the fact that they do not have a specific term for crime.

A theory could be proposed that the **non-naming of the crime** is one important aspect that allows the Iraya to accept a conflict resolution process within the bounds of their customary laws. Because the crime is expressed in generic and not specific terms, it becomes easier for the parties involved to take the corresponding punishment, accept the consequential results of their sacred rituals, and go through the procedure of asking and giving forgiveness no matter how heinous the crime might seem in the context of the mainstream justice system.

In order to fully appreciate and evaluate the language of persuasion, it is necessary to look at the structure of the linguistic realizations, as enumerated on the next page:

- A. **Threats** using the religious beliefs of the Iraya became a persuasive device, particularly in going through the sacred ritual of the “boiling water test” to determine the guilt of the Accused, who did not take the dare and therefore tacitly admitted guilt.
- A.1 The use of the **imperative order** of language structure in the commands of the Chief Amayan helped in persuading the Wife to admit the existence of the offense, thereby starting the conflict resolution process:
- (T6) = *kuha* ng tubig ... *maglaga* [get water ... boil it]
 - (T10) = *lalaban* ka sa tubig ? [you’ll fight the water test?]
- A.2. The use of **bi-polar questions**: the constraining “Yes/No” which limits the choice of the Accused to only two:
- (T6) = *Ano, tanggi?* [you still deny?]
 - (T10) = *lalaban ka sa tubig?* [you’ll fight the water test?]
 - (T12) = *lalaban ka?* [you’ll fight?]
- A.3 The use of the **conclusionmaking word** “*kaya’t*” in (T23) = *kaya’t umamin ka na*, [that’s why admit it now] gives a signal to the Accused that the evidence is strong and he is already trapped.
- B. The use of **referential statements** such as the past tense of the verbs with affixes i.e. [nag-+ v] and [-in- +v] in summarizing the oral testimony of the Accusers impeached the credibility of the Accused and his Wife, making them admit the existence of the offense.
- *Nagtapat na man ang mga bata..* [the children have admitted/testified]
 - *Sinabi na liwanag, eh...*[it was clearly said]
- C. The use of **gossip-within-hearing** device, which is the retelling of the oral testimony of the Accuser-Victims in the presence of the Accused without involving him in the interaction, thereby “erasing” his presence, made the Accused relent.
- D. The attitudinal persuasion device, which injected the social value of right and wrong behavior during the interaction, is realized linguistically in T14 and T16), softening the stubbornness of the Wife:
- *I-ayos naman yung kamalian mo...*[straighten your wrongdoings]
 - *Para namang maputol ang kamalian mo* [this is to stop your wrongdoings]

The final utterances give the parties involved a sense of hope in a new life or a new start. It does not criticize the person, only his weakness. There is an inference that if the Accused admits his guilt, then he would still be accepted by the Community.

The rejection by the Community of the **normalizing device** used by the Accused and Wife in repeating the recurrent theme “*di ko alam*” [I do not know] weakened their stand. This linguistic realization is an attempt to reduce the severity of the case, and an effort to normalize aberrant behavior on the part of the Accused. The device is also shown in the non-naming of the specific offense, as well as the inferential admission of the crime by not accepting the dare to take the “boiling water test”.

The linguistic realizations from the community proved to be more persuasive compared to the defensive arguments of the Accused, which were weak. The hedging utterances of the Accused rendered him powerless, and it showed **discourse power** getting transferred to the interrogators.

Question # 2: *How does language use reveal the inherent interaction rules governing the Iraya’s tradition of conflict resolution?*

Interaction rules are seen as the invisible thread that governs the orderliness of a discourse. A conflict resolution proceeding is considered an “institutional interaction” and therefore, it is not treated as an ordinary mundane conversation that any member of a society would do in daily undertakings.



Extract 1: Conversational Episode # 9 [Probing]

Participants: Chief Amayan = CA, Accused = Acd, Relative of Accused = RA, Female Voice from community = FV+, Male Voice from community = MV+, Community = Comm.

Content: The Accused has been removed from the *pangaw* (a wooden slab on which the wrongdoer's feet were clamped) and is answering questions from the Chief Amayan and the Community.

ANNOTATIONS	TURN	Q-A INTERACTIONS
T1 = Brother in-law of the accused was made to question; this is for fairness.	T1 RA	Bayaw, tutoo ba ang sinasabi o hindi, na ikaw ay may ginagawang anu? [<i>Brother-in-law, are the statements true or not, that you have been doing something?</i>]
T2 = Acd denies	T2 Acd	Wala Ting, ... ngayon ko lang nalaman nang... [<i>No, Ting, ... I just learned it today when ...</i>]
T3 = Giving benefit of the doubt: "only that" means lighter offense	T3 RA	Wala ... Talaga na bang iyon na lang ... [<i>None ... Is it true that it's only that...</i>]
T4 = Acd maintains denial	T4 Acd	Eh yan ay ... walang ... walang ... [<i>Eh that has ... no ...no...</i>]
T5 = Exasperated CA threatens the Accused.	T5 CA	Ay kuha ng tubig, maglaga ... [<i>Ay go get water, we will boil...</i>]
T6 = Female participant joins in the questioning without asking permission	T6 FV1	Ano, tanggi? (<i>What, you deny it?</i>)
T7 = Acd maintains denial for the 3rd time	T7 Acd	Tanggi. (<i>Deny</i>).
T8 = Community gets angry; they do not believe the Accused	T8 Comm.	[Noise/Angry Reactions]
T9 = Male voice urges boiling water test to determine the truth	T9 MV	Lalaban siya ng tubig [<i>He'll fight the water (test)</i>]
T9-T12= Everyone urges Accused to undergo boiling water test	T10 CA	Oo... lalaban ka sa tubig. [<i>Yes.. you will fight the water (test)</i>]
T13 = Accused relented, lamely maintains his innocence	T11 MV2	Lalaban ... [<i>fight</i>]
	T12 MV3	Lalaban ka... [<i>you will fight</i>]
	T13 Acd	Di ako lalaban, di ko alam eh ... [<i>No I will not fight, I don't know eh...</i>] [Angry voices from the community]
T14 = Angered by continuous denial of Accused, participant tries to persuade him using social mores of the community	T14 FV1	I-ayos naman yung kamalian mo... Nagtapat naman ang mga bata noon... [<i>Straighten your wrong doing ... the children have already admitted</i>]
T15 = Accused still maintains innocence = overlaps T16	T15 Acd	Di ko alam... yung atraso kong nagawa... [<i>I don't know ...what error I did...</i>]
T16 = Still persuading Accused through belief in good and bad	T16 FV1	Para na mang maputol ang kamalian mo... [<i>so that you can stop your wrongdoing</i>]
T17 = Accused maintain innocence	T17 Acd	Oo ...di ko alam [<i>Yes .. I don't know</i>]
T18 = Threat from prosecutor for the third time; shows exasperation	T18 CA	Oo .. kuha ng tubig. Maglaga tayo. [<i>Yes..get water. Let's boil (water)</i>]
T19 = Defenses are now down	T19 Acd	Hindi na kailangang .. yung nilaga [<i>It's not necessary ... that boiled water</i>]

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T20 = Prosecutor gains upperhand	T20 CA	O ... ay ano.. <i>[Alright... then what?]</i>
T22-T30= Persuasion through pragmatic acts; repetition of Daughter's story to destroy the credibility of defense	T21 Acd	... yung... <i>[that....]</i>
	T22 CA	Sinabi na liwanag eh ... <i>[You were told that it is clear, eh]</i>
	T23 MV2	Kaya't umamin na ... <i>[that's why, admit it now...]</i>
	T24 Voices:	Umamin na.. <i>[Admit it now...]</i>
	T25 MV3	Kailan daw yan? <i>[When did that happen?]</i>
	T26 FV3	Matagal na ... <i>[A long time ago]</i>
	T27 CA	Matagal nang panahon .. <i>[A long long time...]</i>
	T28 MV4	Sa Sablayan pa ... <i>[They were still in Sablayan...]</i>
T29 = Community participant qualifies his testimony with "I think" to acknowledge hearsay	T29 MV3	Mula pa sa Sablayan hanggang sa kasalukuyan yata <i>[From Sablayan until today, I think...]</i>
	T30 MV4	Sa Abra de Ilog naman ngayon ... <i>[And now in Abra de Ilog]</i>
T31 = Accused admit guilt but still tries to lighten the crime; he did not mention the wrong he did and says it was only for a few days.	T31 Acd	Kasalanan ko man ... halimbawa na ang naging kasalanan ko, ay ako ay nahingi ng pasensya sa inyo. Ako nagagawa ko, kailan, mga ilang araw man... mahingi ako ng pasensya... mula ngayong araw na ito. <i>[If I did wrong... for example I made some fault, I am asking for your forgiveness. I, what I did for a number of days... I am asking for pardon... starting this day]</i>
T32 = Showed the same orientation as to meaning even without saying the "thing" the two agreed on.	T32 FV1	Aminado din yung... <i>[You also admitted that...]</i>
	T33 Acd	OO... aminado <i>[Yes... I admit]</i>

Extract 2 shows that the Iraya institutional interaction belongs to what is categorized as an **informal institutional talk-in-interaction**, with the different speakers doing their turn-takings without any constraint on when to join in and out of the interaction. The distinctive characteristic revealed was the fluidity of the allocation of turns governing the conflict resolution negotiation. This **fluid interaction rule** provides that the Chief Amayan could ask questions aloud for the Community in attendance to hear and to answer or give other related turns as a rejoinder of his turn.

This language behavior invites a "turn" from anyone present. The rejoinder device is seen in T114 and T117, when some of the community members give their reaction to what the Chief Amayan is saying, and also in T108 when the brother-in-law speaks his mind in response to the statements from the Wife. However, the Chief Amayan does not really give importance to the rejoinder device as the 'answer' to his 'question-opinion' because he rephrased his question in T110 so that the Wife could give a categorical answer. At the end of this data fragment, the Wife maintains her denial of the accusation.

In ignoring the question from a member of the community and asking another question, the Chief Amayan made an indirect detour or opting out, a pragmatic act that is meant to "escape an argumentative minefield" from the witness and the rest of the community. This language sequence pattern clearly reveals a **communal undertaking** of the resolution talkin-interaction. Although the Chief Amayan acted as the prosecutor in this case, there was no constraint for anyone to join in the proceedings at anytime except for the Accusers, the Accused, and Witness to the Accused. They only spoke when asked a question or asked to give an opinion, except for the Wife, who responded or rejoined in at any time.

Another characteristic of the turn-taking is that the Wife perceived all turns of the other speakers in the hearing as questions, although some turns were not structured as such. For every

Extract 2: Conversational Episode # 3 [Questioning the Wife of the Accused]

Participants: Chief Amayan = CA, the Wife = W, Brother-in-law = Byw, Male Voice = MV

Content: The Wife refuses to tell the truth and instead, covers the wrong deeds of the husband

ANNOTATIONS	TURN	Q-A INTERACTIONS
T106 = continuation of interrogation of the Wife who is still trying to cover up for her husband's wrongdoing.	T106 CA	Kaya... lumaki and kalukuhan. (<i>That... is why his foolishness worsened</i>).
T107 = Wife overlaps: denies	T107 W	Kahit hindi ko alam...[<i>Even if I don't know..</i>] [REACTIONS from COMMUNITY]
T108 = Byw adding more charges	T108 Byw	Ngayon nakita ko... pati yung anak ko dinadamay. [<i>Now, I see even my daughter is getting involved</i>]
T109 = Shifting the blame on others; Wife maintains denial.	T109 W	Itong dalawa kong mata hindi nagtitingin. Aywan ko sa kanila. Paano sila ang may gay-an... Ayy (<i>My two eyes have not seen. I don't know with them. They are the ones doing it, that is why..</i> Ayy) [VOICES FROM COMMUNITY]
T110 = CA threatening to place the Wife in the <i>pangaw</i>	T110 CA	Ah ..Ano eh .. yung pagtataklob Neneng, maaaring maisalang ka dyan ngayon [<i>Ah..What eh.. your cover-up, Neneng, may put you (in the pangaw)</i>]
T111 = Wife denies that she's covering for her husband	T111 W	Hindi ako nagtataklob... [<i>I am not covering up...</i>]
T112 = Display of exasperation; Both speakers understood.	T112 CA	Oo ... aba ...doon din yan [<i>Yes.. but it's the same</i>]
T113 = Wife pretends to be clean	T113 W	Kasalanang ginawa sa tao at sa adios ang may... [<i>It's a sin to both man and God to...</i>]
T114 = repetition of threat of 'pangaw'	T114 CA	Aba... siya'y ipapasok [<i>Ah.. she should be placed (in the pangaw) now</i>] [VOICES]
T115 = Giving inference why the Wife has been covering for the husband: pressure from in-laws	T115 MV1	... hinahabol nang kabeyanan ... [<i>she is being pressured by her in-laws</i>]
	T116 W	Kasalanan din naman sa tao... [<i>it's a crime against society</i>]
	T117 MV1	Yan baga'y di mo dugo? [<i>Is she not your blood relation?</i>]
T118 = Question on Social attitude	T118 CA	Ibig mong sabihin kung gayo'y paglalasing lamang at iyong reklamo ng iyong anak ay di mo pinapahalaga-an? [<i>Do you mean that it is only your husband's drunkenness that is to be taken into consideration, not your daughter's complaint?</i>]
T119 = Wife is non-committal	T119 W	Nasa kanila na man yan ... [<i>It's up to them</i>]

turn that the other speakers made, the Wife always gave an answer. For instance, T106 from the Chief Amayan was not a question but a **blame-making device** structurally, but the Wife took it as a question and gave an answer. This shows that Answers do not necessarily come as a second pair to

Questions. The normative arrangement is “Question Answer” but in this part of the interaction, a non-question is given an answer. This comes from an orientation that in a deliberation in the Iraya context, every turn is considered a question that needs to be answered.

On the other hand, the data shows inferentially that the wife is an important Witness in this case. She was considered an important participant in the hearing because the confirmation of her husband’s *pang-aapi* must be drawn from her. This is the goal of the Chief Amayan in order to tighten the case against the Accused. This is also where **a clear case of gender role** in this particular hearing is seen. Knowing her inherent **powerbehinddiscourse**, the Wife played “hard and nasty” with the interrogators. It could be seen that the tribal prosecutor allowed her, as an important witness, to argue intensely until she was proven wrong, thereby admitting the existence of the crime as a consequence. After all, it was apparent to the hearing participants that the Wife was only trying to save face and using the power inherent to her at that time. In fact, the Chief Amayan had to resort to the **threat device** using the *pangaw* in T110 to tell the Wife that the community did not believe her alibi and that she was doing this only to protect her reputation and also that of her husband’s family. This threat was made not because she always had a ready repartee, but because she would not admit to her knowledge of the *pang-aapi* and therefore, she became an accomplice to the offense. Thus, she too had to be punished.

Extract 3: Conversational Episode # 2

[Discussion among Elders and those who filed the Case]

Participants: Chief Amayan = CA; Relatives of the Accused = R; Brother-in-law = Byw, Community

Context: The prosecutors are arguing and those who filed the case, represented by the brother-in-law, are trying to convince the CA that the case is serious and warrants a hearing and a sentence.

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T1 = Trying to convince the CA	T1 R1	Matagal na .. Oo, matagal na. Sa Sablayan pa. [A long time ago..Yes, a long time, when they were still in Sablayan.] [NOISE- REACTIONS]
T2 = CA still not convinced	T2 CA	Bisan kung meroong reklamo... [yet, if there is a complaint ...]
T3 = The Community join in convincing the CA	T3 Comm	VOICES: Alam ng mga taga-roon yan [The people there know about it]
T4 = More convincing from the brother-in-law	T4 BYW	Matagal nang nagrereklamo. Inayos-ayos lang yan.. [There have been complaints sometime ago. Some amicable settlements were done].
T5 = CA clarifying his stand	T5 CA	Pero ang tanong ko ay ... may nangyari ba.. may nangyari ba sa kanila? [But my question is...did something happen...did something happen between them?]
T6 = Criticized the kind of question asked by CA.	T6 BYW	Ay ano ba namang tanong yan. [laughter] Matagal na nga.. May nangyari... matagal na nga.[Ay, what kind of question is that? It's been going on for so long. Something happened ..for a long time already]

To the Chief Amayan and the Community, the Wife was clearly lying but was still stubbornly maintaining innocence. The **audience motivation device** is a strong inference of guilt, for the pressure of the community later weakened the alibi of the Wife. The data fragment infers the interaction rule of arguing until proven wrong, as well as the gender role of the wife that has to be respected in this sample case.

Extract 3 reveals additional interaction rules, further proof that the conflict resolution proceeding is a **fluidly structured interaction** where participants may even criticize the questions from the prosecutor without fear of reprisal or sanctions such as ‘contempt of court’ as applied in the mainstream judicial system. This shows that the Iraya conflict resolution process is almost a **free-for-all type of institutional talk**. The relatives of the accuser and members of the community were all trying to convince the Chief Amayan regarding the severity of the offense. The Chief Amayan had to prove his point and clarify his stand on the question at hand. Still, he continues to gain the respect of the parties involved, as well as, the community in attendance. All the turn-takings show the communal delivery of the Iraya justice system.

Question # 3: *What principles of the customary laws and justice system of the Iraya are revealed in the language use in the conflict resolution interaction?*

Extract # 4 shows an inference that there are different ways of resolving a conflict in the Iraya justice system. In T25, the Chief Amayan is giving the Wife a chance to choose how the conflict is to be resolved: the Iraya way or the lowlanders’ way. This shows their age-old process of governance,

Extract 4: Conversational Episode # 4

[Elders/Community Persuade Wife to Tell the Truth]

Participants: CA = Chief Amayan; W= the Wife; Community Members

Context: The CA and the entire Community have been pressuring and persuading the wife to admit to the wrongdoing of her husband.

ANNOTATIONS	URNS	Q-A INTERACTIONS
T21 = Question for confirmation	T21 CA	O... ang tanong ngayon ... [O.. the question now is]
	T22 W	Ano? (What?)
T23 = Expressing the Question	T23 CA	...kung talaga bagang ikaw ay gustong ika ngay magkaayos? Maalis yung kanyang kalokohan? [if you are really interested in, say, resolving this conflict. To put a stop to his foolishness?]
T24 = Agreement from the Wife	T24 W	Sige, ayusin na nga.. [Ok... let's resolve it] [Community Reactions]
T25 = Wife made to choose type of resolution	T25 CA	Sa anong klaseng ayos? [How would you want it resolved?] [Community Reactions; Cries are heard]
T26 = The audience reaction made the CA raise the question again.	T26 CA	O... gusto nyong maayos dito o ayaw ninyo? [O... do you want it resolve here or not?]

as well as their democratic system in running the affairs of the community. It also shows that the leadership and the community of the Iraya recognize the existence of the lowland justice system.

Extract 5 shows the reservations of the Iraya community regarding the lowland justice system. In giving the Wife several choices, it is possible that the Chief Amayan was considering the anxiety of the relatives of the accused about the type of conflict resolution and the sanction for the offender.

On another analytic level, Extract 5 shows how the Iraya uphold the supremacy of their own customary laws and justice system, and how they express their indictment of the lowland’s justice system. The Chief Amayan, in his wisdom, shared his belief about the inequalities in the mainstream

Extract 5: Conversational Episode # 4

[Elders/Community Persuade the Wife to Tell the truth]

Participants:

CA = Chief Amayan; W= the Wife; Byw = son-in-law; Community Members = FV or MV+

Context:

The Wife is given the choice on where to have the case settled: the IP court or or lowland court.

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T26 = Question of choice	T26 CA	O ... gusto nyong maayos dito o ayaw ninyo? [O... would you like this settled here or not?]
T28-T29= Recognition of the Mangyan justice system and the doubts they have on the lowlander’s court.	T27 W	[unintelligible]
	T28 Byw	Kaya nga dinala dito ay kinikilala naming, dahil kung doon sa ibang... pamunu-an... ay baka hindi na makikita ... [that is why we brought it here... because we recognize (this court) for if we bring this to the other government... maybe we won't see..]
	T29 Comm	[VOICES: kaya nga dinadala namin para ma ... talagang ... [that is why we brought it here so that... it really will...]
	T30 CA	Ano ba para sa iyo? Papayag ka ba dito o hindi? [How is it for you? Would you want it here or not?]
T31 = Wife starts to relent	T31 W	Kung may papatunguhan ... ay di... [If there's a way .. then ...]
T32 = Wife refuses again (to refute the crowd)		VOICES: magpaayos ka na [have it settled]
	T32 W	Hindi [No]
	T33	{VOICES: kamangha-mangha at ka gimbal-gimbal} [surprising... horrible]
T34 = Chief Amayan repeats the Question to the Wife	T34 CA	O... ano sa iyo, magpaayos ... sa tanggapan ng iban? [O... how is it with you ... you want it settled in some other office?]
T35 = Finally, Wife agreed	T35 W	{very softly} Dito [here]
T36 = Chief Amayan fears the judgment would leak to other communities, expresses his impression of the lowland justice system and inequalities that have to be corrected.	T36 CA	Hindi na man kaya pag-amen... ito'y lumigwak magiging pa... Alam mo maraming tagilid ang batas ng tao... ang may kasalanan magawang husto ..yan ang isip sa tao. Kailangan maayos... [I hope after the admission... this won't leak and would... You know there are so many inequalities in men's laws. Someone who committed the crime could be acquitted ... that's the mentality of men ... that has to be corrected.]



114

THE ROAD TO EMPOWERMENT

VOLUME I - Old Ways, New Challenges

justice system that has to be corrected. In addition to the Wife's agreement to their conflict resolution process, the Chief Amayan made a covenant with the Wife to uphold the decision. Whatever sanctions the customary laws would impose on the offender should be appealed to the lowlander's justice system to prevent what he infers as "trouble" in case this happens. The Wife conceded and thus, Iraya customary laws were followed in the deliberation.

In Extract # 6, the Chief Amayan shows how to deal with a dispute the Iraya way. When the Wife was made "powerless", it was the turn of the Chief Amayan to exercise his power: both the power-behind-discourse as the chosen prosecutor of the case, and the power-in-discourse as the holder of the higher end of the asymmetrical knowledge of the facts of the case. This part of the deliberation confirms the Foucaultian theory that says power is **fluid**: it is transferred from the hand of one power-holder to another depending on who holds the higher end of the asymmetrical knowledge of information, as well as the holder of the power-behind- discourse at a certain point in an interaction.

When the Chief Amayan exercised his questioning power, his **power-in-discourse**, the Wife had to answer politely. In T88, the Chief Amayan confirmed that the admission of the Wife before the Iraya court is needed before it could officially go into the process of conflict resolution. This means

Extract 6: Conversational Episode # 3

[Questioning: Wife as Witness and Supporter of Husband]

Participants: Chief Amayan = CA; the Wife = W; Female member of community = FV1

Context: During the interrogation of the Wife, the Chief Amayan's objective is to obtain confirmation of the knowledge of the crime from the Wife herself.

ANNOTATIONS	URNS	Q-A INTERACTIONS
T79 = Chief Amayan is asking the Wife, who is only concerned about the drunkenness of Accused	T79 CA	Eh, yung sa kaso ng inyong anak? Anong kuwan ninyo dyan...? <i>[Eh, what about your daughter's case? What can you say about that?]</i>
T80 = Wife still standing on the lie	T80 W	Ah .. bay eh ... ano ako dyan ... ni hindi ko nga alam... <i>[Ah... well eh... I don't know ... I don't have any knowledge about that]</i>
T81 = Chief Amayan is turning the tables on the Wife	T81 CA	O... eh... ngayong umabot na yan dito... <i>[O... eh but it has reached here already]</i> [Silence]
T82 = Question asking for confirmation	T82 CA	Magsabi ka ng tutoo. <i>(Tell the truth.)</i>
T83 = Wife constrained to stand on her lie	T83 W	O... ayy... ah... hindi... yung pag-inom niya ay hindi maalis. <i>[O... well ah... not that.. he cannot stop his drinking]</i>
T84 = Overlapping comment from female in the crowd	T84 FV1	{alam niya} <i>[she knows]</i>
T85 - T87 = CA clarifying what the Wife needs to do.	T85 CA	Uh... iyan nga eh... ganito... simula noon hanggang ngayon... <i>[Uh... that's it eh... this... started in the past and goes on until today]</i>
	T86 W	O..
	T87 CA	May talagang dapat ayaw mo nang ilihim... <i>[There is really something that you should not hide]</i>
T88 = Verbalization needed to start the conflict resolution	T88 CA	Dapat magmula sa inyo. <i>(It should come from you)</i>

that both parties in the conflict must be open for resolution. This is important because if one party is averse to the process, then it would be difficult to attain resolution of the conflict.

Another revelation in the deliberation is the Iraya's system of fairness. The complainant is given all the chances to seek redress, and this is done in a communal set-up. Everyone in the community has an opportunity to say his or her piece, so that everyone becomes part of the conflict resolution process.

This is clearly seen in Extract 7. In T24, the accuser did not accept the suggestion from the crowd. She flatly said "*hindi ako papayag*" (I won't agree) and was against the suggestion of someone in the crowd (T23) to simply hide the wrongdoing. The Chief Amayan stressed the mandate to give importance to the complaint and see it through in a deliberation. This is the essence of T26, which also reveals that the conflict resolution process of the Iraya is a communal one. He clearly stated the reason why they were all there that day.

Extract 7: Conversational Episode # 1 [Preliminary Investigation of the Case]

Participants: Chief Amayan = CA; the Accuser = Acr; members of the Community = FV+

Context: This interaction happened before the actual deliberation on the case.

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T21 = They cannot give a word for the offense. Everything is hedged.	T21 FV1	Ok... yan ang tanong... kung paano yan... kung paano yan... [Ok... that is the question... how was that... how was that...]
T23 = Someone suggests hiding the case	T22 CA T23 FV2	Yun ang tanong... [that is the question] Siempre... O tago-an na lang. [Of course... O let's just hide it]
	T24 Acr	Ah... hindi ako papayag [Ah... No, I won't allow that]
	T25 CA	Hindi ka papayag? [You don't agree?]
T26 = The core of the justice system of the Iraya Mangyan	T26 Acr	{Silence}
	T26 CA	Kaya't tayo ay nagkatipon ng ganito kadami na ikaw ay linuong ... dapat na intindihin and iyong inireklamo... [That's why many of us are gathered here, (to hear) your complaint that you were abused... your complaint should be given importance]

Even the giving of the verdict and the sanction is a community undertaking. In Extract 8, the communal giving of the sanctions to the Accused after his admission of the offense is revealed clearly. The Chief Amayan is shown asking the people concerned for the sanction they would like to impose on the offender. He called the Accusers or Victims first, then their family members, the elders, and other members of the community. This is *catharsis*- a cleansing of the "evil" that befell on the tribe. Here, the full weight of Iraya justice is served to the satisfaction of the victims and the community as a whole through their customary conflict resolution process.

While some people may think the Iraya as a harsh and cruel people, Extract 9 would show that not all cases brought to the attention of the elders always resort to whipping as punishment. Some offenses are considered light and may be resolved in a "*pag-usapan na lang*" (just talk things over) manner or amicable settlement. Also, the Chief Amayan does not decide on the case alone. The *Puon Balayan* plays an important role in decision making so does all the community members.

Another point showing the sense of humanity and compassion of the Iraya is the reduced number of lashing given to the offender, even though the communal sentencing has called for a

Extract 8: Conversational Episode # 10

[The Verdict, Punishment, and the Asking for Forgiveness]

Participants: Chief Amayan = CA; Brother-in-law = Byw; the Accused = ACD; the Wife = W; the Accuser = ACR; the Community = MV+ and FV+; CS???

Context: This excerpt shows the communal giving of punishment after the Accused admitted his wrongdoing.

ANNOTATIONS	URNS	Q-A INTERACTIONS
T34 and T36 to T38 = turns showing exasperation at the insincerity and the pretensions of the Accused and his Wife	T34 MV1	..umm, marami ng labutay <i>[umm, too much talk]</i>
	T35 ACD	Ah... hindi na... kaya... sinasabi ko naman hindi na ako uulit... <i>[Ah, not anymore, that's why... I am saying that I won't do it again...]</i> [VOICES FROM COMMUNITY]
	T36 MV2	Hatulan mo na <i>[Give the verdict now]</i>
	T37 MV3	Naku naman, ang taklob <i>[There again, the cover]</i>
	T38 MV4	Grabe naman <i>[this is too much]</i> <i>[After the many reactions]</i>
T39 = Chief Amayan consults the other elders for the verdict	T39 CA	O... anong igagawad dyan.. mga lupon... <i>[O... what ruling should be given to him]</i>
T40 = There is a suggestion to go through the ritual.	T40 FV1	kuwan .. rituwal <i>[Well.. ritual]</i>
	T41 MV2	Rituwal gyud kay ilan ... <i>[It must be a ritual because of the many...]</i>
T42 = Start of the giving of the communal punishment.	T42 BYW	O ... kay Tatay, bibigyan natin siya <i>[O... for Tatay [the accused who is his father-in-law or brother-in-law?] we will give him..]</i>
	T43 MV3	... Anong... yung reklamo ng bata <i>[What... about the charges of the children?]</i>
T44 = The Wife is already admitting to the crime	T44 W	Eh... di ba... inaamin na.. <i>(Eh wasn't it admitted already?)</i>
T45 = The first to be asked for the number of lashes is the Accuser	T45 CA	Ikaw... O... ilan ang ibibigay mo.. ilang palo? <i>[You... O... how many would you give ..how many lashes?]</i>
(Note: One cavan equals 25 lashes)	T46 ACR	Dalawang kaban <i>[two cavan]</i>
	T47 CA	Hah? A... dalawang kaban... dalawang kaban... Singkwenta yan, no? <i>[Hah? A... two cavan, two cavan, that's fifty, right?]</i>
T48 to T59 = Members of the community take turns in giving the communal verdict of punishment	T48 CS	O Bebe... kayo... sa iyong Lolo... ilan ang ibibigay mo?... <i>[O Bebe... you... for your Grandfather, how many would you give?]</i>
	T49 APO	Hmmm..
	T50 CS	Palo.. hah? <i>[Lashes Hah?]</i>
	T51 APO	Lima <i>[Five]</i>
	T52 CS	Lima <i>[Five]</i>
	T53 MV4	Palo laang <i>[Lashes only]</i>
	T54 CS	O... singkwenta y singko <i>[O... fifty-five]</i>
	T55 MV5	Kamahal pa rin sa akusa <i>[What a grave accusation]</i>
	T56 CS	Ikaw Miyo... pila Miyo ka kaban <i>[How about you Miyo, how many cavan?]</i>
	T57 MV6	Isang kaban <i>[one cavan]</i>
	T58 CS	Isang kaban <i>[one cavan]</i>
	T59 MV7	Seventy-five... otsenta na <i>[It's eighty already]</i>
	T60 CS	Ay... sigi pa... Hindi lamang yun... sa inyong dalawa na... <i>[Ay some more... That's not all ... for the two of you now]</i>

Extract 9: Conversational Episode # 10

[The *Hatol* or Judgment]

Participants: Chief Amayan = CA; Members of the Community = MV+ and FV+

Context: This is the part where the community decides about the punishment for the Accused and some considerations to be made regarding the penalty.

ANNOTATIONS		TURNS		Q-A INTERACTIONS
T82	= Chief Amayan continues to solicit additional number of lashes	T82	CA	Ilan sa iyo? [How many (lashes) would you give?]
T83	= Male community member expresses belief that Accused can no longer bear the penalty	T83	MV4	Ay... (laughter) ... di na kakayanin ang daming yan [Ay.. that's already too much]
		T84	MV5	Siento biente tres na... [It's one hundred twenty-three already]
		T85	CA	Kung makakaya pa ng tao... [If he can still bear it]
T86	= The number of lashes is only a sentence, inferring that only those that the Accused could bear would be imposed.	T86	MV6	Di... sentencia laang naman.. sentencia.. [Well... it's only a sentence... a sentence]
T88 to T89	= A Tribal elder assures community about whipping considerations, giving support to the Chief Amayan	T87	MV7	Sentencia [sentence] [VOICES-REACTIONS]
		T88	MV6	Gawain nya ang makakaya... yung hindi, hwag gagawin. [Let him take what he can bear, those he can't, let's not do it]
		T89	CA	O... yan... O... naririnig ninyo? Ibig sabihin..[O... there... O... did you hear that? That means..]
T90	= A member of the community expresses uncertainty if the Accused would accept the verdict	T90	FV1	Pag tinanggap kaya niya.. [If he accepts...]
		T91	MV6	Noong nakaraan nga at... [Last time, it was...]
T92	= Chief Amayan gives the assurance that after the Accused would be a free man afterwards; he would have nothing to fear	T92	CA	Yung Mangyan ay di... at wala na siyang kakatutan... [The Mangyan would be... he will not have to fear anymore] [VOICES REACTIONS]
T93	= Future constraints; a test if the victims are really afraid of the Accused (unclear)	T93	CA	Pwera nga... doon natin masusubukan kung takot nga o hindi yung ... [Well, on the other hand we would be able to test it if (the victims) are really afraid or not.]
		T94	MV5	Ay, di parang hinayaan kung hindi... [Ay, if we don't do anything, then it is like condoning the...]
T95	= Reason why the Accused had to be punished	T95	CA	Oo... kaya patawan siya ng parusa ng kanyang gawain. (Yes... that is why we have to apply the punishment for what he did)
T99	= Chief Amayan declaring consideration for the offender	T99	CA	Ngayon na nagtatapat na siya ng kanyang pagkakamali... bigyan naman natin ng konsiderasyon. [Now that he has admitted his error... let us give him some consideration.]
T101	= Not all the lashes in the sentence would be given	T100	MV7	Bilang konsiderasyon... [as consideration]
		T101	CA	Kaya yan siguro, sa ganang atin, di natin maibigay lahat... [Probably, on our part, we won't be able to give all (the number of lashes)]
T102	= Inference of consideration	T102	MV7	Sabi nga'y kokonti lang iyan... [I told you it would only be few]



since it is his or her job to present facts and evidences in an argument. The second has the power because he or she could deny and demand evidence. (Hutchby, 1996)

This contention is present in the Iraya case at hand. As could be seen in conversational episodes 1 & 2, the Victim/Accuser was pressured to present evidence of the case that she filed. On the other hand, her mother who is the Wife of the Accused just denied the accusation and presented an alibi. In the beginning, the Wife held the participants under her ‘power’ for sometime through her use of the recurrent theme: “*I don’t know*” and “*there was nothing there... it is just that her husband (the accused) has always been dead drunk when he comes home, such that he doesn’t know what he was doing*” alibi. However, in the end, when the evidence could not be denied anymore, **power transferred** to the Victims and the Chief Amayan, who acted as the prosecutor. In presenting his theory, Foucault does not assume that power resides with one group, who can then use it to influence other groups. Instead, he sees power as a set of ever-present possibilities that can be mobilized or resisted by social agents (individuals, groups, and larger collectivities). He sees power being embedded in that set of relationships between and among social agents who may variably exercise or resist power. This is what analysts have termed “discourse-behind-power” and “power-in-discourse.”(Foucault,1977)

In this particular Iraya deliberation, “power” was fluid and was transferred from one speaker to another depending on interaction orientation and category of argumentation rank. ‘Power-in-discourse’ had been held by the Wife for sometime as she resisted the accusation against husband. The Wife was able to hold power because she assumed the “second” category in the argumentation hierarchy. Moreover, she assumed the “power” of having an important role, as the one being pursued by the community to admit the guilt of the husband in order to formally start the conflict resolution process. However, when she introduced an ‘alibi’, she opened herself to resistance, thereby **shifting power** to those who can deny, pressure and demand evidence or explanation from her.

Instances of “power-behind-discourse” were also vividly exemplified in the Chief Amayan’s turns, when he exercised his power as prosecutor and judge. In Extract 11 for instance, he threatened to put the Wife in the “*pangaw*” if she continued to cover up her husband’s offense. The “**power-in-discourse**” held by the Wife could now be seen as slowly slipping out from her hands. At this point, the CA had the upper hand. This part of the interaction revealed the lowering of the intensity of the Wife’s denials.

Extract 11: Conversational Episode # 3
[Chief Amayan vs. the Wife of the accused]

Participants: Chief Amayan = CA; Wife of the Accused = W

Context: The obvious continued cover-up of the molestation done by the Wife’s husband has forced the Chief Amayan to use his power-behind-discourse as the prosecutor of the case. It is customary law to get a person into the “pangaw” even for lying.

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T110 = Threat using his institution- al power	T110 CA	Ah ..Ano eh .. yung pagtataklob Neneng, maaaring maisalang ka dyan ngayon [<i>Ah..What eh.. your cover-up, Neneng, may put you (in the pangaw)</i>]
T111 = Wife still denying	T111 W	Hindi ako nagtataklob... [<i>I am not covering up ...</i>]
T112 = Chief Amayan emphatic, telling the Wife that she is lying	T112 CA	Oo ... aba ...doon din yan [<i>Yes.. but it’s the same</i>]

On the other hand, those who *go second* in an argument may also be in a powerful situation because they can oppose and express opinion, which can in turn controvert the evidence first presented. Consequently, those who *go first* are in a weaker position, as they may be called upon to defend their argument. However, this can be remedied. Wit and the asymmetrical knowledge of argument *can “hijack”* the argument to focus on the more controversial topic that is avoided by the other party.

Extract 12 displays the shift of power. In T80, the Wife had taken the position of the first speaker in an argument by proposing a way out to the community. However, the “hijack” technique succeeded in deflecting power away from the Wife and placed her in a disadvantageous position of having to clarify her proposal to the community. This made her take the first category in the argument hierarchy, thus rendering her powerless. Her hedging stance when asked about the case filed by her daughter showed her uneasiness, which is a signal of powerlessness. It also shows the Chief Amayan’s **tacit knowledge of the art of argumentation**. The interaction shows that although the process is long, the resolution of a conflict could be done in the Iraya court within a day only, unlike in mainstream courts where it can take years before a case is resolved.

Extract 12: Conversational Episode # 3 [Interrogation of the Wife]

Participants: Chief Amayan = CA; the Wife = W; member of the community = MV1

Context: The Wife is avoiding the controversial topic by proposing to the community a way of solving the problem. The Chief Amayan used the “hijacking” technique to gain

ANNOTATIONS	TURN	Q-A INTERACTIONS
T77 = Reminder that the problem has been happening for long	T77 MV1	Yan eh... matagal na [<i>That... that's been happening for a long time</i>]
T78 = Wife avoided the topic and instead, requested the elders to help her husband to stop drinking	T78 W	Ay yah... yung na pag-uwi na lasing Ising, magulo yah... yan kakapa-kapa sa goma ng isang tao... ang sa akon... hiling lang eh turuan ninyo siya yung pag-alis ng pag-iinom. Bahala na kayo... [<i>Ay yah, his coming home drunk, it's messy... he goes crawling and touching another person's body... my request is, teach him how to stop drinking. It is up to you</i>]
T79 = “Hijacking” of the proposal, shifted discussion to the main issue.	T79 CA	Eh, yung sa kaso ng inyong anak? Anong kuwan ninyo dyan...? [<i>Eh, what about your daughter's case? What can you say about that?</i>]
T80 = Wife is back to defensive stance, but already hedging	T80 W	Ah .. bay eh ... ano ako dyan ... ni hindi ko nga alam... [<i>Ah... well eh... I don't know ... I don't have any knowledge about that</i>]
T81 = Chief Amayan has the power. The Wife's proposal is rejected and forgotten. It is the Wife now defending	T81 CA	O... eh... ngayong umabot na yan dito... Magsabi ka ng tutoo [<i>O... eh but it has reached here already. You have to tell the</i>]

Question # 5: What language features are used by the Iraya in the sacred rituals during conflict resolution negotiations?

In this particular part of the talk-in-interaction, the punishment for the wrongdoing was done first, and then it was capped with a sacred ritual to seal the promise of the offender not to do the offense again. Extract 13, which the elders allowed to be taped, describes what happened after

Extract 13: Conversational Episode # 11 **[Sacred Ritual]**

Participants: Chief Amayan = CA; the Accused/Offender = ACD; Community members = FV+ and MV+

Context: After the community had rendered the punishment, the Accused performed the sacred ritual of eating salt mixed with soil to seal the promise to the Iraya gods that he would not repeat the offense.

ANNOTATIONS	TURNS	Q-A INTERACTIONS
T1 = Chief Amayan commanding the Accused to swear to the gods	T1 CA	Manunumpa ka sa Panginoon, ha? Ano.. <i>[Swear to god, ha?]</i>
T2 = Accused starts swearing	T2 ACD	Apo Iraya... Apo Lupa... kung sa tiyan na kung umuliit ay pwedeng mamatay... <i>[Lord Iraya... Lord of the Soil... if it's already in the stomach and I would do it again, then I would die]</i>
T3 to T6 and T9 = Coaching from the community on the words to be used in the sacred ritual	T3 FV1	Matunaw siya nang parang asin... <i>[that he melts like salt]</i>
	T4 MV1	Matunaw siya nang parang lupa at asin... <i>[that he melts like soil and salt]</i>
	T5 FV1	Matunaw parang lupa <i>[to melt like soil]</i>
	T6 MV1	Yan... <i>[that's it]</i>
T7 = Declaration of the Chief Amayan of the cleansing of the Accused	T7 CA	O... mga babarit hindi na siya mag-anu sa kanyang anak <i>[O... women, he won't repeat the deed to his daughter anymore]</i>
T8 = Promising to the community too	T8 ACD	Oo... matunaw man ako, magawa man akong lupa <i>[Yes.. I may melt, I may turn into soil]</i>
	T9 MV2	Matunaw man... manumpa ka <i>[even if you melt... make a promise]</i>
	T10 CA	Oo... manumpa ka talaga <i>[Yes, you have to swear]</i>
T11 = The community requires assurance that the offense shall not be repeated anymore	T11 MV2	Para alam naming lahat na talaga siyang nanunumpa <i>[So that all of us would know that he really swore]</i>
T12 = Instructions to listen to the formal swearing	T12 CA	Making kayo <i>[Listen all]</i>
T13 = Formal swearing of the Accused to the gods and the community	T13 ACD	Ang... kaya ako kumain ng asin ay ayon sa aking panunumpa na hindi ko na gagawin... ang aking pagkakasalang nakaraan at kung sakali... <i>[The.. that is why I ate salt in accordance to my promise that I won't do the same offense again ... my past offenses and if ever..]</i>
T14 = Continued coaching the Accused on how to articulate his promise	T14 MV2	Matunaw ng lupa ... matunaw na parang lupa o parang asin <i>[melt in the soil.. melt like soil or like salt]</i>

the offender took his punishment and shows the culmination of the conflict resolution process. The data fragment shows that the language used during the sacred ritual of promising and swearing to the Iraya gods not to repeat the offense again had a different structure compared with the language used in the deliberations. This includes the condition given by the offender himself on what would happen if ever the crime is repeated, i.e. the offender would rightfully accept the consequence of a broken sworn promise.

The Irayas' conflict resolution interaction shows the use of metaphorical symbols like "*lupa*" (soil) and "*asin*" (salt) to mean **death** if the Offender violates his promise. This means the punishment would already come from the gods. The use of metaphorical symbols differentiates the language of sacred ritual from ordinary language, and the institutional question-answer interaction in a conflict resolution process. When the Iraya people address their gods, the language use takes on the formal and poetic tone. This reveals the Iraya's deep reverence for their gods and their belief of their gods' power over them.

This use of metaphorical reference on matters relating to their gods was shown in another data fragment earlier. This was the use of the figure of speech '*personification*' on "*tubig*" e.g. "*lalaban ka sa tubig*" (water) in the communal threats that the elders and the Community had given to the Accused to force him to admit his guilt at the beginning of the deliberations. It may be inferred that in any interaction dealing with their beliefs or gods, the Iraya people use poetic or literary forms of language.

Lastly, the excerpt shows that the communal process did not end in the sentencing of the Accused. It continued even up to the coaching of how to properly word the promise or the swearing to the Iraya gods from the elders, who have a tacit knowledge of sacred rituals that ordinary Irayas do not have. This is a clear inference that the Community is willing to accept the Offender back to its fold after the resolution of the case. Community bonding is displayed in the sacred ritual at its very best, showing genuine conflict resolution in the end.

Preserving a Sacred Tradition

This case study has proven that the Iraya of Atipan, Abra de Ilog of Occidental Mindoro have a set of established and formalized processes within their customary laws and justice system. They have an age-old culture that has helped them survive the changes in their environment. Their sincerity in settling disputes among themselves mirrors an uncorrupted and untainted sense of justice worthy of preservation. Their communal conflict resolution process has a set of formalized interaction rules that serve as the Iraya's norm of conduct as a people, which must be respected and protected by the Philippine government. Section 15 of IPRA and Articles 8 to 12 of ILO Convention 169 specifically support the right of indigenous peoples to their communally accepted justice systems and conflict resolution mechanisms.

Although the Iraya people do not have a specific name for crimes as compared to the lowland justice system, their interaction shows that they tacitly know what kind of offenses are serious and shameful. The Chief Amayan profoundly expressed the Iraya's disdain for the particular offense discussed in this case study when he said in Conversational Episode 9: "*Ay... ang lahat ng ina at ama ay walang premyo ngayon*" [Ay... all the mothers and fathers today do not have values anymore.]

Sacred rituals weigh heavily on the positive side, ensuring that the Offender would not violate his sworn promise of not repeating the wrong deed. It is inferred from the data that there are usually no recidivists after the settlement of a case. This could be the reason why few crimes are committed among the Iraya in Atipan.

The ability of the Iraya to use a different language form for sacred rituals and another for conflict resolution shows that their language has attained a certain level of development that has to be sustained and preserved. It is important to conduct further studies on language use in the

conflict resolution practices of other indigenous peoples in the country in order to gain deeper insights into their peace-building processes. Information gathered could be used to build a profile of conflict resolution processes among Philippine indigenous groups. It may be possible to use their commonalities and contrasts to enhance the mainstream Filipino justice system.

The Philippine Government and the Filipino people, in general, should support the Iraya in exercising their birthright as indigenous people in their ancestral domains; to freely practice their peace-building processes among themselves; to preserve their sacred rituals and spiritual beliefs; to govern their community as they see fit and in harmony with the instituted Philippine government; and to obtain the kind of education that would foster their sense of identity and advance their way of life.

Topics that could heighten awareness of the cultural identities, customary laws and justice system of indigenous peoples may be included in the secondary school curriculum under the *Makabayan* (Social and Civic Studies) subject, as well as the general education courses in the tertiary level. This would help other Filipinos understand their indigenous brothers and sisters and thereby bridge the gap between and among them.

Dr. Victoria P. Dinopol is the Vice President for Academic Affairs and concurrent Dean of the Graduate School of Negros Oriental State University in Dumaguete City, Philippines.

With PANLIPI's facilitation, consultations were held among the Iraya to ascertain the information in this article, thus they must be acknowledged also as "authors". Editing was undertaken with PANLIPI.

References

Chapter 1

Indigenous Filipinos in the World of Work

Towards Equality and Non-Discrimination in Employment and Livelihood

- Asian Development Bank (2002). *Indigenous Peoples/Ethnic Minorities and Poverty Reduction*, Manila.
- Asian Development Bank ADB (1999). *Policy on Indigenous Peoples*. Manila.
- Association for Asian Studies (1995). *Indigenous Peoples of Asia*. Monograph and Occasional Paper Series No. 48, Michigan.
- Beato, Christine (2004). The Effectiveness of Government Programs in Addressing Human Rights Issues Among the Filipino IP. UP SOLAIR term paper (unpublished).
- Beauclerk J., Narby J., Townsend J. (1988). *Indigenous Peoples, A Field Guide for Development*, Oxfam.
- Cabalatungan, Cielo C. (2005). Paper presented on IP's Vocational Training at the Training of Facilitators for the promotion of ILO Convention (No 169) on Indigenous and Tribal Peoples. Manila.
- Candelaria, Sedfrey (2006). *Jurisdictional Issues arising from the passage of R.A. 8371 or the in relation to the Court System*. Case study for ILO SRO Manila.
- Cembrano, Margarita R. (1998). *Patterns of the Past: The Ethno-Archaeology of Butuan*, Butuan City.
- Civil Service Commission (CSC) Resolution 89-463 of July 1989 on "Policy directions on Equality of Employment Opportunity"
- CSC Memorandum Circular No. 8 of 1999 on "Equal Representation of Women in Third Level Positions in Government"
- Coalition for Indigenous Peoples' Rights and Ancestral Domains (2004). *Guide to RA 8371*, Manila. Diamond, Jared (1999). *Guns, Germs and Steel, The Fates of Human Societies*, W.W. Norton & Company New York.
- Dunuan, Evelyn. Speech at the Asian Regional Consultation on Poverty Reduction delivered at the Asian Development Bank, Ortigas Avenue, Pasig on October 1, 2001.
- Estrella-Gust, Dulce (1988): *Psychosocial Factors and Problems at the Workplace*, Manila.
- Estrella-Gust, Dulce, & Cucuenco T.S., San Jose M., Andres T.S. (2005). *Pesticide Exposure*, in Asia Pacific Newsletter on OSH, Volume 12, Number 1.
- Garvan, John M. (1941). The Manobos of Mindanao, in *Memoirs of the National Academy of Sciences*, Vol. XXIII, US Government Printing Office, Washington D.C.
- Gelacio, Datu Manggusawan Teofilo E., et al. (2000) *Manobo Dictionary*, Urias College, Butuan City.
- Gelacio, Datu Manggusawan Teofilo E. *Manobo Tribe*, San Francisco, Agusan del Sur. (typograph)
- Gust, Gert A. (2004). *Equality at Work in the Philippines*, ILO Manila (for publication).
- ILO (2002). *Action Programme for Decent Work: Philippines*, Manila.
- ILO (2003). *Fundamental Rights at Work and International Labour Standards*, Geneva.
- ILO (2003). *Time for Equality at Work*, Geneva.
- ILO (2002). Newsletter on Indigenous and Tribal Peoples. Manila.
- ILO (2000). *Support to Management of Ancestral Domain by IPs of the Philippines under INDISCO (Bukidnon and Sarangani Project Sites) Terminal Report*. ILO SRO Manila.
- ILO (2005). *Proceedings of Training of Facilitators for the promotion of the ILO Convention No 169 on Indigenous and Tribal Peoples*. ILO SRO Manila.
- ILO (1996). *Equality in Employment and Occupation*. ILC Report 83rd Session, Geneva.
- Malanes, Maurice (2002). *Power from the Mountains*, ILO/INDISCO Case Study No. 8, Baguio.
- Medina, Carlos P. (2006) *How IP cope with Violations of Human Rights and International Humanitarian Law*. Case study for ILO SRO Manila.
- National Commission for Indigenous Peoples (NCIP) website: <http://www.ncip.gov.ph>
- National Commission for Indigenous Peoples (2004). *ADSDPP Primer* (Formulation of the Ancestral Domain Sustainable Development and Protection Plan), Quezon City.
- National Commission for Indigenous Peoples (2004). *The Badjaos in Cebu*. Cebu City.
- National Commission for Indigenous Peoples. STRA-QRU Accomplishment Report for 2003.
- National Commission for Indigenous Peoples (2000). *The Indigenous Peoples of the Philippines*.
- National Economic and Development Authority (2004). *Medium-Term Philippine Development Plan 2004-2010*, Manila.
- Scott. William Henry Scott (1999). *Barangay*, Ateneo de Manila University Press, Manila.
- Sibal, Jorge V. and Mercado, Rosalinda (2004). *The Practices of Selected Companies in Managing Workforce Reduction, Employee Separation and Other Post-Employment Concerns*. Unpublished UP SOLAIR paper.
- United Nations Development Programme (2004). *Human Development Report 2004: Cultural Liberty in Today's Diverse World*, New York.
- Ursua, Evalyn G. (2001). *Addressing Sexual Harassment in the Workplace: The Philippine Experience*. Manila.
- Vargas, Erwin M., et al (2005). *Case Studies of Chosen Indigenous Peoples' Schools: Defining Issues Toward Policy and Program Formulation*. ILO SRO (typescript).

Chapter 2 **Who Decides?**

Jurisdiction and Indigenous People's Rights

Aquino, Ramon C. (1997). The Revised Penal Code 3.
Aquino, Amado D. (1997). Land Registration and Related Proceedings 123.
Arabian Sr. Bensaudi I. (2000) Philippine Shari'a Courts Procedure 6
Armamento vs. Guerrero, 96 SCRA 178 (1980)
Azucena Jr. C.A. (1999). The Labor Code with Comments and Cases.
Badua v. Cordillera Bodong Association, G.R. No. 92649. February 14, 1991.
Bernas, Joaquin (2002). The 1987 Philippine Constitution: A Reviewer-Primer.
Caragay-Layno vs. CA, 133 SCRA 718.
Caro vs. CA, 180 SCRA 401(1989)
Civil Code of the Philippines
Coalition for Indigenous Peoples' Rights and Ancestral Domains (1999). Guide to Republic Act No. 8371.
Director of Lands v. IAC, Acme Plywood and Veneer et al, 146 SCRA 509, 520 (1986)
Director of Lands, et.al. vs. Register of Deeds, et al., 92 Phil 826 (1953)
Francisco, Ricardo (2001). Civil Procedure 33.
ILO Convention NO. 169
Implementing Rules and Regulations of Presidential Decree 1508
Interview with Atty. Evelyn S. Dunuan, former Chairman, NCIP.
Interview with Atty. Ma Vicenta P. De Guzman, Executive Director, PANLIPI
LRC-KSK IPRA MANUAL 30 (unpublished).
Mamadsul vs. Moson, 190 SCRA 82, 89 (1990)
Mondonedo, Nora Linda (1996). Interphasing National Law with Customary Law in the Cordillera in Conflict Resolution. Unpublished.
Noble vs. City of Manila, 67 Phil 1 (1938).
Noblejas and Noblejas (1992). Registration of Land Titles and Deeds 239.
Philippine Constitution of 1997
Realty Sales Enterprises, Inc vs. IAC, 154 SCRA 328, 348 (1987).
Republic vs. October, 16 SCRA 848 (1966)
Revised Rules of Court, Rule 135
Revised Rules of the Department of Agrarian Reform Adjudication Board, Rule II
Reyes, Luis B. (2001). The Revised Penal Code, Criminal Law 12.
Sy Sr. vs. IAC, 162 SCRA 130, 144-145 (1988)
The Local Government Code of 1991, R.A. No. 7160

Chapter 3 **Timuay at Datu**

Indigenous Self-Governance in Teduray and Magindanaon Societies

Accion Contra El Hambre (2005). *Broken lives, fragile dreams: A Vulnerability study of five ethnic communities in Maguindanao and Lanao del Sur*. Cotabato City: ACH.
Alejo, A. E. (2000). *Generating energies in Mount Apo: Cultural politics in a contested environment*. Quezon City: Ateneo de Manila University Press.
Barangay Gang Socio-Economic and Physical Profile (1994)
Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (September 1991). <http://www.unhchr.ch/html/menu3/b/62.htm>
Daturanong, Abubacar M. (2005). *The Maguindanaon Datus: Their Role in Resolving Conflict.. Doctoral Dissertation. Notre Dame University, Cotabato City*
Gowing, P. & Mc Amis, R. (1974). *The Muslim Filipinos*. Manila: Solidaridad Publishing House.
Hoebel, A. E. (1972). *Anthropology: The study of man*. New York: McGraw Hill Book Company.
Hughes, L. (2003). *The No-Nonsense guide to indigenous peoples*. Oxford: Verso.
Lacson, RD C. (2005). *Aromanon Manobo armed conflict experiences: cultural coping mechanisms and strategies*. Xavier University, Philippines. (unpublished thesis).
Mastura, Michael O. (1979). *The rulers of Mindanao in modern history: 1515-1903*. Research Project No. 5 Modern Philippine History Program. Quezon City: Philippine Social Science Council.
McKenna, T. M. (1998). *Muslim rulers and rebels*. Manila: Anvil Publishing, Inc.

Rodil, B. R. (1994). *The minoritization of indigenous communities of Mindanao and the Sulu archipelago*. Davao City: Alternate Forum for Research in Mindanao, Inc.

Schlegel, S. (1970). *Tiruray Justice*. California: Berkley University Press, Inc.

The World Bank (November 2003). *Human development for peace and prosperity in the Autonomous Region in Muslim Mindanao*. Pasig City: The World Bank.

Timuay Justice and Governance (2003). *Oryentasyon Hinggil sa Timuay Justice and Governance*. Quezon City: Philippine Peasant Institute.

Chapter 4

Copyright for the T'nalak

Protecting the Intellectual Property Rights of Indigenous Communities

Agreement on Trade Related Aspects of Intellectual Property Rights, April 15, 1994.

An Act Providing for the Establishment of a System of Community Intellectual Property Rights Protection , Senate S.N. 101, 12th Congress, 1st Session (June 30 2001)

Act 3815. An Act Revising the Penal Code and Other Penal Laws. December 8, 1930.

Bernas, Joaquin (2002). *The 1987 Philippine Constitution: A Reviewer-Primer*.

Cariño v. Insular Government, 41 Phil. 935 (1909).

Creser Precision Systems v. CA, 286 SCRA 13 (1998).

Cruz v. DENR, 347 SCRA 128 (2000).

De la Rama Steamship v. NDC, 35 SCRA 567 (1970).

DENR Department Administrative Order No. 96-20, (1996) Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources.

Draft Declaration on the Rights of Indigenous Peoples, August 26, 1994.

Executive Order No 247 (May 18, 1995). Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-Products and Derivatives, for Scientific and Commercial Purposes and For other Purposes.

Greaves, Thomas (1996). *Tribal Rights*, in *Valuing Local Knowledge: Indigenous People and Intellectual Property Rights* 29 (Stephen B. Brush and Doreen Stabinsky, eds.)

Inter-American Declaration on the Rights of Indigenous Peoples. February 26, 1997.

Jacanimo, Antonio (1998). *Initiatives for the Protection of Rights of Holders of Traditional Knowledge, Indigenous Peoples and Local Communities*,
http://www.wipo.org/eng/meetings/1998/indip/rt98_4e.htm

Manzano v. CA, 278 SCRA 688 (1997).

Mirpuri v. CA, 318 SCRA 516 (1999).

Osmeña v. Orbos, 220, SCRA 703 (1993).

Paner, Sabrina (2003). *Giving Them What is Due? A Critique of Present Laws and Proposed Legislation on the Protection of Indigenous Scientific Knowledge*.

Pelaez v. Auditor General, 15 SCRA 569 (1965).

People v. Que Po Lay, 94 Phil. 640 (1954).

Philippine Constitution of 1987

Philippine Legal Encyclopedia (1986)

Records of the Senate, Vol. II No. 45, November 28, 1996, 731-732.

Records of the Senate, Vol. I No. 3, August 4, 1997.p.162

Record of the Senate Sponsorship Speech of Sen. Juan Flavier, Oct. 16, 1996, p. 255.

Republic Act No. 386. An Act to Ordain and Institute the Civil Code of the Philippines. June 18, 1949

Republic Act 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.

Republic Act No. 8293. An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing its Powers and Functions, and for Other Purposes

The African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources (Action Plan 2002)

Tobias, Maricris Jan (1999). *Copyright Protection of Indigenous Expression*, 73 Phil. L. J. 831.

TRIPS Agreement, http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

UN Convention on Biological Diversity. June 5, 1992

U.S. v. Grimaud, 220 U.S. 506 (1911)

U.S. v. Barrias, 11 Phil. 327 (1908)

Chapter 6

The Power of Language

A Conversation Analysis of an Iraya Mangyan Conflict Resolution Process

- Agar, M. (1985). Institutional Discourse. *TEXT* 5 (3): (pp. 147-168).
- CCP Encyclopedia of Philippine Art: Peoples of the Philippines (1994). *Mangyans*. Vol. II. (pp. 106-119)
- Chang, Y.R. (2003). *Can you answer the questions? An ethnographic study of questioning as a culturally situated persuasive genre of talk*. Paper presented at the annual conference of the International Communication Association. San Diego, CA.
- Chang, Y.R. (n.d. online) *Who speaks next? Discourse structure as persuasion in Chinese criminal courtrooms*.
[http:// www.edu/communications/ychang/personalwebpage/discstructaspersn.htm](http://www.edu/communications/ychang/personalwebpage/discstructaspersn.htm)
- Denzin, N.K. & Lincoln, Y.S. (Eds.) (1994). *Handbook of qualitative research*. London: Sage Pub.
- Dinopol, V. (2005). *A Pragmatic Analysis of the Estrada Impeachment courtroom 'question-answer' interaction*. An unpublished dissertation. Manila: Philippine Normal University.
- Drew, P. & Heritage, J. (Eds.) (1992). *Talk at Work: Interaction in institutional settings*. Cambridge: Cambridge University Press.
- Fisher, S. & Todd, A.D. (Eds.) (1986). Introduction: Communication in institutional contexts: social interaction and social structure.”
 Cited in: Roy O. Freedle (Ed.) *Discourse and institutional authority: Medicine, Education, and Law*. Vol. XIX in the series: Advances in Discourse Processes. New Jersey: Ablex Pub. Co.
- Foucault, M. (1977). *Power/Knowledge*. In: Wooffitt, R. (2005). *Conversation Analysis and Discourse Analysis: a comparative and critical introduction*. London: Sage Pub.
- Jefferson, G. (1984). “At first I thought”: a normalizing device for extraordinary events. Unpublished manuscript. Tilburg: Katholieke Hogeschool. In: Wooffitt, R. (2005). *Conversation Analysis and Discourse Analysis: a comparative and critical introduction*. London: Sage Pub.
- Hutchby, I. (1996). Confrontation talk: arguments, asymmetries and power on talk radio. In: Wooffitt, R. (2005). *Conversation Analysis and Discourse Analysis: a comparative and critical introduction*. London: Sage Pub.
- Lindsley, (n.d. online)
- Sarangi, S. (1998). Institutional Language. In: Mey, J.L. (Ed.) *Concise encyclopedia of pragmatics*. Oxford, U.K. Elsevier Science Ltd.
- Standfield II, J.H. (1994). Ethnic modeling in qualitative research. In: Denzin, N.K. & Lincoln, Y.S. (Eds.) (1994). *Handbook of qualitative research*. London: Sage Pub.
- ten Have, P. (1999). *Doing conversation analysis: a practical guide*. London: Sage Pub.
- Togeby, O. (1998). Pragmatic principles. In: Mey, J.L. (1998 ed.) *Concise Encyclopedia of Pragmatics*. Oxford, UK: Elsevier Science Ltd.
- Wetherell, M. (1998). Positioning and interpretative repertoires: conversation analysis and post-structuralism in dialogue. *Discourse and Society*, 9 (3): 387-412.
- Wooffitt, R. (2005). *Conversation Analysis and Discourse Analysis: a comparative and critical introduction*. London: Sage Pub.
- Zimmerman, D. H. & West, C. (1975). Sex roles, interruptions and silences in conversation. In: Thorne, B. & Henley, N. (Eds.) *Language and sex: Differences and dominance*. Rowley, M.A.: Newbury House. (pp.105-129).

ACKNOWLEDGMENTS

The publisher gratefully acknowledges the contributions and active participation of the following indigenous peoples' communities in the preparation of the case studies for this book:

- the Manobo of Agusan del Sur, the Dumagat of Casiguran in Aurora, and the Badjao of Cebu City for *Indigenous Filipinos in the World of Work: Towards Equality and Non-Discrimination in Employment and Livelihood*
- the Teduray of Upi and the Magindanaon of Barangay Gang, Sultan Kudarat in Maguindanao province for *Timuay at Datu: Indigenous Self-Governance in Teduray and Magindanaon Societies*
- the T'boli of Lake Sebu, South Cotabato for *Copyright for the T'nalak: Protecting the Intellectual Property Rights of Indigenous Communities*
- the Mangyan of Occidental Mindoro, the Tinggian of Abra, and the Manobo of Carmen in North Cotabato for *Caught in the Crossfire: How Indigenous Peoples Cope with Human Rights Violations*
- the Iraya Mangyan of Atipan in Abra de Ilog, Occidental Mindoro for *The Power of Language: A Conversation Analysis of an Iraya Mangyan Conflict Resolution Process*

Proper credits are hereby given to PANLIPI through its Executive Director, Atty. Vicenta De Guzman, for providing their pictures on pages 33, 34, 35, 64, and 84. Pictures on pages 66 and 69 were likewise sourced from Mabuhay Magazine of Philippine Airlines.

The project was implemented under the guidance of steering committee members namely, NCIP Director Marie Grace Pascua of Office on Policy, Program and Research (OPPR) and ILO officials Sr. International Labour Standards Specialist Temesgen Samuel and Sr. Programme Assistant Diane Respall. Facilitation and technical services were provided by Domingo I. Nayahangan, former National Coordinator of ILO-INDISCO, and his successor Ma. Theresa P. Matibag.