

A Journey of Hope

IMPLEMENTING THE INDIGENOUS PEOPLES' RIGHTS ACT OF THE PHILIPPINES

Volume 3

The Road to Self-Governance

Published by the International Labour Organization (ILO) in cooperation with the United Nations Development Programme (UNDP), the National Commission on Indigenous Peoples (NCIP) and the New Zealand Agency for International Development (NZAID)

2005

FOREWORD

"A Journey of Hope" – a three-volume publication – contains several case studies based on the grassroots realities of women and men in indigenous peoples' communities. This publication encompasses issues that have implications on the implementation of the Indigenous Peoples' Rights Act (IPRA) or R.A. 8371. It is therefore very relevant to indigenous peoples in the Philippines, as well as other stakeholders such as local government units (LGUs), national government agencies (NGAs), non-governmental organizations (NGOs), people's organizations (POs), workers and the private sector.

This publication is the product of a collaborative project of the International Labour Organization (ILO) and the United Nations Development Programme (UNDP), which aims at improving policy and decision-making of key governance institutions, both public and private, by developing empirical evidence of key issues relevant to the indigenous peoples of the Philippines. In general, these case studies are expected to serve as a basis for a review and improvement of the implementing rules and regulations (IRR) of the IPRA, the national law on indigenous peoples, which reflects the spirit and intent of ILO Convention No.169, the Indigenous and Tribal Peoples Convention, 1989.

ILO Convention No. 169 is the foremost international legal instrument that deals entirely with the rights of indigenous and tribal peoples, and its influence extends beyond the number of countries that have ratified it. Support for better application of IPRA is also consistent with better application of ILO Convention No. 169.

The publication of these case studies would not have been made possible without the involvement and participation of the women and men and boys and girls from selected indigenous peoples' communities in the country who accommodated the case study writers involved in this project. We are also grateful for the support and cooperation provided by UNDP and the New Zealand Aid. Special thanks also goes to NCIP and other partners for their valuable contribution to the realization of the case studies.

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Director
International Labour Organization
Sub-Regional Office Manila

A Journey of Hope

is a three-volume series that summarizes the scoping reports and case studies written under a support to policy and programme development (SPPD) project collaboratively undertaken by the International Labour Organization (ILO) through its Interregional Programme to Support Self-Reliance of Indigenous and Tribal Peoples through Cooperatives and other Self-Help Organizations (INDISCO), the National Commission on Indigenous Peoples (NCIP) and the United Nations Development Programme (UNDP).

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The contents of this volume are based on case studies and a scoping report focusing on the recognition of ancestral domains in the Philippines. These studies are meant to generate information that would facilitate the full implementation of the Indigenous Peoples Rights Act. The project was implemented under the guidance of a steering committee headed by the Chair of the National Commission on Indigenous Peoples. Representatives from the International Labour Organization, United Nations Development Programme, concerned government agencies and non-government organizations were part of the committee. Domingo L. Nayabangan, ILO-INDISCO National Coordinator, provided facilitative technical services for the project.



LIST OF ACRONYMS

BITO	Bakun Indigenous Tribes Organization
CADC	Certificate of Ancestral Domain Claim
GNRU	Guatemala National Revolutionary Union
ICC	Indigenous Cultural Community
ILO	International Labour Organization
IP	Indigenous Peoples
IPRA	Indigenous Peoples' Rights Act
KADMA	Kitaotao Ancestral Domain Manobo Association
LGC	Local Government Code
LGU	Local Government Unit
MALUPA	Manuvu Lumadnong Panaghuisa sa Arakan
NCIP	National Commission on Indigenous Peoples
NDF	National Democratic Front
NGO	Non-Government Organization
NPA	New People's Army
PLANT	Pambansang Lupon ng Nakatatanda sa Tribo
PANLIPI	Tanggapang Panligal ng Katutubong Pilipino or Legal Assistance Center for Indigenous Filipinos
WWF	World Wildlife Fund

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This study looks at the question of jurisdiction over ancestral domains in areas covered by the Autonomous Region in Muslim Mindanao, and whether the law creating the region can be reconciled with the Indigenous Peoples Rights Act. One of its major objectives is to determine which agency should have the power to award titles to indigenous peoples within the ARMM, and how the functions of affected agencies can be properly delineated to remove overlapping roles.

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INTRODUCTION

In the 1990s, the new Local Government Code and the Indigenous Peoples Rights Act (IPRA) paved the way for the strengthening of indigenous socio-political institutions and systems of governance. The IPRA law, for instance, provides for the recognition by the state of "the inherent right of ICCs/IPs to self-governance." With this legal mandate, various groups have undertaken a host of initiatives to revitalize indigenous systems of governance across the country.

Non-government organizations and academic institutions have started to document customary laws and their application to the community. Two such groups are the Organization for Training, Research and Development Foundation, Inc. and the Xavier University that are documenting the customary laws of the Iraya Mangyan in Oriental Mindoro and the Talaandig communities in Bukidnon, respectively.

Government agencies are also doing their share, especially in providing financial and technical assistance. The National Commission for Culture and the Arts (NCCA) and the Office of the Presidential Assistant for the Peace Process, in collaboration with the Cordillera Communities Development Foundation, have assisted Tuguegarao and Kalunga communities in sustaining the annual meeting of peace pact holders. The NCCA also provided support to the Higaonon communities in Agusan del Sur in holding their Dumalemgdong Festival, an occasion for the tribal leaders to meet, renew ties, and discuss ways to strengthen their conflict resolution processes.

Peoples' organizations, particularly those that arose from indigenous institutions, serve as strong and credible advocacy groups for the preservation and strengthening of indigenous socio-political structures. One of the best examples is the Bakun Indigenous Tribes Organization (BITO) of the Kantataey-Bago people in Bakun, Benguet, whose conflict resolution model is featured in Chapter 3 of this volume. There are similar organizations among the Bagobo communities in Davao, the Higaonon people in Agusan, and the Tagbanwa people in Palawan.

Based on the legal and policy framework provided by new legislation, non-government organizations have taken the initiative to study and help facilitate the creation of tribal barangays. One such group, Pandipi, relates its experiences in this field in Chapter 2.

Governance is one of the most important aspects of indigenous knowledge systems and practices. In many indigenous communities, the council of elders still plays a significant role in the decision-making process. Yet, many of these institutions have weakened, generally because of the influence of modernization. This has left only the elders with the main task of performing rituals. However, there are cases where indigenous systems of governance have been strengthened when these are invoked to resolve problems, such as those involving ancestral domains and lands.

A few examples of indigenous systems of governance in selected communities, both original and traditional forms, as well as those that have undergone revisions as a result of integration with modern practices, are listed below:

Batak - Their indigenous socio-political institution is the council of elders headed by a *Musikampo*. The council of elders is mainly an enforcer of customary law, with special attention to the settlement of disputes. Cases brought to the barangay or municipal leaders are referred to the council of elders for resolution. The concerns brought to the council usually involve boundary disputes, destruction of fields by animals, and other crimes such as theft or physical injuries.

Bontok - In Mt. Province, the village or *ili* is the largest political unit, having its own territory and system of governance. The seat of the indigenous governance system is the *Ator*, a stone-paved platform with large upright stones placed around a fireplace. The upright stones serve as

back rests for the elders as they sit around the fire discussing the affairs of the community. A small hut on one side of the platform serves as sleeping area for bachelors and widowers.

The council of elders oversees the socio-economic, political and ritual activities of the community. The elders also manage the common land and property that may be used for the benefit of the members. Decision makers in an *ator* are male elders. To become recognized as an elder, one must have experience in the resolution of disputes and a reputation for good judgment. He must also be articulate. He need not necessarily have great wealth or a successful record as a warrior, though these can add to his prestige.

Disputes involving other *ators* or villages are resolved with the participation of the elders of the wards involved. Decisions on whether or not to go to war or forge peace are discussed lengthily with the participation of other community members. Elders usually narrate the history of conflict, after which people debate on what appropriate action to take. Decisions are reached by consensus. The go-between or *pinakarsu* serves as liaison officer and messenger between the two warring villages. He is usually from one of the villages involved who has married into the other village, and therefore, is the only person who can travel safely to both villages. If death occurs during the conflict, the *pinakarsu* may be tasked to bring a slain person to his home village, after which he has to perform a cleansing ritual. When the two warring villages decide to forge peace, the task of the go-between is over and the elders of both villages proceed with the peacemaking processes.

In urban centers, disputes may be settled with the help of the elders or litigated in court. Further away from the town center, most disputes are settled in the *ator*. Barangay officials, respected professionals from the community, and government officials may participate in peace making processes.

The Bontok socio-political institution continues to be relevant despite modernization and the existence of mainstream local government units. The council of elders may not have anything to do with commercial activities in the urban center (i.e. the Bontok Poblacion), but they still have a role in the agricultural life of the community. They perform agricultural rituals in the *ator* and elsewhere. They declare *ubayu tengau* or rest day before and after harvest, or when a fire destroys a house or houses. After the rest day, they declare a *fatad* or call to action, where people help each other to rebuild destroyed houses by bringing materials and working until the house is finished. The *fatad* is also declared when there is need for community action such as putting out a fire or repairing a communal irrigation canal.

The *ator* is also a place where young married males congregate and learn from the elders. In this way, the *ator* serves as a training ground for the younger men, who are expected to spend time there and do errands for the elders.

The vitality of Bontok socio-political systems and institutions is innate, which is why they have lasted through the years. They have become the people's rallying point when it comes to protection of ancestral lands and domains, including natural resources. A classic example is the Chico river dam controversy. With their common opposition to the building of the dam, the Bontok and Kalaga peoples expanded their bilateral peace pact into a multilateral one. Warring communities set aside their differences and united in their efforts to address a bigger problem, such as the dam project.

Hannoo Mangyan - The *kataungon* is the wisest and, usually, the oldest male in the community. He performs governance functions, and settles intra-community disputes with the

help of the *kasabe* or council of elders. Disputes reach the attention of *kataallungan* and *kasabe* only when parties fail to reach an amicable settlement by themselves. The guilty party is determined through direct confession of the offender, or through any of three prescribed trials. A corresponding penalty is imposed.

Disputes presented to the barangay council are usually referred back to the tribal council for settlement. A dispute between a *Hamnoo* and non-*Hamnoo* is settled in the village where the incident happened. If the case involves land issues, the elders in the community where the land is located will settle the problem.

The traditional term *kataallungan* may be interchanged with the term tribal chieftain, a translation that government agencies have adopted to refer to indigenous leaders.

Ibaloy - Their traditional decision makers are the *ipamama* or elders who are considered wise and who belong to the *kabuang* or wealthy class. The elders settle disputes through the *tongtong*, which literally means discussion. As an institution, *tongtong* is the venue where elders and community members discuss issues and settle disputes.

Tongtong has evolved to include a cross-section of the community and to address inter-community problems. Local politicians and other government officials sometimes join the *tongtong* to help settle inter-community disputes.

Cases that are settled through the *tongtong* include physical injuries, boundary disputes, inheritance cases, domestic problems and theft. The guilty party is fined in the form of land, animals and family heirlooms. Ibaloy in rural communities resort to *tongtong* more often than those in urban centers, who have access to state justice systems. In rape cases, however, some Ibaloy in urban areas such as Baguio City and nearby environs go to a respected elder who decides on penalties, if both parties agree to settle out of court. The amicable settlement ensures that the victim will not be subjected to public scrutiny, though the penalty imposed may not be commensurate to the physical and psychological damage suffered by the victim.

As a revitalized institution, the *tongtong* is now used for discussing community concerns. In the construction of the controversial San Roque Multi-purpose Dam project in Ilogon, Benguet, elders and other community leaders in Dalupirip used the *tongtong* to reach a collective decision on the issue.

Kalanguya - Like the Ibaloy, the Kalanguya society relies on the council of elders. Inter-community disputes are settled by the elders of the concerned communities. Many people also consult the council of elders for advice on important matters. They are important in the religious life of the community as they officiate rituals and prayers.

In some Kalanguya communities, young leaders become members of the council of elders because of their knowledge of issues and exposure to problems. The knowledge gained outside the community can be used in addressing problems affecting them.

Kalinga - The *papungat* or elders are the primary decision makers in the community. Usually, the elders have extensive family connections with other *pungat* and an impressive reputation for dispute settlement. They are also very good communicators. Wealth is an advantage since the elders are expected to feed visitors. Although the main task of the *papungat* is to settle disputes, they also decide on other matters such as resource conservation. For instance, they can declare an *apar* or moratorium on the use of a particular piece of land to allow its regeneration. Inter-tribal conflicts are resolved through the peace pact or *bodlong*. The elders lengthily discuss the declaration of war and the forging of peace with other members of the community.

During deliberations, which can last a day or two, women prepare the food, which consists mainly of meat from animals butchered by men. Traditionally, women are not allowed to voice out their concerns in the deliberations, but they might discuss the matters at home and influence the men's decisions. They can also delay the war by not preparing food for the warriors.

The *pagangut* are also usually the peace pact holders. There are peace pact holders who are not *pagangut*, having only inherited their position from relatives. A peace pact holder is responsible for the safety of a visitor from the other village. If the visitor is hurt while in his village and the peace pact holder does not retaliate against the aggressors, the *bidong* is ruptured and a tribal war ensues. But the peace pact may be renewed if both groups agree to do so.

The institution that ensures peace among Kalinga tribes and their neighbors is still the peace pact. Local government officials are allowed to participate, but it is the community led by the *pagangut* that makes the final decisions. Peace imposed on the warring communities by government and other entities is temporary and will not hold.

The council of elders and peace pact holders also protect ancestral domains and resources from neighboring tribes and other outsiders. Aside from peace and unity, they tackle issues concerning socio-economic programs such as livelihood and infrastructure development.

The creation of the Kalinga Bidong Congress composed of elders, peace pact holders, and other *binodogan* or people belonging to communities that have entered into peace pacts, is a positive development. The KBC holds an annual assembly where leaders from various Kalinga communities come together, discuss relevant issues and forge closer ties. The main objective of the organization is to maintain peace through arbitration.

Tagbanwa – In the traditional leadership hierarchy, the *masikampu* is the highest decision-maker at the level of the ancestral domain. At the village or sitio level, the decision-maker is called *paanglana*. He decides on important community concerns and settles disputes. If there are disputes or other community issues that are not resolved by the *paanglana*, the *masikampu* is approached for decision.

Tiruray – The legal authority in Tiruray society is the *kefeduanan*, who is often known for his capacity to speak in metaphors and stay calm during discussions or *hynann*. He should be equally recognized and respected by other *kefeduanan*. He should be able to memorize old cases and how these were resolved.

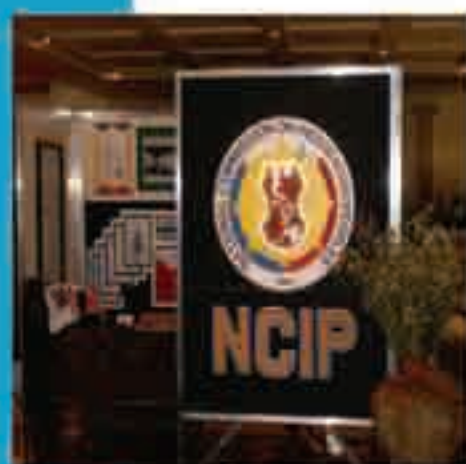
In resolving a dispute, the *kefeduanan* normally explain the case with metaphors. The *kefeduanan* also discuss the amount of fines and penalties that are commensurate to the offense committed.

There are many more examples that have yet to be brought to public attention, but for now, this volume presents four case studies that delve into indigenous governance and justice systems in greater detail. Obviously, substantial efforts are needed to ensure that indigenous institutions and systems of governance will survive and regain vitality and strength. The state of indigenous systems of governance nationwide need to be assessed and trailblazing projects pursued with greater intensity to achieve concrete results.

Training for indigenous institutions and community organizations on how to access development assistance, advocacy, networking, planning and implementation of development projects are necessary. Such capability building programs aimed at reinforcing indigenous structures would help them cope with the changing socio-political environment.

The national government can help speed up the process by developing guidelines for coordination and partnership between local government units and corresponding indigenous institutions. It must be recognized that indigenous institutions are part of the country's socio-political landscape, and their decisions have an impact on Philippine development as a whole.





CHAPTER 1

A TALE OF TWO LAWS: BALANCING THE INTERESTS OF INDIGENOUS PEOPLES AND MUSLIMS IN MINDANAO

The issue of land tenure has been one of the important reasons for unrest among indigenous peoples and Muslim Filipinos. Recent legislation such as the Indigenous Peoples Rights Act (IPRA) and the expanded Organic Act for the Autonomous Region in Muslim Mindanao (ARMM) treaded on this issue carefully, making sure that enough space is left for considering various alternatives in resolving this politically sensitive issue. The Organic Act provides for the enactment of a law to address this issue. However, this law has yet to be enacted, thereby reviving interest on the question of whether or not ancestral domains within the ARMM are covered by the IPRA, which is silent on this issue.

ARMM AND IPRA

The 1987 Philippine Constitution mandated the creation of autonomous regions within the northern region of the Cordillera and the southern region of Muslim Mindanao. This would be done through an organic act defining their basic structure of government, including legislative powers over specific matters such as ancestral domain and natural resources within their jurisdiction. These powers are subject to the Constitution and national laws.

Prior to the ratification of the 1987 Constitution, then President Corazon Aquino issued Executive Order Nos. 122-A, 122-B and 122-C, which created the Office of the Northern Cultural Communities (ONCC), Office of Southern Cultural Communities (OSCC), and Office of Muslim Affairs (OMA), respectively. Under Section 5 of each of these laws, powers and functions granted to each office included the provision of legal and technical services for the survey, adjudication, titling and development of Muslim/tribal ancestral lands, as well as settlements proclaimed by the government for Muslim Filipinos, northern cultural communities, and southern cultural communities. It must be noted that the power to award titles or claims over these lands was withheld from these offices.

On June 10, 1987, President Aquino reorganized the Department of Environment and Natural Resources (DENR) through Executive Order No. 192. Under this issuance, the DENR was granted the power to exercise exclusive jurisdiction on the management and disposition of all lands of the public domain. It would continue to be the sole agency responsible for classification, sub-classification, surveying and titling of lands in consultation with appropriate agencies.

In 1989, the Organic Act of the autonomous Region in Muslim Mindanao or Republic Act No. 6754 was enacted. The law specified the jurisdiction of the Autonomous Regional Government (ARG), which included ancestral domains.

As a result of this law, President Aquino issued Executive Order No. 462, which transferred certain powers of the OSCC within the ARMM to the Autonomous Regional Government. This included the function of providing legal and technical services for the survey, adjudication, titling and development of tribal ancestral lands, as well as settlements proclaimed by the government for the southern cultural communities within the ARMM. The Regional Government designated the OSCC field office to undertake these functions, and absorbed it as the OSCC-ARMM.

In 1992, Republic Act No. 7586 or the National Integrated Protected Areas System Act was passed. The law granted DENR the power to prescribe rules and regulations governing ancestral lands within protected areas. Together with the relevant provisions of the Constitution, this law was among the considerations of the DENR when it issued Department Administrative Order No. 2, which provided for the issuance of Certificates of Ancestral Domain/Land Claim. Since then, the DENR has issued 181 Certificates of Ancestral Domain Claim and 146 Certificates of Ancestral Land Claim, covering a total of more than 2.5 million hectares of ancestral domain.

When the Indigenous Peoples Rights Act (IPRA) was enacted in 1997, one of the country's most marginalized sectors finally gained due recognition. The law created the National Commission on Indigenous Peoples (NCIP) as 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 indigenous cultural communities. The most important power of the NCIP is to issue certificates of ancestral land and domain titles to qualified indigenous communities, superseding the DENR's previous function.

Under the IPRA, the ONCC and OSCC were merged to constitute the NCIP. However, the OSCC-ARMM remained with the ARG, which claimed that the office was not affected as its existence arose from then President Aquino's Executive Order No. 462.

In 2001, the Expanded Organic Act for the Autonomous Region in Muslim Mindanao (the new ARMM) was passed. A new feature of the updated ARMM law was that it mandated the appointment of a Deputy Governor for Indigenous Cultural Communities. Furthermore, it became more encompassing, as provided in Article IV, Section 2: "The Regional Government has jurisdiction over all matters devolved to it by the Constitution."

The IPRA and the new ARMM law are both the results of lobbying from various sectors for the government to recognize and protect two of the most marginalized sectors in the Philippines, the

Muslim Filipinos and the Indigenous Cultural Communities. Muslim Filipinos have waged bloody battles to obtain their autonomy from the central government. Meanwhile, indigenous peoples have waged the struggle for recognition of ancestral lands and domains for several generations. The government has tried to address these issues through the two laws.

Despite its noble intentions, the two laws left certain areas unclear, a situation that somehow constrained their full implementation.

Under the IPRA, the NCIP has jurisdiction over claims for ancestral domains made by indigenous cultural communities. However, under the Constitution and the ARMM Law, the jurisdiction over ancestral domain in the autonomous region was given to the ARG. Because of this situation, indigenous peoples within the ARMM who wish to claim their ancestral lands and domains have become uncertain which agency to approach regarding their applications. The existence of two ARMM offices which are charged with looking after the welfare of indigenous peoples – the OSCC-ARMM and the Office of the Deputy Governor for Indigenous Cultural Communities – seemed to have complicated matters further. Obviously, their functions need to be clearly delineated so that effective plans, programs and services can be implemented for indigenous peoples within the ARMM.

Local Autonomy and ARMM

The concept of autonomy first came about when former President Ferdinand Marcos created the Southern Mindanao Autonomous Region through Presidential Decree No. 1618 in July 25, 1979. However, the 1973 Constitution did not contain any provision on autonomous regions so the scope of the issuance was not clear.

After the fall of the Marcos government in 1986, the new government's first priority was the passage of a new constitution that would strengthen democracy and prevent another Martial Law dictatorship in the future. The Committee on Local Governments of the 1986 Constitutional Convention was torn between the question of creating a fully federal form of government or establishing autonomous regions, particularly in the Cordilleras and Muslim Mindanao.

In his sponsorship speech, Commissioner Ponciano Benmagen recognized the overwhelming passion of Muslim Filipinos to achieve recognition of their right to self-governance: "The Bangsa Moro is a historically and culturally distinct and separate nation from the Christian majority and deserves this status under the universal principle of self-determination; and Islam is the religion and way of life of the Bangsa Moro which requires a separate political and administrative framework from the Western concept and principle of separation of church and state. The latter is similarly important because the Bangsa Moro embraces Islam as the central theme, not only of his religious practices, but all other aspects of life including the government and the economy. Hence, a political fusion with the Christian majority is workable only under a framework of political autonomy which shall allow the full flowering of the genius of the Bangsa Moro in the context of his Islamic Culture."

In the end, the constitutional commission decided to establish autonomous regions instead of a federal government, keeping in mind the diversity of cultures and not just geographic proximity. Only the Cordilleras and Muslim Mindanao were given the privilege of forming autonomous



Muslim attire has found its way into other indigenous groups such as these Tagbanua women performing the *pagdiwata* ritual.

regions, in recognition of their distinctive historical and cultural heritage.

Because of the criteria, the ARMM's scope is not restricted to contiguous territories. It covers the provinces of Maguindanao, Lanao del Sur, Sulu, Tawi-tawi, Basilan and the City of Marawi. Some parts of the region are also the ancestral domains of the Karaga, Sangil, Maranao, Hanun, Maguindanao, Yakan, Samal, Badjao, Tauing and Kalibugan indigenous peoples.

The decision to create autonomous regions was also a response to the need for progress in the outlying provinces which the unitary system is perceived to have failed to achieve. The explanation of Commissioner Jose N. Nollado shows such intention: "Rapid growth could be better attained with a more efficient and effective management of the country. By limiting matters to be decided by the central government to those of national importance, the

central government will not be unduly distracted by localized problems. Moreover, programs should be designed according to regional priorities and potentials rather than the national yardstick of least common denominator.

"By reason of the archipelagic geography of our country, central governance is inefficient and unresponsive. A regionalized structure will make the government more accessible to the people ... The State can achieve equitable distribution of income through the decentralization of political and economic power. In addition, the exercise of these powers through local autonomy is also the key to modernization of our rural areas."

Commissioner and constitutional expert Fr. Joaquin Bernas clarified that "the creation of autonomous regions does not mean the establishment of sovereignties distinct from that of the Republic. These autonomous regions can be established only within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

According to Commissioner Bernagen, what they envisioned was an efficient working relationship between the autonomous region and the central government. It was seen to be an effective partnership and not a separation. The autonomous structure would facilitate catching

up with the development process in the more economically advanced regions, as it would be more responsive to the cultural and geographic particularities of the region.

However, it was pointed out that 'token autonomy' is not what the Bangsa Moro peoples envisioned. As pointed out by Macapado A. Muslim, Chancellor of the Mindanao State University, two things are essential for meaningful Moro autonomy: the capability to be adequately self-sustaining and not dependent on the central government, and some degree of compensatory justice for the Muslims. The Congress addressed these two issues by enacting the ARMM Law.

A discussion on the type of autonomy that the ARMM enjoys would show whether a "meaningful Moro autonomy" has been granted.

The Supreme Court made an earlier decision that reflects on this issue through its review of the case of *Limboua v. Mangalita*, (G.R. No. 80391, 28 February 1989) which involved the expulsion of a member of the Sangguniang Pampook in the ARMM. The local body had argued that since it is part of an autonomous region, the courts could not intervene in its affairs. But the Supreme Court ruled that while the Autonomous Region enjoys decentralization, there are two sides to the issue that need to be differentiated: "Autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive and accountable,' and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.' At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises 'general supervision' over them, but only to 'ensure that local affairs are administered according to law.' He has no control over their acts in the sense that he can substitute their judgments with his own.

"Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to 'self-immolation,' since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency."

Although the Court declared that the Autonomous Region under the Marcos regime did not enjoy a decentralization of power, the Court refused to rule on whether the grant of autonomy to Muslim Mindanao under the 1987 Constitution involves an effort to decentralize power rather than mere administration, as there was no action requiring a ruling on the controversy at that time.

Two years later, the Court settled this issue in the case of *Cordillera Broad Coalition v. Commission on Audit*, which questioned the constitutionality of Executive Order No. 220, dated July 15, 1987, creating the Cordillera Administrative Region "CAR" (G.R. No. 79956, 29 January

1990). The petitioners' main contention was that the order pre-empted the enactment of an organic act by the Congress and the creation of the autonomous region in the Cordilleras conditional on the approval of the act through a plebiscite. The Supreme Court dismissed the petition and ruled that Muslim Mindanao and the Cordilleras enjoyed political autonomy. Excerpts from the ruling follows: "The creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18]."

According to Professor Alberto C. Agra, a recognized specialist in Philippine Local Autonomy, decentralization of administration is equivalent to administrative autonomy while decentralization of power is equivalent to political autonomy. Applying this definition to the Supreme Court pronouncements, it can be deduced that what the ARMM enjoys is a decentralization of power; meaning it is accountable to its constituency and not to the central authorities. However, its legislative powers over matters such as ancestral domains are still subject to national laws, and therefore within the jurisdiction of the Philippine Congress.

With two laws governing ancestral domains within the ARMM, there is a need to determine which agency should have the power to award titles to the indigenous peoples within the ARMM. There are two issues that must be considered: The first is whether the NCIP can validly devolve its powers, functions and duties under IPRA to the ARG, which has vested rights under the Constitution, and the other is whether it is possible to reconcile two ARMM offices, each of which claims to exercise jurisdiction over the indigenous peoples within the region – the OSCC-ARMM and the Office of the Deputy Governor for Indigenous Cultural Communities in the ARMM.

NCIP and the Autonomous Regional Government

The OSCC-ARMM created under the 1989 ARMM law was not merged with NCIP, although the latter arose from the 1997 IPRA law which came much later. There are two reasons why IPRA has not amended the first ARMM law and the jurisdiction over ancestral domains has not been transferred from the ARMM to the NCIP:

(1) Character of an Organic Law

The ARMM Law was enacted as an organic law. According to Commissioner Nollodo, the organic act has the character of a charter passed by Congress, not as a constituent assembly, but as an ordinary legislature. Therefore, the organic act is treated as an ordinary statute that is subject to repeal or amendments through the ordinary legislative process.

When the Congress acts as a constituent assembly, it has the power to formulate a Constitution or to propose amendments and revisions to the Charter, and to ratify such proposal. When the Congress acts as an ordinary legislature, it only has the power to pass, repeal or amend ordinary

laws or statutes (as opposed to the organic law).

Upon the enactment of the IPRA, no express repeal was made on the first ARMM Law. As a result, it cannot be said that the IPRA has amended the ARMM Law and transferred the jurisdiction over ancestral lands and domains in the region to the NCIP.

However, in a 2002 ruling, the Supreme Court asserted that the ARMM law can only be revised through majority vote in a plebiscite. With the pertinent section of the ARMM law as reference, the high court ruled: "An ordinary statute, whether general or special, cannot amend an organic act that provides for an autonomous region which under the Constitution may only be created, and therefore changed, through a plebiscite called for the purpose." As a result of this decision, the issue on the character of an organic act seems to have been muddled and opened to further interpretation.

(2) Constitutional Provisions

The second reason would be Constitutional, which prevails over any statute. The provisions on local autonomy in the 1987 Constitution clearly states the following:

Article X, Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;

This means that even before the ARMM law was enacted, jurisdiction over ancestral domains had been vested in the autonomous region. However, this does not mean that the matter is beyond the reach of the legislature, due to the caveat that the ARG's legislative powers are also subject to national laws.

When the new ARMM Law was enacted in 2001, it did not enumerate the matters over which it had jurisdiction, as stated in the old ARMM Law. Instead, it merely referred to the powers that the Constitution granted to the autonomous regions. What was new is that it mandated the appointment of three deputies for the Regional Governor to represent the Christians, indigenous cultural communities, and Muslims in the region and become part of the ARMM executive council. By mandating the appointment of three (3) deputy governors for each sector, it appears that the ARMM has recognized that its region has become multicultural and its inhabitants are not limited to Muslims. It also appears that the ARMM has recognized the need to establish separate offices to address the concerns of each of these three (3) sectors.

Like its predecessor, the new ARMM Law also mandated the creation of an Oversight Committee "for the purpose of supervising the transfer to the autonomous region of such powers and functions vested in it by this Organic Act." The Oversight Committee was organized on February 8, 2002.

During the 2nd meeting of the Technical Working Group for the Oversight Committee on February 28, 2002, one of the decisions reached was that the NCIP would be one of the national government

agencies devolved to the ARMM. As a result, an Executive Order was drafted, transferring the powers of the NCIP to the ARG.

The proposed Executive Order was submitted to NCIP Chairperson Atty. Evelyn Dumanan and OSCC-ARMM Executive Director Victoria Kanakan for comment. Atty. Dumanan's position was that it would result to the dismemberment of the NCIP and therefore, legislative action is necessary. She explained it thus:

"R.A. 8371 created the NCIP as the vehicle to implement the provisions thereof and has clothed it with powers and functions. The transfer of the powers and functions of the NCIP to any other body is not authorized by the law itself. This being so, there is need for the amendment of the law before any of its powers and functions could be transferred.

"Upon closer scrutiny, the proposed Executive Order does not only transfer the powers and functions of the NCIP to the ARMM but is actually a case of dismemberment of the NCIP as an agency. The proposed Executive Order creates an NCIP in the ARMM independent from the NCIP created by R.A. 8371. We do not find the arrangement objectionable if the NCIP at the ARMM would still be part of the NCIP as a national government agency, that is, NCIP-ARMM will be under the control and supervision of the NCIP-Central Office as one of its field offices."

Furthermore, Dumanan noted that "the power and function of the national government to protect the ancestral domains and ancestral lands of indigenous cultural communities in the ARMM has already been devolved to the Regional Government" as stated in Section 20 of the Constitution. Hence, the NCIP cannot be devolved to the ARMM.

Under the IPRA law, the NCIP was created as the "primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights therein." The creation of administrative agencies raises questions related to their powers and functions, as well as constitutional restrictions that apply to any legislative act.

The NCIP derives its powers over ancestral domains in the country from Section 44 of Republic Act No. 8371. On the other hand, ARG's jurisdiction over ancestral domain within the ARMM is mandated by the ARMM Law and the Constitution. According to a paper by Atty. Alberto Agra on



the Powers of Local Government, “Devolved powers are those powers conferred by the National Government and transferred to local governments. These powers were originally performed by National Government Agencies. Non-devolved powers are those directly delegated to local governments.”

Clearly then, no devolution can be made with regard to ancestral domains to the ARG, as this power had been expressly given by the Constitution to autonomous regions. Therefore, the NCIP cannot be further devolved to the ARG. The ARG may, however, exercise its constitutional powers by creating its own regional agency (for instance, a “Regional Commission on Indigenous Peoples”) to properly implement its jurisdiction over ancestral domains, including those of the non-Muslim indigenous peoples. As indigenous peoples are not classified on the basis of religion, the delineation of jurisdiction should be based on geographical areas.

In the meantime, prior to the passage by the Regional Legislative Assembly of a law creating such a regional agency in the ARMM, it is submitted that the IPRA is deemed applicable.

One of the major limitations of the Office of the Deputy Governor for Indigenous Cultural Communities is that unlike the NCIP, it cannot issue titles for ancestral lands and domains. Hence, an indigenous cultural community in the ARMM seeking to file a petition for titling of their ancestral lands and domains under IPRA has to file it with NCIP. However, once the ARG’s Regional Legislative Assembly has enacted a local legislation addressing this duty, then the NCIP must transfer all petitions from indigenous cultural communities within the ARMM to the regional agency. This is similar to what the DENR did with the applications for CALC and CADT filed with the agency, which were all transferred to the NCIP when the IPRA law was enacted.

Complications may arise in case of overlapping claims. Since the functions of the NCIP and the ARMM government have not been harmonized, it is possible that a CADT or CALT awarded to a Muslim indigenous community by the NCIP will be challenged by non-IP Muslim communities on the ground that within the ARMM territory, the NCIP has no jurisdiction.

OSCC-ARMM and the Office of the Deputy Governor for Indigenous Cultural Communities

Within the ARMM itself, the other issue that needs to be resolved is the existence of two offices charged with the same function of administering ancestral domains. These are the OSCC-ARMM, created through an executive order after the first ARMM Law was enacted, and the appointment of a Deputy Governor for indigenous cultural communities in the expanded ARMM law. The apparent duplication occurred because the new ARMM Law had no express provision dissolving the OSCC-ARMM.

Prior to the appointment of the Deputy Governor for Indigenous Cultural Communities, the Executive Director of the OSCC-ARMM wrote a letter to the Technical Working Group dated March 6, 2002 deferring comment on the proposed Executive Order transferring the powers of the NCIP to ARMM, pending consultation with tribal leaders and legal advisers.

On May 14, 2002, a dialogue among the NCIP Commissioners, members of the ARMM Technical Working Group and members of the OSCC-ARMM Technical Working Group was held for the purpose of reconciling and establishing the functions of each of the two offices working with the indigenous peoples within the ARMM region. In the same meeting, a second draft Executive Order was presented for consideration. While the first draft EO referred to the devolution of the powers and functions of the NCIP within the ARMM region, the second one referred to the reorganization of the OSCC-ARMM into the NCIP-ARMM.

Following the dialogue, *Timuoy* Gambalita T. Gusi was appointed as the Deputy Governor for Indigenous Cultural Communities.

On June 5, 2002, the OSCC-ARMM submitted to the Technical Working Group a draft Memorandum of Agreement with the NCIP regarding the implementation of IPRA within the region. The draft agreement calls for the creation of a regional branch of the NCIP to be known as the NCIP-ARMM. Meanwhile, the Office of the Deputy Governor for Indigenous Cultural Communities likewise transmitted a proposed Executive Order to the Regional Governor prescribing the powers, functions, duties and responsibilities of the Office.

The proposed executive order indicates that the OSCC-ARMM obtained its powers from Executive Order No. 462. But a closer look at the pertinent documents showed that the power over ancestral domains was actually transferred to the ARG and not to the OSCC-ARMM. The continued existence of the OSCC-ARMM is not a result of the devolution of powers, but rather a direct act from the ARMM Governor, who designated the agency to perform the services mandated under Executive Order No. 462, in consonance with the ARMM Law and the Constitution.

Had the Regional Governor or Regional Legislative Assembly decided to bestow the power to title ancestral lands and domains to the OSCC-ARMM, they would have the power to do so, by virtue of the express provision of the Constitution. However, there was no such regional legislative act or regional executive order. Hence, it is clear that the ARG has not yet granted the power to title ancestral lands and domains within the ARMM to any agency.

Should the Regional Governor or the Regional Legislative Assembly decide to transform the OSCC-ARMM into the regional counterpart of the NCIP (for instance, as the Regional Commission on Indigenous Peoples), the relationship of this body to the Office of the Deputy Governor for Indigenous Cultural Communities has to be addressed. In addition, the Regional Legislative Assembly has to prescribe the relationship between the Regional Commission and the Regional Governor, which may be similar to the relationship between the Office of the President and the NCIP. This relationship is discussed under the Rules and Regulations implementing the IPRA as follows:

Section 1. NCIP as an Independent Agency Under the Office of the President. The NCIP is the primary agency of government for the formulation and implementation of policies, plans and programs to recognize, promote and protect the rights and well-being of indigenous peoples. It shall be an

independent agency under the Office of the President. As such, the administrative relationship of the NCIP to the Office of the President is characterized as a lateral but autonomous relationship for purposes of policy and program coordination. This relationship shall be carried out through a system of periodic reporting. Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion of the Chairperson of the Commission, as Chief Executive Officer.

Under the Revised Administrative Code of 1987, an agency refers to "any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein." The relationship between the NCIP and the Office of the President can be characterized as one of "attachment" as provided in the Administrative Code:

- (3). Attachment. - (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;
- (b) Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion or judgment of the executive officer of the agency or corporation. In the event that the Secretary and the head of the board or the attached agency or corporation strongly disagree on the interpretation and application of policies, and the Secretary is unable to resolve the disagreement, he shall bring the matter to the President for resolution and direction;

The Regional Governor is the Chief Executive of the ARMM. If the proposed Regional Commission on Indigenous Peoples (RCIP) is created to perform the functions of the NCIP within the ARMM, it may become an independent agency attached to the Office of the Regional Governor. Since its powers and functions will be similar to the NCIP, the relationship of the RCIP with the Office of the Regional Governor should be similar to that of the Office of the President and the NCIP -- one that is characterized by a lateral but autonomous relationship.

On the other hand, the relationship of the Deputy Governor for Indigenous Cultural Communities with the Regional Governor can be compared to the relationship between the

President and the members of his Cabinet, for instance a Department Secretary, where the latter acts as an alter ego of the President. In this case, the doctrine of political agency is applicable and the Deputy Governor acts as an alter ego of the Regional Governor. The Supreme Court has defined the doctrine of qualified political agency in the case of *Carpio v. Executive Secretary*, as follows:

"Typically well accepted, as a corollary rule to the control powers of the President, is the Doctrine of Qualified Political Agency." As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.

"Under this doctrine, which recognizes the establishment of a single executive, 'all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.

"Thus, and in short, 'the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department.'"

As an alter ego of the Regional Governor, the Deputy Governor should have a lateral but autonomous relationship with the RCIP for purposes of policy and program coordination. In an interview, Deputy Governor Gonsi indicated that he recognizes this, and therefore he does not consider the RCIP as an agency under his Office. He expressed the belief that both his Office and the local counterpart of NCIP are under the Office of the Regional Governor:

Jurisdiction over Ancestral Domains in the ARMM

To sum up, it may well be a good step forward for the Regional Legislative Assembly of the ARG to consider enacting the necessary legislation to create a Regional Commission on Indigenous Peoples (RCIP) which would serve as the primary agency for the formulation and implementation of policies, plans and programs to recognize, promote and protect the rights and well-being of indigenous peoples, especially over their ancestral lands and domains. The RCIP will serve as the counterpart of the NCIP within the ARMM, and may adopt the NCIP's procedure for delineation of ancestral lands and domains.

It may also be good to consider reorganizing the current OSCC-ARMM into the RCIP, as it has been performing the powers and functions transferred to the ARG on the promotion of the development of the indigenous peoples. This may help ensure the continuity of services extended

to these communities. The Deputy Governor for Indigenous Cultural Communities needs to maintain constant coordination and cooperation with the RCIP to ensure the formulation and implementation of necessary and relevant policies, plans and programs to recognize, promote and protect the rights and well-being of the indigenous peoples within the ARMM. Despite its independent nature, the RCIP must have a system of periodic reporting with the Deputy Governor for Indigenous Cultural Communities. However, matters of day-to-day administration or internal operations will be left to the head of the RCIP.

On the Issue of Ancestral Waters

Under the new ARMM law, the definition of ancestral domain and lands of indigenous cultural communities is provided in Article X, Section 1, as follows:

All lands and natural resources in the autonomous region that have been possessed or occupied by indigenous cultural communities since time immemorial, except when prevented by war, *force majeure*, or other forms of forcible usurpation, shall form part of the ancestral domain. Such ancestral domain shall include pasture lands, worship areas, burial grounds, forests and fields, mineral resources, except strategic minerals, such as uranium, coal, petroleum, and other fossil fuels, mineral oils, and all sources of potential energy; lakes, rivers, and lagoons; and national reserves and marine parks, as well as forest and watershed reservations. (Underlining supplied).

Under this definition, bodies of water such as lakes, rivers, lagoons and marine parks are not listed as part of the ancestral domain. This may be a cause for concern, considering that some of the indigenous communities in the ARMM, like the Badjao, rely mainly on the seas for their livelihood.

A possible solution to this issue may be to introduce an amendment in the expanded ARMM law in order to incorporate related bodies of water into the definition of ancestral domain. Pertinent provisions of the IPRA may be used as points of reference in formulating such an amendment.

Right to Self-Governance in the ARMM

The survival of indigenous cultural communities and the Bangsa Moro people depends on their ability to assert and secure land rights. Their right to self-determination is tied to ownership of their lands.

The government has tried its best to answer this demand. However, its best efforts were met with certain idiosyncrasies that had to be satisfied. Hence, the laws that the government enacted were fraught with vague provisions and gray areas when applied together.

The IPRA grants NCIP the power to issue ancestral domain and land titles. However, the 1987

Constitution and the old ARMM Law grants this power to the ABG. As a result, the NCIP has tried to treat carefully with regard to petitions coming from the ARMM. On the other hand, the ABG failed to come up with legislation to exercise its jurisdiction over ancestral domains during the effectivity of the old ARMM Law.

To resolve the conflict and reconcile the differences, this study posits that a regional legislation should be enacted, creating a Regional Commission on Indigenous Peoples to serve as the local counterpart of the NCIP and perform the powers, functions and duties necessary to protect the rights of the indigenous peoples within the ARMM. To ensure the continuity of services, it is suggested that the OSCE-ARMM should be reorganized into the Regional Commission on Indigenous Peoples. The newly-created Deputy Governor for Indigenous Cultural Communities, as the alter ego of the Regional Governor, must maintain close coordination and cooperation with the Regional Commission on Indigenous Peoples to ensure that necessary policies and programs to best address the needs of indigenous peoples within the ARMM will be properly drafted and implemented.

The enactment of the Indigenous Peoples' Rights Act was a novel and well-applauded legislation that responds to the needs of the indigenous peoples. In the application of this law however, the concerns of other sectors must also be considered. The creation of the Regional Commission on Indigenous Peoples is proposed, not only to address the right to self-determination of the indigenous peoples within the ARMM, but also to signify the exercise of autonomy by the Bangsa Mero peoples, allowing them to ensure their own right to self-determination.



Colorful Muslim boats called *vinta* on the shores of western Mindanao



The Ateneo Human Rights Center conducted this study to determine if the ARMM law can be reconciled with the Indigenous Peoples Rights Act (IPRA). Primary data came from a personal interview with Atty. Evelyn S. Dumanan, Chairperson of the National Commission on Indigenous Peoples (NCIP) at the time of the study, and telephone interviews with ARMM officials and staff. Secondary materials came from legislation records, relevant jurisprudence, and various publications. The scope of this study is limited to five provinces and one city covered by ARMM, and 10 indigenous communities residing in the area.

Among the outputs of the study are a comparative chart of the draft Executive Order proposed by the Oversight Committee Technical Working Group, the draft Executive Order proposed by the OSCC-ARMM Technical Working Group, and Executive Order No. 462; a proposed Regional Legislative Act creating the Regional Commission on Indigenous Peoples; and a Regional Executive Order providing for the powers, functions and duties of the Deputy Governor for Indigenous Cultural Communities. These additional documents may be obtained from the Manila office of ILO-INDISCO upon request.



To preserve their distinct lifestyles, indigenous communities are seeking legal recognition of their village structure through the *barangay* system



CHAPTER 2

ON THE TRAIL OF TRIBAL BARANGAYS

The exercise of the right to self-governance by the indigenous peoples (IPs) could be significantly enhanced if the basic unit of governance conforms with their traditional institutions that the State is mandated to recognize and protect. This may be the reason why Congress has passed two significant legislations which highlight the State's commitment to enhance the IPs' right to self-governance.

Section 38 of the Local Government Code (LGC) of 1992 provides for the creation of tribal barangays as follows: "To enhance the delivery of basic services to the indigenous cultural communities, barangays may be created in such communities by an Act of Congress."

In 1997, Republic Act 8371 or the Indigenous Peoples' Rights Act (IPRA) further institutionalized the creation of tribal barangays by providing under Section 18 the following: "The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays."

The barangay is the smallest political unit in the country. It derives its importance from Section 38 of the LGC, which states: "The barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities, and forum wherein collective views of the people in the community may be expressed, crystallized, and considered and where disputes may be amicably settled."

These functions provide the anchor for promoting the right to self-governance and empowerment of IPs. It is also within this context that Section 13 of IPRA declares: "The State recognizes the inherent right of ICCs/IPs to self-governance ... and respects the integrity of their values, practices, and institutions. Consequently, the State shall guarantee the right of ICC/IPs to freely pursue their economic, social, and cultural development."

The reference to the LGC highlights the need to harmonize the relevant provisions of the two laws, considering that the policies enunciated in the IPRA are not adequately reflected in the former. This discrepancy gives rise to two important questions:



Indigenous women preparing offerings for *runsay* ritual in a barangay in Aborlan, Palawan

1. How should tribal barangays be created?
2. What structures and fiscal policies should govern tribal barangays?

It is generally believed that as long as these two questions remain unanswered, the establishment of tribal barangays in accordance with the IPRA may continue to be stalled. Implementing guidelines regarding the structure, administrative and fiscal affairs, selection of leaders, and other governmental matters need to be formulated to ensure a systematic move toward the formation of tribal barangays.

Barangays Busog and Culiati

Along the mandates of the two laws, PANLIPI, a non-government organization composed mainly of lawyers, facilitated the conversion of two mainstream barangays — Busog and Culiati — into tribal barangays. These are predominantly inhabited by the Solod-Bukidnon indigenous communities.

The barangays of Busog and Culiati are the farthest inland villages in the Municipality of Valderrama, Province of Antique. Culiati has 35 households with a population of 310 people, while Busog is slightly bigger with 48 households and 320 residents. The total area of both barangays, based on their Certificate of Ancestral Domain Claim (CADC), is 6,700 hectares. They are located about 36 kilometers from the town proper of Valderrama.

The province of Antique lies on the west coast of the island of Panay. It has a land area of 2,517 square kilometers and a population of 406,361. It has 18 municipalities and 561 barangays. Its capital town is San Jose de Buenavista. The shoreline of Antique was recently redefined with the acquisition of the islands of Semirara and Cateya, which were formerly part of Mindoro.

Antique has its back to the steep mountains of the range that isolates it from the other provinces of Panay. It has almost no coastal flat lands, although there are low and fertile plains and valleys, with plenty of pasture. Two fifths of the land area is covered with forests. The spurs of the long mountain range descend nearly to the coast. Among the peaks found in the province are Mt. Tungo, Mt. Usigan, Mt. Tocmocan, Mt. Madla-as, Mt. Tigas, Mt. Dumar, Mt. Baloy, Mt. Agbalame, Mt. Agparale, Mt. Pola, Mt. Tuno, Mt. Librene, Mt. Igdadig, Mt. Upao, Mt. Sumanan, Mt. Tichayot, Mt. Tibajon, Mt. Ungao, and Mt. Patkan.

Because of these mountains, rains from the northwest monsoon are cut off; hence, the province experiences a long dry season. The sea on the west coast and the forest on the eastern boundary temper the climate of Antique. Storms are usually frequent during the months of May and June.

while thunderstorms occur between April to July.

Antique derived its name from the town of Hamik, its first capital. According to the tales of the Maragtas, Antique once enjoyed primacy among the realms carved out in Panay by 10 Bornean *datus* (chieftains). These *datus*, fleeing the tyranny of Sultan Makamaw of Borneo, bought the island from the Ati King Marikudo and established Hamik, Aklan, and Irong-irong. The *datus* are known to have landed in Malandog, Hamik where a marker commemorates the event, usually reenacted during the *biswaryan* (literally meaning "place where the boats landed") festival. The wisest among the chieftains, Datu Sumakwel, ruled in Hamik.

During the Spanish era, Antique was administered from Iloilo, and became a backwater of the colony. When Miguel Lopez de Legazpi transferred his headquarters from Cebu to Panay, his men came upon the village of Bugasong and Hamik. Encuentros were established in Pandan and Hamik in the 1570s. In 1581, the Augustinians set up a mission in Hamik, establishing the first parish in Antique. A number of parishes were later set up in the other areas. In 1793, Antique became a province of Panay.

The people of Antique did not welcome Spanish rule. The natives, called *mumlo* and *casaco*, refused to live in the town centers, a problem that was exacerbated by occasional Muslim raids along coastal towns. In 1828, secular priests participated in a serious revolt against the *alcalde mayor* while in 1888, the secret organization *Aghang* protested the abuses of Spanish officials and Augustinian clergy.

A lasting legacy of the Philippine revolution in Antique was the Iglesia Filipina Independiente, a church founded by Gregorio Aglipay and Isabelo de los Reyes. Next to Ilocos, Antique has the greatest number of Aglipayans.

In the book *The History of Panay*, authors Felix B. Regalado and Quintin B. Franco describe the people of Antique as hardy, provincial folk who are driven to excel in whatever they do. They are independent-minded, determined, adventurous, and thrifty. They are also immensely nationalistic and willingly embrace any movement that fosters dynamic Filipinism.

Most of the residents are farmers. In the past, many of them worked in the sugar plantations in neighboring Negros island as "sacadas" (hired hands). Land is not very productive in Antique, making it necessary for farmers to seek other sources of income such as salt making and fishing. In the idle months between planting season and harvest time, the farmers are busy in home-based industries.

Antique is a net surplus producer of rice, sugar, and other agricultural crops. It is also rich in mineral and clay deposits, as well as forest and non-forest products. Goods and raw materials are brought in Antique through inter-provincial roads from Iloilo City to San Jose de Buenavista, and from Nabua, Aklan to Pandan. More than 20 water courses have to be traversed in and out of Antique and during the rainy season, some roads are closed due to floods. Antique has a port, but inter-island vessels seldom stop there because of the shallow shore line.

In general, Antique has kept a low profile in national affairs. Its mountainous terrain, lack

of good roads, ports, transportation, and communication facilities have prevented Antique from raising its residents' standard of living.

The people of Antique partly attribute the lack of development in politics, as they tend to support the opposition. For instance, in pre-martial law days, when the president belonged to the Nacionalista Party, the Antique governor was from the Liberal Party. During the snap elections of 1986, the pro-Corason Aquino opposition led by former Gov. Evelio B. Jarier conducted a successful campaign against entrenched pro-Marcos forces in the province. But after the elections, the charismatic Jarier was gunned down in broad daylight in San Jose. The assassination intensified the tension that culminated in the EDSA revolt 11 days later.

The Sulod Bukidnon of Antique

The *Tumandok* (native) *Bukidnon*, popularly referred to as the Sulod or Sulodnon, is the largest indigenous group in Panay Island. The Office of Southern Cultural Communities placed their population at around 40,000 as of 1993. This is a conservative estimate, as there may be more of them in the barangays not covered by the survey. They are found in the provinces of Capiz, Antique and Iloilo, specifically in municipalities of Tapas, Valdeirama and Lambuan, respectively.

It is believed that they settled in the lowlands because their twin epic, *Lahaw Dunggon* and *Humadagnon*, revolves around life near the sea. Historical accounts suggest that they were either shifting agriculturists who had sold their farms to the lowlanders, or lowlanders who migrated to the uplands at the onset of the Spanish occupation to escape suppression. However, genealogical accounts show that they were already in the area when the Spaniards came to the interior settlements of Panay.

The Sulod people belong to various subgroups of Bukid, Bukidnon, Mundo, Putian, Muneses, and Buki communities. Those who live near the headwaters of Pan-ay are called *Pan-aynon*, while those living near the headwaters of Ibalayod or Jahaur are known as *Ibalayodnon*. The ones found near the Aburan River are known as *Aburanon*. The mountain peoples of Antique, especially those living in the interior, are called *Baynon*. Generically, they are referred to as *Tumandok nga Bukidnon*, though some of them resent the name because of its connotation as backward societies. Their language belongs to the central Philippine group and the dialects are related to *Hirinyan*, the lowland *Kirinyan*.

Traditional religious rites are numerous, including 16 major ones celebrated by a *baylan*. The group is known for their epics such as *Lahaw Dunggon*, which is among the most extensive in the country. Like the Iligan epics, these are committed only to memory.

Cosmology

The Sulod people of Central Panay believes that the universe is divided into four domains: *ibabawnon* (upperworld), *pagtan-an* (middleworld), *Ipanon* (earth world), and *ibabawnon* (underworld).

Ibalanant is divided into two regions. One region is headed by a male *diwata* (deity) named *Tungbang Langit* (pillar of the sky). Under him are less powerful *diwata*, namely: *Bangun-Bangun*, deity of universal time who controls all cosmic movement; *Pahulanglang*, who changes the seasons; *Rihang Lint*, god of thunder and lightning; *Samalanggon*, god of rivers and seas; *Santimilyo*, deity of good graces; and *Munsad Burulakaw*, god who has direct power over the affairs of men. The other region is ruled by the female deity *Alimayna*. Under her are lesser divinities: *Murapuro*, *Tihang-Tihang*, *Lahing Daut*, *Tubay Kinabilyan*, *Puuhilig-sa-pigay*, *Pimangig Uray*, *Tumhang Gaderguday*, and *Salangkating Pala*.

The powerful *diwata* who reigns in *Pagtang-an* or the middle world is *Puthuring* and his wife *Mulanawan*. They have five children: *Ginbitman*, (who is the wife of *Munsad Burulakaw* of *Ibalanant*), *Matanayan*, *Sirangann*, *Layang Sakla*, and *Tayang Tubig*. There are also lesser divinities in *Pagtang-an* led by *Puhayst* and his wife *Durunuan*. They have several children: *Abaw*, *Saramihun*, *Bart*, *Ulanlang Langitnan*, and *Mahadulon*.

The underworld or *Idadabunant* is ruled by *Pandinugan*, god of earthquakes. He has a brother who is also named *Tungbang Langit*, who supports the world on his shoulders. The latter is married to *Layong Kabig*, the *diwata* who controls the stream of snakes at the entrance of *Idadabunant*. She has a sister named *Layong Baybey*, the *diwata* who controls the rising and falling of the tides and is married to *Puigub*. They have a child named *Magsanladang Biday*.

Historical records show that the Solod believe in the soul-spirit, which removes itself from the carnal body upon death and travels from one place to another until it reaches a lafe, which it has to cross with the assistance of *Bangle*, the ferry man. According to this myth, *Bangle* asks the soul-spirit several questions before he takes it to the other shore. If the soul answers that it has had more than one wife, it is congratulated and immediately carried across on *Bangle*'s shoulder. If it has had only one or remained a bachelor, then it is told to hold on to *Bangle*'s pubic hair and to swim across the sticky water. As there are no recorded cases of polyandry, it cannot be assumed that the same questions apply to the female soul.

The soul has to pass another stream guarded by a deity called *Babagi*, who asks him the same questions. After passing the test, the soul is admitted to *Maifu-as* mountain, where it joins a cockfight before it is taken to a rest house called *Barampungan*. If its relatives in the earth world perform the right ceremonies, the soul undergoes a strengthening process, after which it takes its place in the center of *Maifu-as*, where it leads a normal life. Eventually, it turns into one of the environmental spirits that guard every aspect of Solod society.

Solod religion is intertwined with social and economic activities like fishing and hunting, which are influenced by defined environmental and ancestral spirits. All phases of the agricultural cycle, such as pre-clearing, begin with an invocation to ancestral spirits. The *agpat* ceremony, for example, is a post-clearing chanting ritual done as a gesture of apology to spirits who may have been hurt by burning of the field during the clearing process. It is believed that illness is

caused by forest spirits, that have to be appeased. The *baylan* leads the procession, dancing to the beat of gongs and drums to invoke good and evil spirits.

Social Organization

In his book *Philipino Indigenous Ethnic Communities*, Elanla Jocano classifies Solod under the *puro* or kindred type of social organization. These are generally composed of clans who occupy a particular settlement and interact closely with each other. They reside in clusters of scattered, autonomous, and semi-permanent settlement of varying sizes. Since individual dwellings are far apart, the function of the community as a social group is not readily apparent to the casual observer. But it would not take time for an observer to discover this, as Jocano notes about the Solod:

"The dispersed dwellings are in reality closely interrelated that the various households maintain a continuous face-to-face interaction, and that the members of the community are integrated into a social entity of close neighbors and kin, who share in enough activities so that their interaction are both frequent and different from interactions with outsiders."

Clusters of just a few houses compose a settlement. It is usually headed by the oldest man called *parambucton*, who is assisted by a younger man called *limbang* in managing community activities and conflicts. The roles are not hereditary.

Like other indigenous communities with a *puro* type of social organization, stability of the settlements is, in most cases the temporary product of agricultural opportunities, impermanent kinship obligations, and fluid social ties. Component families tend to shift around as people look for better spots or abandon a location that has come to be associated with an illness or death. Jocano concludes:

"On the whole, almost all indigenous ethnic communities with *puro* type of social organization share the Harau basic settlement types as follows:

- * Minor settlement – single cluster with at least two houses (i.e. roof structure) but only one resident family
- * Simple settlement – single cluster with at least three houses and two or more resident families, but with only one spouse set in the oldest generation
- * Complex settlement – single cluster with at least four houses and three or more resident families including at least two siblings or cousins (other than spouses) in the oldest generation
- * Compound settlement – linked cluster comprising two separate but close house clusters (not more than a few hundred meters apart)"

These observations were validated in community visits to Cadar and Valderrama, where the Solod dwellings are generally impermanent, rectangular, gable-roofed houses made of bamboo and grass or nipa shingles. These are raised on posts four to six feet above the ground. Floors are made of bamboo slats; and walls of flattened bamboo or bark.

Built close to most houses are structures for special purposes like granaries and religious rituals. Among the Sulod, the structure called *urub* has a tent-like roof which touches the ground and is used for emergencies such as sudden storms and strong winds.

In terms of social structures, Sulod communities are loosely stratified. Social differentiations are based mostly on economic affluence, politico-jural influence, knowledge of native lore, genealogical history, and personal charisma.

Puro social stratification is closely linked with kinship and family. Hierarchical arrangement of status is anchored on alliances of families and kinship groups, particularly those who are affluent. Individual achievements, like bravery in battle or acquisition of supernatural power, are often attributed to psychic inheritance or favors bestowed by ancestral spirits. Among the Sulod, man becomes an achiever because the unseen powers of ancestral spirits or their spirit-friends have opened all avenues of luck and fortune for him. In return for such favors, the lucky person should observe all rituals and taboos necessary to maintain his relationship with kindred spirits and, in the process, maintain his social status.

Leadership Patterns

The most influential elder who possesses the personal ability to persuade other members of the community often assumes leadership among the Sulod. Of the Sulod leadership pattern, Jocano states:

"The informal leader among Sulod of Central Panay Island is called *parangluton* (advisor) or *busay* (arbitrator). He is a respected individual because of his wisdom, but he is not the center of power or authority. There is no definite center of sociopolitical power and the *parangluton* is not exempted from doing the rounds of subsistence activities pursued by all Sulod.

"The *parangluton*, who also functions as the *busay* or arbitrator is generally sought after and obeyed because of his ability to form opinion and to give advice on the basis of Sulod laws and customs. He is generally a highly moral man, with firm conviction and unquestioned courage. Oftentimes, he assumes the role of *busay* if the case brought to him is personal, inter-familial, and/or inter-community.

"As elder of the group with superior knowledge of customary laws, he chairs the group of elders which is sometimes informally convened to deliberate on cases of great importance like murder, rape, and family feuds. This group of elders, generally of household heads called *kubimantun*, is composed of closely related kinsmen within grandparental and parental generations. It is from this unit that the *busay* (arbitrator), *parangluton* (advisor), and even the *baylan* (medium) are selected from. The group represents the council of elders and the members participate actively in all community affairs like marriage arrangements, performance of community rituals and ceremonies (especially the annual river festival), settlement of family feuds, and many other cooperative works. These encompass various aspects of Sulod social, economic, ritual, and legal life that are beyond the capacity of individual or family to handle.

"In settling the case, the *parangluton* maintains disinterest and as much as possible, explores

the possibility for amicable settlement before a particular problem is discussed in the community-wide council. In arbitrating cases, he is assisted by the *tinimbang* (assistant) who acts as his spokesperson while he listens to all parties concerned.

"The *tinimbang* may suggest or argue against certain points of customary laws as interpreted by elders or by the *parangkaton*. Sometimes he scolds, harangues, threatens, exaggerates crimes of defendant, criticizes motives of plaintiff, and swears to spirits of ancestors, if this becomes necessary, to emphasize the wisdom of judgment about to be made. He uses extensively moral examples or propositions called *batinuhana* (examples or analogies).

"The *tinimbang* knows the psychology of people. Although he is the most visible person during discussions, it is generally the *parangkaton*'s or the *lucay*'s opinion which prevails and carries more weight. All parties in the case are invoked to have erred or are at fault, thereby demonstrating that no one wins but all are responsible for the conflict. Fines are collected from those who figure prominently in the case."

Jocano goes on to say that while all *puro* leaders are assisted by a council of elders called *kabimulaan* among Solod, some ethnic communities have no name for this group of decision makers who are also legal experts, religious functionaries, and *kinamen*. As the anthropologist Jesus Peralta described in his research among the Iwaki people:

"Membership admits both sexes, and recruitment to offices is not formalized. It comes as a result of a long process of acceptance established through cumulative participation in council meetings. Age does not necessarily carry the special privilege of immediate acceptance. The capacity to generate opinion and a following carries more weight in being accepted as a council member."

While this is true in other *puro* communities, among the Solod, age is an important factor. Skills in persuasive argumentation, negotiation, and use of metaphoric language are among the qualifications for a leader and for those who will sit in the council. The council is convened informally to consider matters of grave importance to the group. There are no fixed dates nor scheduled time for meetings.

Cases are heard patiently amid feasting and drinking. The spokesperson of each party (i.e., the victims and the accused), who convenes the council meeting, presents the case of his "client." After both sides have been presented, the council members take up the merits and demerits of argumentation. They argue at length among themselves until the fault is established, terms of negotiations (as in divorce) are clarified, degree of liability is agreed upon, and so on. Passing judgment proceeds with great care.

Discussions reached in these informal discussions are considered authoritative and are followed, even if the council does not have the police power to enforce them. This is because the decisions are made by responsible and respected community members. Also, most of the elders are reputed to possess supernatural powers or are under the protection of magical spirits. They are also secretly feared and obeyed. But the most dominant factor for self-enforcement are public opinion and customary laws. *Puro* members have a very high and profound respect for

their laws and for the opinions of their elders. Decisions are sometimes handed down at the end of discussions. In some groups, the older person, acting as the judge, formulates the decision based on the opinion of all council members present.

Marriage

Nuptial ceremonies among the Sulod are replete with prototypes of theater, literature, song, and dance. The *pagbati* is the ceremonial meeting of two sets of parents, who pretend ignorance of the couple's engagement, so that they may formally confirm it. Marriage negotiations are conducted in the form of a poetical joust, in which the girl's family again pretends ignorance of the boy's intentions. Part of the joust includes the haggling over dowry. Once this is accomplished and the boy is duly accepted, the boy's service to the girl's family begins. He brings to the house symbolic objects, such as banana leaves, which signify the virtue of "righteousness giving shade and protection to the couple in their life's journey," according to Jocano.

The wedding day begins with *lungaw*, another poetical joust between two spokespersons. This is recited as the wedding entourage takes some numbered steps from the gate to the stairs of the house. After the wedding, the feast begins but it is regularly interrupted by another poetical joust, in which the bride is referred to metaphorically as the "flower of the house." During such occasions, lacelorn plates called *labang*, and the *sibulan* or the ancient Chinese jar in which rice wine is fermented, are taken out of storage and used for the feast.

Economic Patterns

Sulod communities have adapted in the highland Visayan culture of subsistence based on swidden farming, supplemented by trapping of animals and foraging for food. Their principal crops are upland rice, corn, and root crops. The cultivators are highly mobile; fields are shifted every two years and allowed to fallow for the next five years or so before being utilized again. This practice is akin to many other indigenous peoples of the *puro* type of social organization. Jocano states:

"The technique of shifting cultivation requires a good grasp and better understanding of the nuances of the natural environment. This includes knowledge of climatic conditions, soil types and fertility, succession of plant crops, and nature of forest flora and fauna. Such requirements have developed among the different *puro* communities through extensive familiarity with environment, even at the micro-level of knowledge. Most of the *puro* communities have detailed knowledge of local terrain as well as flora and fauna of surrounding world.

"Swidden activities are not done in haphazard manner. These are well adjusted to specific seasonal changes. Almost all ethnic groups follow a number of sequential stages or cycles in pursuing crop cultivation.

"The most desired food crops grown are rice, corn, sweet potatoes, banana, taro, and vegetables like squash and beans. Other products collected and sold or exchanged for items that are not locally produced include honey, almociga, gums, rattan, firewood, edible roots, and fruits.

In addition to food crops, livestock is raised for home consumption, ritual sacrifices, and trade.

Carabaos and cattle are also raised by some groups for use in transport and farming, especially among groups residing at the edge of deforested, marginal settlements. Hunting and gathering and inland fishing are carried out to supplement food production. Most members of ethnic communities are good hunters. This skill may be attributed in part to the fact that their produce is meager and uncertain and must be supplemented with protein food. There are nine hunting techniques which are known and are availed of by Salod of Central Panay.²²

Sharing is an important trait common to all ethnic groups of the *panay* type of social organization. This is true of the Salod. They call the exchange of cooked food *gawitraway*. Fish caught in the streams or rivers are shared with neighbors. Meat of deer or wild pig from hunting expeditions is shared. But meat of small birds or animals, bagged by individual hunters along the way, need not be shared with others. Each participant in the hunt gets a share of meat, with the leader getting a larger share. The owner of the dog gets an additional share, and so do the people who happen to be present during the partitioning of meat. Property rights to the land, hunting grounds, and fishing areas are unknown to many groups. These places are communally owned. Anyone can farm, hunt, and fish wherever he wants, provided no one has placed a stake on the site.

Creating a Tribal Barangay

In September 2000, PANLIPi initiated the creation of tribal barangays in response to requests from a number of indigenous cultural communities. Daniel P. Dinopol, PANLIPi Capability Building Program Director, made a preliminary legal study together with volunteer lawyers Jeremy Bionat and Danny Valenzuela and consultant Raoul M. Cola.

The legal study came up with the following findings:

1. The Barangay, being the basic unit under the political system in the Philippines, is the most relevant political concept to the IP's right to self-governance because the areas within ancestral domains are necessarily parts of existing barangays.
2. Under Sections 6 and 385 of the LGC, a barangay may be created by law or by an ordinance of the Sangguniang Panlalawigan or Sangguniang Panglungsod, subject to the approval of the majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected.
3. When the Barangay is created by the Sangguniang Panlalawigan, the recommendation of the Sangguniang Bayan shall be necessary.
4. In Article 386, the LGC emphasizes the exemption of tribal barangays from the requirement pertaining to population and contiguity of the areas established as ancestral domains.
5. Section 10 of the LGC states that qualified voters of the political unit or units directly affected must participate in the plebiscite.
6. Section 387 of the LGC provides that the barangay shall be headed by a Punong Barangay and seven Sangguniang Bayan members, the Sangguniang Kabataan chairperson, a barangay Secretary

SOME DEFINITIONS

1. **Tribal Governance** – refers to a set of structures and practices traditionally observed by the indigenous cultural communities in running the affairs of their community.
2. **Barangay Governance** – refers to the structures and practices in running the affairs of the barangay in accordance with the provisions of the Local Government Code of 1991.
3. **Tribal Barangay** – refers to a community, majority of the inhabitants thereof being members of the indigenous cultural communities recognized as such pursuant to IPRA and the Local Government Code of 1991.
4. **Interface** – the areas where tribal governance and barangay governance may be reconciled in the creation of a tribal barangay or the conversion of a mainstream barangay to a tribal barangay.

and a Barangay Treasurer. The set-up, as designed in the IGU, fails to consider that customs and traditions of IPs set definite roles among tribal elders and members.

7. There is a need to reconcile the Tribal Justice System with the required *Lupong Tagapamayapa* and Barangay Justice System.

8. Fiscal matters and sustainability of the Tribal Barangay must be studied further.

Overall, the legal study concluded that it was possible to convert existing barangays into tribal barangays, but there is a need to define the differences between a tribal barangay and a mainstream barangay.

PANLIP held consultations among IP communities to build consensus regarding a prototype Tribal Barangay. The Barangays of Busog and Calat in Valderrama, Antique were the first indigenous communities to assert their desire to become a Tribal Barangay. Since they were already regular barangays, they decided to submit a petition so they can be converted into a tribal barangay without altering their boundaries or the instruments that created them.

Negotiations for the conversion of the two barangays started in the last quarter of 2000. A meeting with then-Governor Exequiel Javier of Antique resulted in the creation of a joint task force consisting of PANLIP and the Provincial Planning and Development Office, through its Officer Ms. Julianne Cape. The task force was charged with preparing the requirements and endorsements for the conversion of the two barangays to tribal barangays.

On February 27, 2001, consultations were conducted at the Provincial Capitol with no less than the Governor himself addressing the assembly. The IPRA provisions on the creation of tribal barangays were thoroughly discussed, and in line with the power of the Provincial Government to create barangays, the Governor gave permission to proceed with the process of declaring the two tribal Barangays.

Consultations with affected IP communities started in March 2001. Twenty five Sulod leaders

participated in an orientation workshop to discuss the conversion procedures. The workshop resulted in the unanimous signing of a petition for the conversion of the two Barangays into tribal barangays. The Petition was later on passed on for approval to other members of the community who were not present in the orientation seminar.

PANLIPi also gave orientation seminars to local government officials about the IPRA law, particularly the provisions on the creation of tribal barangays. On September 12, 2001, members of the Sangguniang Bayan of Valderrama attended such an orientation. Subsequently, the legislative body unanimously passed Resolution 45-2002 on May 20, 2002 endorsing the petition of the Sulod communities. (see box below)

Also in May 2002, PANLIPi intern Christian Castillo conducted a perception survey and legal study to answer two basic questions:

(a) How should a tribal barangay be created?

(b) What structures and fiscal policies should govern tribal barangays?

Resolution No. 45, 2002

WHEREAS, the Municipality of Valderrama supports the implementation of Republic Act No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997,"

WHEREAS, the Barangay Busog and Barangay Cullat at this municipality are ever since occupied by indigenous peoples;

WHEREAS, it is a policy of the Philippine Government to recognize and promote all individual and collective rights of Indigenous Cultural Communities/ Indigenous Peoples within the framework of national unity and development in accordance with the Constitution and applicable norms and principles;

NOW, THEREFORE, on mass motion made and unanimously seconded be it

RESOLVED, as it is hereby resolved, to endorse the conversion of Barangay Busog and Cullat as Tribal Barangays in this Municipality;

RESOLVED, FURTHER, to furnish a copy of this resolution to the Office of the Provincial Planning and Development Office, San Jose, Antique for its information and appropriate action.

CARRIED UNANIMOUSLY

I HEREBY CERTIFY TO THE CORRECTNESS OF THE ABOVE QUOTED RESOLUTION.

SIGNED:

Ma. Luisa P. Satazar
SB Secretary

Josefino Q. Castillo
Vice Mayor
Presiding Officer

MAY 20, 2002

The activity made use of Focused Group Discussions and interviews in selected IP communities in Pauray, as represented by either the barangay captain or the tribal chieftain, and their respective local government units. The main thrust was to differentiate a tribal barangay from a regular barangay, so the discussions focused on four areas:

- > The IP concept of a tribal barangay;
- > Their model and political structure;
- > Their rights and obligations under a tribal barangay;
- > Their expectations from the tribal barangay and/or from the LGU.

One of the issues discussed was the requirement for a

majority vote in a plebiscite before a tribal barangay can be created. The opinion of the Commission on Elections (COMELEC) is that the plebiscite for a tribal barangay is no different from that of regular ones. Hence, in its resolutions prescribing the rules and regulations governing plebiscites to ratify the creation of barangays, the COMELEC stated that all qualified voters of the municipality as of the last day for convening the Election Registration Board are entitled to vote in the plebiscite.

However, the Supreme Court has squarely decided the issue in *Paredes v. Executive Secretary*, where it was held that: "x x x the acceptable construction is for those voters, who are not from the barangays to be separated, should be excluded in the plebiscite."

Converting regular barangays into tribal ones pose fewer problems because most, if not all, of the inhabitants of the proposed barangay are IPs.

The Department of Interior and Local Government (DILG) has yet to establish rules regarding the conversion of regular barangays to tribal barangays. The COMELEC holds the view that a resolution would suffice, since conducting a plebiscite would cause delays in budgeting due to the financial cost involved. The DILG would have to act on this matter to avoid political interference from local officials.

For instance, despite previous expressions of support, the resolution creating the tribal barangays of Binog and Culiab were placed under study for some time supposedly because the Sangguniang Bayan has not comprehended the import of a tribal barangay. In the end, a strong lobby from the IP communities led to the approval of the resolution.

Survey participants in Valderama said they prefer the tribal chieftain as the head of the barangay. Indigenous political structures should be integrated in tribal barangays if the State genuinely seeks to recognize the values, practices, and institutions of IP communities. According to them, the current system causes confusion in the community because of the presence of two leaders in the community. Furthermore, the barangay captain may choose to be indifferent to the authority of the tribal chieftain. Also, the role of the tribal chieftain becomes relegated to being a mere conduit for communications from the NCIP.

The Barangay Captains in Jamindan, Capiz agreed with the respondents from Antique. For them, the officials of the barangay should be composed of tribal leaders. Furthermore, they believe that traditional voting should be used so that less politics would be involved.

The participants believe that if tribal leaders work directly with the LGUs, projects for the IP communities would be administered efficiently. With their own tribal barangay, the IPs would benefit from the Internal Revenue Allotment (IRA) that would otherwise be used for projects that do not benefit them directly. The funds would be used to improve agricultural technology and upgrading transportation services. Thus, the IPs' right to determine and decide priorities for development is actualized.

The Barangays are given taxing powers as an income generating mechanism, but this provides negligible revenues given the level of economic development in most of the proposed tribal barangays. It is recommended therefore, that the distribution of IRA takes into account the LGUs'

level of development instead of making population the controlling factor.

The Sangguniang Bayan of Valderrama inquired about the effect of tribal barangays on the comprehensive land use plan of the municipality. The legal study recommended that the LGU take into account the IPRA provision that the IPs' ancestral domains have a specific purpose, i.e., necessary to ensure their economic, social and cultural welfare. The implementing rules and regulations of IPRA also deem the area and resources in the domains destroyed if a) it can no longer serve its natural function; 2) it is used in a manner inconsistent with the customary laws; and 3) it is used in a wasteful manner causing irreparable damage. Hence, municipal plans should bear in mind these considerations.

The most pressing obstacle in the development of most IP communities is the absence of social services. A case in point is the *Ali in Aklan*, who are widely distributed in the municipality of Malay. They were given 25.9 hectares of land in Sinita Kurong in Barangay Cogon, which the *Ali* people found infertile. Hence, they have to migrate as far as Segros to find work. Because they have dispersed to other places, some barangays have as low as only six families of *Ali* while the whole municipality has approximately 200 families.

Given this reality, the geographical concept of a barangay should be reconsidered in the case of tribal barangays, so that it could bring together members of the indigenous community who are scattered in a municipality.

After the series of consultations, the Sangguniang Panlalawigan of Antique finally passed Resolution 402-2002 on August 15, 2002 conforming to the Sangguniang Bayan of Valderrama's endorsement of the conversion of Barangays Busog and Culiat as Tribal Barangays. (see box)

As this case study was being written, the Governor of Antique was set to sign the Sangguniang Panlalawigan Resolution which is the last act needed before the final declaration of Culiat and Busog as Tribal Barangays. After this, efforts still have to be exerted to realize the actual interface between the tribal barangay and regular barangay systems.

Barangays and Tribal Governance: A Comparison

On September 21-22, 2002, nearly 50 leaders and members of the two barangays held a focused group discussion to identify concerns and issues towards the harmonization of the Barangay Administrative Structure with Tribal Governance. A month later, key informant interviews were held among LGU officials regarding their concept of a tribal barangay.

Tribal Governance

The discussions and interviews provided information on existing tribal structure and governance, the existing barangay structure and governance, issues and concerns regarding the two systems, and possible areas of interface.

The *Solid* participants confirmed the academic studies regarding their leadership patterns, particularly the lack of a central political authority. The IP communities in barangays Busog and

Culiat do not have a definite structure of government, although they have a patriarchal form of traditional governance. Each tribal community is headed by a Chieftain called *jaranglato* who makes decisions for the tribe. He performs all governmental functions in the community such as the settlement of all forms of conflicts between members. He acts as adviser to all tribal members in all their problems, even personal ones. Everything he says is faithfully followed. Hence, the chieftain performs executive, legislative and judicial functions.

The Chieftain is chosen by the people through the raising of hands, or *otro voce*. He is qualified for leadership by reason of his perceived wisdom, experience, physical prowess, and bravery. The Chieftain is the most respected elder in the tribe.

The Chieftain has the power to organize a group of highly respected elders composed of six members to assist him in running the affairs of the tribe. This group is referred to as the "council of elders" or *kabinataan*. The council assists him in his job of governance.

In cases of conflicts, the Chieftain initiates the settlement between the parties; with the the Council of Elders acting as a jury. If the parties cannot decide on a settlement, the Chieftain makes the decision.

**28th Regular Session of the Provincial Board of Antique
Resolution No. 402-2002**

**RESOLUTION CONFORMING TO RESOLUTION NO. 45-2002
OF THE SANGGUNIAN BAYAN OF VALDERRAMA,
ANTIQUE, ENDORSING THE CONVERSION OF
BARANGAYS BUSOG AND CULYAT AS TRIBAL
BARANGAYS IN THE SAID MUNICIPALITY**

WHEREAS, the Body is in receipt of Resolution No. 45-2002 of the Sangguniang Bayan of Valderrama, Antique, endorsing the conversion of Barangays Busog and Culyat as tribal barangays in the said municipality;

WHEREAS, a reading of the resolution shows that the action of the Sangguniang Bayan is legal inasmuch as establishment of tribal barangays is one of the rights of indigenous people as embodied in RA 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997;

WHEREFORE, on motion of Member Untaran, and duly seconded by Member Picolo, be it:

RESOLVED, to conform with Resolution No. 45-2002 of the Sangguniang Bayan of Valderrama, Antique, endorsing the conversion of Barangays Busog and Culyat as Tribal Barangays in the said municipality;

RESOLVED FINALLY, to furnish a copy of the resolution to the Office of Cultural Minorities Provincial Office, the Honorable Governor Salvacion Z. Perez, the Honorable Members of the Sangguniang Bayan of Valderrama and the Tribal Heads of Barangay Busog and Culyat, all in Valderrama, Antique for information and reference.

Certified Correct:

Attested:

Sgd: Jimmie G. Elizalde

Sgd: Rosie Dinamay

Asst. Secretary to the

Board Member

Sangguniang Pantatawigan
(Designate)

(Presiding Officer)

August 15, 2002.

Payment of fines is a common penalty. In an adversarial case, if one member is found guilty, the aggrieved party is given the choice to demand "*linanuang*" (a form of settlement where the offender gives the offended party a certain thing of value, or to demand that the offender be banished). There is no penalty of imprisonment.

Each tribe has a "*Mangbando*" or a town crier appointed by the chieftain. He plays the role of an announcer of any information or matters which the Chieftain wants to disseminate to the people.

The *Mangbando* is also in-charge of collecting contributions from the tribal members which the chieftain requires in case of emergency or on special occasions. The tribe has no source of funds, or any means of raising revenues for providing services to the people. The chieftain disposes of any funds or goods acquired solely for the purpose of the donation.

Barangay Administration

The current barangay structure in the Cullat and Busog follows the Local Government Code. The Barangay Captain is elected by the people in the community. He is the chief executive officer and performs such functions as attending meetings, representing the barangay, calling the people and the *Agawad* (councilors) to meetings, approving resolutions passed by the *Agawad* and acting as peace keeper.

The Sangguniang Barangay or legislative body is also elected by the people. It passes resolutions concerning issues in the community, holds meetings with the barangay captain, and helps the captain decide on problems in the community.

Other officials are the Barangay Secretary who keeps the records of the barangay, takes the minutes during barangay meetings, and issues certifications when required; the Barangay Treasurer who keeps the monies of the barangay; and the Barangay *Tawods* (watchmen) who keep peace and order in the community. There is also a Sangguniang Kabataan representative and a Lupon Tagapamayapa. The Sulod assume that these barangay officials were appointed by the Barangay Captain from among his kin and friends.

Barangay fiscal policies pertain mainly to the Internal Revenue Allotment (IRA). Some funds are also raised from taxes such as the 10% levy in the sale of meat and rattan, income from rice mill business, donations, fund raising activities and fines.

Merging the Two Systems

The Sulod communities agreed that the declaration of their barangays as Tribal Barangays will go a long way in recognizing their structures of governance and provide benefits for the people. However, they also identified several issues and concerns regarding the co-existence of both tribal governance and the existing barangay system in their communities.

1. Leadership

In Barangay Busog, there is confusion among the people because the elected Barangay Captain is not the same as the traditional Chieftain. While the traditional chieftain is deeply respected and followed, the Barangay Captain is deemed as the formal leader who decides on projects in the community. While there is no conflict between the two persons at present, it is

feared that if conflict occurs, the people will be divided.

2. Manner of Voting and Qualifications

The indigenous peoples chose their leaders in the traditional manner. However, when election day comes, they are asked to vote through secret ballot. They think that this process is very much prone to corruption. They would rather choose their leaders openly, so that only the best qualified and respected will win.

3. Barangay Justice System

The concurrent use of the Traditional System and the Barangay Justice System brings some confusion. Many of the Sulod people have a very sketchy idea of what the Barangay Justice System is all about. They say that all the Lupon does is to see to it that a settlement is reached; if so, the Barangay Captain certifies the agreement but if not, the case is taken to the police. In reality however, it is very rare that a case is taken to the police.

4. Delivery of Services

In Barangay Busog, where the Barangay Captain and the Chichain are two different persons, there is confusion as to who should propose and implement projects.

Local Administration and IP right to Self-governance

Various studies have shown that conflicts often arise among indigenous cultural communities who are governed by tribal leaders, but which, at the same time, are recognized by the state as political units governed by a set of local elective officials. In some cases, several barangays are found in one ancestral domain alone. In a few cases, ancestral domains would even comprise an entire municipality such as the Matigsalog ancestral domain in Kibotao, Bukidnon; the Bugkalot ancestral domain which straddles the provinces of Quirino, Nueva Vizcaya, Nueva Ecija and Aurora; and the Tagakaulo ancestral domain which covers the whole municipality of Malabon in Sarangani Province.

In most cases, conflicts result from overlapping functions, especially in the delivery of basic services and resolution of disputes between migrants and IPs regarding natural resources management. To resolve these conflicts, it is necessary to create a distinct political unit, such as the tribal barangay, that would exercise the role of the barangay under the unitary set-up of government, but governed by state recognized tribal leaders.

To facilitate the process of finding a reasonable interface between a mainstream barangay and a Tribal Barangay, a comparative matrix of the legal provisions from IPRA and LGC are presented below using a set of parameters. (see box)

In the process of reconciling local administration with indigenous peoples' right to self governance, four possible areas of interface have been initially identified. These are:

1. Indigenous Justice Systems and the *Katarungan Pambarangay* (Barangay Justice System)
2. Ancestral Domains Sustainable Development and Protection Plan (ADSDPP) and the Barangay Development Plan

3. Applying the principle of administrative autonomy or the treatment of the ancestral domain as a special political unit.
4. Application of the principle of Equivalent Free Voting.

The first two are adequately supported both by the LGC and IPRA, while the last two areas may need further legislation.

Indigenous Justice Systems and the Barangay Justice System

One recommendation from the Solod people is to recognize customary law and indigenous justice systems in implementing the Barangay Justice system. There are sufficient provisions in the LGC and IPRA to harmonize both for the benefit of indigenous peoples who comprise the majority in a barangay. (see box below)

PARAMETERS	LGC	IPRA
Political Unit/ territories governed	Barangays (within ancestral domains)	Ancestral Domain (composed of one or more barangays/ municipalities)
Roles of the Political Structures / Institutions	Primary Implementing unit of government policies and program and Forum where views are considered and disputes settled.	Indigenous Political Structures are institutions, relationships, patterns and processes for decision making and participation used to pursue economic, social and cultural development
Creation / Conversion or Delineation and Recognition	Created by Congress or by the Sangguniang Panlalawigan with endorsement from the Sangguniang Bayan and subject to the approval of the LGUs concerned through a plebiscite	Self-definition and Formal Recognition through Certificate of Ancestral Domain Title (CADT)
Structure and Leadership	Elective Officials such as Punong Barangay and Sangguniang Barangay and Chairperson of the Kabataang Barangay	Indigenous Political Structures including, but not limited to Chieftain, Datu, Council of Elders, Peace Pact Holders, etc.
Democracy and Participation	Barangay Assembly	Consensus Building Processes
Basic Services	Barangay as the main agency for delivery of basic services	Guaranteed under Section 25 of IPRA
Resolution of Conflicts and Justice Systems	Recognizes indigenous justice systems and applies it if warranted	Respect for Indigenous Justice System provided in Section 15 and other provisions of IPRA
Development Planning	Barangay Development Plan	Ancestral Domains Sustainable Development and Protection Plan

IPRA provides that IPs shall use their own commonly accepted justice systems, conflict resolution institutions, peace building process and other customary practices within their respective communities, as long as these are compatible with the national legal system and internationally recognized human rights protocols.

Barangay courts known as *Lupong Tagapamayapa* (Peace Committees) were organized in 1980 as the implementing arm of the Barangay Justice Program. The committee is composed of several *Pangkat ng Tagapagkasundo* (arbitration panels). The barangay justice system was incorporated in the LGC, but it also recognizes the indigenous system of settling disputes through the IPs' council of elders. Sections 399 and 412 of the LGC explicitly provides for the use of customary laws and indigenous justice systems in the resolution of disputes where a majority of the population are indigenous peoples and where the dispute involves members of the indigenous peoples.

It is worthwhile to mention that historically, village conciliation bodies have long existed among indigenous cultural communities and are among the oldest institutions in the country. Long before Spain colonized the Philippines and introduced Christianity, local para-legal systems were already settling family or neighborhood disputes through their village council of elders presided by the village chieftain or *datu*.

Internationally, the right to self-determination has been recognized in various treaties and has been generally accepted as customary law. It reflects the importance given to families and communities in many societies, and the general inherent communal quality of humans.

The experiences of other countries in self-governance and the recognition of customary laws may be taken as additional examples. In Colombia, traditional councils are considered legal entities and the villages inhabited by indigenous peoples are recognized as territorial entities, on equal footing with departments and district areas. In Paraguay, the constitution recognizes the right of indigenous peoples to freely apply their political systems and observe customary practices as long as they do not violate fundamental rights.

The ADSDPP and Barangay Development Plan

Another important area of interface is the Ancestral Domains Sustainable Development and Protection Plan (ADSDPP), which is the equivalent, or even broader, than the Barangay Development Plan.

The LGC provides that "Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal or barangay level shall assist the corresponding sanggunian in setting the direction of economic and social development and coordinating development efforts within its territorial jurisdiction."

One of the local government structures established by the LGC is the Barangay Development Council, which holds a pivotal role as a management instrument of the barangay leadership. It is empowered to monitor and evaluate national plans and projects at the local level. The council's

task is anchored on the Barangay Development Plan, which is crafted with the coordination of various sectors in the community.

On the other hand, the ADSDPP serves as the instrument for development planning for indigenous peoples in the IPRA law. Each tribe formulates a site-specific plan according to the needs of the community. It contains provisions regarding the protection of natural resources as well as development plans covering the delivery of basic services. The ADSDPP is usually broader in scope than the Barangay Development Plan and is likely to include all issues found in the latter.

Considering the mandatory requirement of Free and Prior Informed Consent of indigenous peoples in all matters affecting their domains, the adoption of the ADSDPP as the framework of development in a tribal barangay would be more logical, expedient and acceptable than a regular barangay plan. By substituting the Barangay Development Council for the appropriate ADSDPP Committee, the process of development planning will become more transparent, democratic and sustainable.

Administrative Autonomy: The Ancestral Domain as a Special Political Unit

The provision on Tribal Barangay, both in the LGC and the IPRA, is a reflection of state policy recognizing the distinct character of indigenous peoples and their different form of political structure and leadership. It is the appropriate venue for resolving the conflict of governance, within ancestral domains, between local officials and tribal leaders. The tribal barangay has to be within the bounds of the LGC, even as it embodies the right to self-governance recognized in IPRA.

However, the tribal barangay defined in the LGC does not directly address the issue of tribal leaders as leaders recognized by the central state exercising their functions within a basic political unit. Neither does the concept address the relationship of the local elective officials to tribal leaders in case a tribal barangay is created.

A strategy to resolve this legislative impasse may be to declare the Ancestral Domains as a Special Political Unit with administrative autonomy. The case of Bolivia may be used as a model. Its new Constitution, adopted in 1994, recognizes indigenous communities as legal entities. Traditional authorities of indigenous peoples can exercise administrative functions and alternative procedures for settlement of disputes, in accordance with their customs, as long as they are not contrary to the constitution and national laws.

As a special political unit, the ancestral domain shall be authorized to enjoy the powers and functions enjoyed by the barangay or municipality. It shall remain an integral and inseparable part of the unitary set-up of government, and shall be subject to the laws on local governance. Tribal officials shall exercise the powers and functions necessary for the proper governance and development of its unit, consistent with the constitutional policy on local autonomy and decentralization.

This strategy, however, may entail new legislation. Thus, it may be incorporated in the law creating a tribal barangay.

Application of the Principle of Equivalent Free Voting

One area that is important in finding a reasonable reconciliation of local administration and the rights of indigenous peoples to self-governance is the manner of electing or installing the local leadership.

The Implementing Rules and Regulations of IPRA promulgated by the National Commission on Indigenous Peoples (NCIP) declares that it shall, in consultation with the IPs and in close coordination with the DILG, formulate measures to ensure the implementation of the principle of Equivalent Free Voting (EFV) Procedure to effectively recognize the IPs political systems. The EFV, which is found in the Universal Declaration of Human Rights, is a principle in international law recognizing the alternative ways of expressing the will of the people other than through secret vote. The NCIP needs to expedite the formulation of the guidelines so that the EFV procedure can be integrated in the tribal barangay system.

Roadblocks to the Creation of Tribal Barangays

Despite the legislative intent to reconcile governance in areas delineated as ancestral domains of the indigenous peoples, where both governance through tribal leaders and officially elected officers are exercised, there persists a number of continuing challenges that have stalled the interface process.

For one thing, relevant legislation such the Local Government Code and IPRA do not adequately address the issue of interfacing customary law and national laws. There are no provisions specifically harmonizing the functions of both the tribal leaders and elective officials when barangays are located within ancestral domains.

The Local Government Code recognizes the use of customary law in dispute resolution through tribal leaders, but fails to recognize the status of tribal leaders as political leaders capable of governing within the formal barangay structure. The role of tribal leaders is limited to settling disputes in barangays dominated by indigenous peoples.

On the other hand, IPRA does not provide for mandatory recognition of the tribal leaders in the barangay by local elective officials. It only defines how a tribal barangay can be created, but it does not address the issue on governance.

In some cases, the laws have even assigned overlapping functions to tribal leaders and elective officials. For example, the LGC gives the task of basic service delivery and the implementation of development projects to local elective officials, while the IPRA designates the same functions to the indigenous leadership.

While the two sets of leaders exercise functions that may differ in many respects, they both play a critical role in development projects. The elective officials are the conduits for the planning and implementation of the Barangay Development Plan, while the tribal leaders provide guidance in the formulation and implementation of the ADSDMP.

Although it may happen that the tribal leaders may themselves be the local elective officials in

Capability-building workshops have helped indigenous peoples craft their own development plans.



barangays encompassed within ancestral domains, in many cases, this is not often the reality. In many indigenous communities, the qualification, manner of election and functions of the two sets of leaders vary in several ways. The local elective officials of the barangay are governed by the provisions of the Local Government Code. On the other hand, the selection and functions of tribal leaders depend upon customary laws and practices of the community.



This case study was done by the Tanggapang Pamilya ng Katutuhang Pilipino or Legal Assistance Center for Indigenous Filipinos (PANLIP) in collaboration with the Sulod-Bukidnon communities in barangays Busog and Cadiat in Valderrama, province of Antique. PANLIP has been working with indigenous communities in the island of Panay since 1985. In the province of Antique, it has worked mainly with the MI and Sulod-Bukidnon groups in the delineation of their ancestral domains and resource management planning, and in seeking redress for violations of their human rights.



**A young girl
performs a
traditional
dance from
the Cordillera
region**

CHAPTER 3

THE TONGTONG AS A MODEL FOR CONFLICT RESOLUTION

The upland town of Bakun in the northern Philippines was the first indigenous community in the country to be awarded a Certificate of Ancestral Domain Title (CADT) on July 20, 2002. Composed of seven barangays, Bakun has an area of 29,444.34 hectares populated by 17,000 Kankanaey and Iligo peoples.

Like other indigenous communities, Bakun hardly fell to the Spanish colonizers who ruled the Philippines for 300 years. The Spaniards had heard about the gold that was closely guarded by “fierce natives” in the north’s mountain provinces. From neighboring Cerrantes town in Ilocos Sur Province, the Spaniards built a horse trail that was used by a certain Lt. Guillermo Galvey in leading a gold expedition to Bakun. Traces of what is now called the Spanish trail still exist, but it is not clear if the Spaniards even succeeded in operating the Kankanaey gold mines as the “fierce natives” had fought back. The failed attempt of the Spaniards to control Bakun totally explains why the Kankanaey and Iligo folk retained much of their oral tradition, one of which is their indigenous *tongtong* justice system.

But what the Spaniards failed to do in Bakun and other indigenous communities for almost 400 years, the Americans succeeded in doing a few decades later. One telling effect of American colonial rule in Bakun was the entry into the upland town of extractive industries. The colonial government imposed land laws, such as the Public Land Act of 1902, which legalized the entry of big-scale industries into the community. These included logging concessions, sawmills, and big mining companies, which proved to be destructive to Bakun’s environment. Moreover, the laws that created these industries also challenged the Kankanaey-Iligo people’s indigenous justice system.

The impact of these colonial laws persisted long after the Americans had relinquished direct colonial control of the country. In fact, most of the country’s post-colonial laws were patterned after American jurisprudence. Small wonder then that the three large sawmills in Bakun, established during the American colonial period, continued to operate until the mid-1990s.

Despite the colonial laws that found their way into the government's national laws, the indigenous *tungtong* justice system withstood the ravages of time. The Kankamey-Bago folk have always resorted to the *tungtong* to resolve disputes, helping ease the backlog of cases in the courts.

A History of Resistance

National laws and the companies that invoked them had been, in many cases, in conflict with the Kankamey-Bago people who had asserted their right to their customary laws. The extended conflict between the late Ben Olayo, a Bakon native and engineer, and the Benguet Management Corporation-Forestry Company is a classic example.

The company had sought to operate in the forests of Tabbuk, a village within the borders of Bakon and neighboring Kibungan town. But Olayo asserted the communal ownership rights of the villages of Palina, which is part of Kibungan, and the village of Ampusongan in Bakon over Tabbuk's pristine forests. He mobilized the communities of Palina and Ampusongan and guarded the path towards Tabbuk. In retaliation, the company blocked a road and pathway that served as the communities' only link to Habema Highway, the town's transport link to Baguio City. As a result, the affected community folk had to go through the village of Madayven in Kibungan, which was a much longer route.

The company's dispute with Olayo was so heated that some company employees and guards threatened Olayo with death. Undaunted, Olayo applied for a license to carry a firearm to defend himself in case the threats to his life were carried out.

Invoking its logging license issued by the forestry bureau, the company sued Olayo for "illegally obstructing" the company's operations. But Olayo and the community did not let their guard down. They maintained their vigil with tenacity, even after Olayo died of a lingering illness in 1984.

Fortunately, the government of then President Corason Aquino banned commercial logging in the area in 1990. Olayo did not live long enough to see how the government's action finally put a stop to the company's desire to cut the forests in Tabbuk. But the affected community folk felt vindicated, confident that they and Olayo had been right all along in preventing the attempt to start logging operations in the pristine forest, which served as the headwaters of a major river system. Today, the Tabbuk forest has remained as pristine as ever. The springs and brooks that the forest sustains have provided benefits not only to the communities that resisted the logging operations, but to people living downstream as well.

The long-running conflict between Olayo and the community on one hand, and the company on the other hand, was a case that the community's elders could not resolve through the *tungtong* because the company insisted on its legal concession. The whole experience also showed a classic case where a company got into a conflict with an indigenous community simply because it insisted on legalities and refused to recognize the prior and ancestral rights of the communities to natural resources.

Most elders of Balun still remember the Olazo case against the Benguet Management Corporation, and they always recall the experience as part of their history of resistance against an imposed type of “development.” Within the community however, the *tongtong* has always been their way of resolving internal conflicts or disputes.

How The Tongtong Works

The *tongtong* is an indigenous justice system based on consensus. It covers all aspects of behavior – from marriage problems and land disputes to petty theft, physical assault, rape and murder. The system has been passed on from one generation to the next from venerated ancestors; thus, it is accepted as partly sacred and unchanging. Nobody knows who instituted its procedures, or whether the *tongtong* has ever been amended. What is clear is that the system has existed in the memory of wise, old men and women called the *Pupungum*, who are considered to be the best arbiters in the village.

Although it is moderated by the elders, the *tongtong*'s ruling process is participatory. Under the system, no one is judge, and no one presides. Both litigants (complainants and accused) are required to speak for themselves, but every member of the public is encouraged to express his or her sentiments and comments. There is no prior oath or assignment of roles.

Unlike in the legal courts where cases can be postponed and reset for another day, or even after weeks and months, the hearing for a case through *tongtong* is continuous and does not stop until a decision is reached. Normally, a case heard through *tongtong* procedures can be resolved in a day, making delivery of justice efficient. With the speedy trial and resolution, cordial relationship between and among the litigants and the community is restored, which is the *tongtong*'s primary goal.

The entire family and community of the litigants are subject to the final judgment, but litigants are always consulted before a penalty is imposed. The final decision is inferred from the pronouncements of the litigants. Since the aggressor's culpability is attached to his or her family and community, implementation of the decision rests solely on the community. Public opinion enforces whatever is the decision of the best arbiters. *Batu* or shame is the ultimate sanction for a crime, and it makes life intolerable for a convicted person in a unanimously reprobative community.

Another feature of the *tongtong* is its independence. Elders and community members are unanimous in saying that the political, economic and social status of persons under litigation had not, in any way, influenced the outcome of cases settled through the *tongtong*. The same is true about the elders and members of the *Lupong Tagapamayapa* – their political, economic and social status is immaterial. What counts most are their impartiality, wisdom, credibility and experience.

When there is a dispute to be settled, both contending parties and their relatives go to the *tongtong* or community court, and sit among the elders and leaders of the village. As soon as both parties are duly represented, an elder opens the *tongtong* process with a *petik* or prayer.

Offering a drop of *tapay* or rice wine to the spirits, the elder intones the *petik* (the following is a concise translation):

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

After the prayer, an elder may start the session by presenting the background and bone of contention of the case, or may immediately call the complaining party to present its case. A complainant who cannot speak for him or herself may appoint a relative to present the complaint. The other party is then called to argue, deny or admit the complaint.

Both contending parties can argue freely. But any of the elders can speak out to guide and direct the arguments when these are going wayward, or when arguments become heated. All speakers remain seated during the *tongtong*. The council of elders council and the gathering can reprimand anyone who stands up or points fingers at somebody.

The participants in the process strictly observe silence. Anybody who desires to talk makes a signal and speaks only when it is his or her turn to do so. Every elder (man or woman) who joins in the discussion actually helps interpret the customary law under the *tongtong* system. But the customary law interpreter has no power to persuade or mobilize public opinion to back his or her argument. Anybody who joins the *tongtong* deliberations essentially acts as a moralist. As such, he or she advises the disputing parties or mediates with tact and diplomacy. If necessary, he or she even scolds to help repair the breach between the two parties.

Spontaneity is the norm in a *tongtong* process, as no particular person is assigned to make a judgment. The *tongtong* is done in public, in full view of as many people as possible. This setup makes transparency the norm, and lying can cause one to lose face.

An agreement or decision is made only after both parties have presented their sides and the temper of the discussion has calmed down. At this point, an elder may call for a break so the council can huddle in a corner with representatives from both parties to arrive at a common decision. The decision has to be unanimous, as voting is not the norm in the *tongtong* process.

Once a decision is reached, the group meets again, and an elder with a clear, loud voice announces the verdict. As both parties have accepted the decision, the second part of the *tongtong* is to decide the penalty. This second stage is still participatory, and the party to be penalized may bargain until a decision is made. Only then can the *tongtong* rest the case.

To finally seal the decision, an elder utters a closing *petik* prayer, which goes:

*"O heavenly spirits, after this decision, bless and seal us with renewed harmonious relations. May you wash all misfortunes and cleanse whatever unsavory or uncalled for remarks made during the *tongtong* process. May you continue to bless us as we go on with our lives."*

The prayer reflects the main goal of the *tongtong*, which is to restore harmonious community relations. This can only be done if all the protagonists will not keep a record of wrongs or hard feelings in their hearts. The *petik* prayer is thus a cleansing ritual. Once all hard feelings and misfortunes are cleansed, stability and prosperity reigns as both protagonists resume normal relations. To the Kankamey-Bago people, prosperity or blessings come in the form of abundant farm harvests, productive livestock, good health, and long lives. Later, the Kankamey-Bago people included children who finished college and obtained gainful employment as part of their prosperity and blessings.

Traditionally, part of the penalty for the guilty party is providing the meals for the participants and observers of the *tongtong* process. Usually, this means not only a few chickens, but perhaps a pig or two or even a cow, depending on the number of people gathered for the *tongtong* and the gravity of the offense, misdemeanor or crime.

Another additional ritual is called *sabosoh*, during which an additional chicken is killed and sacrificed for a special purpose – to cleanse unsavory or inflammatory remarks uttered during the *tongtong*. A knowledgeable elder facilitates the *sabosoh* rite and “reads” the liver and hide of the chicken offered.

Mainstream Laws

In recent decades, the Philippine government has come up with policies and laws that recognize indigenous practices in resolving conflicts.

The first government policy that sought to recognize customary laws was Presidential Decree No. 1508. Also known as the *Katarungang Pambarangay* Law, PD 1508 was promulgated by the President Ferdinand Marcos on June 11, 1978. The decree recognizes the historical fact that “amicably settling disputes among family and barangay members at the barangay level without judicial recourse” is a time-honored tradition in the country that is rooted in Filipino culture.

A more recent law, Republic Act 7160 or the Local Government Code of 1991, also recognizes the role of customary laws in dispensing justice. Authored by Sen. Aquilino Q. Pimentel, Jr., the Local Government Code, particularly Chapter 7, mandates that each barangay or village in the country should create a *Lupong Tagapamayapa* (Peace Council) composed of the *punong barangay* (barangay captain) as chairperson and 10 to 20 members. The *lupon* shall be constituted every three years.

Aside from being actual residents or workers in the barangay, members of the peace council must have integrity, impartiality, independence of mind, sense of fairness, and a reputation for probity. While discharging their duties, *Lupon* members are considered “persons in authority” as defined in the Revised Penal Code.

The *Lupon* has one main objective: to bring controversies among barangay residents to “an amicable conclusion.” The creation of the *Lupon* as a venue for settling disputes was done without prejudice to the settling of disputes among members of indigenous cultural communities

through their traditional structures like the datos or elders.

The Indigenous Peoples Rights Act (IPRA) of 1997 also recognizes the rights of indigenous peoples to settle conflicts according to traditional means. It stresses the “primacy of customary laws and practices” and further states: “When disputes involve indigenous cultural communities or indigenous peoples, customary laws and practices shall be used to solve the disputes.”

Interfacing *Tungtong* With the Barangay Justice System

Five of the seven *barangays* (villages) of Bataan still practice the *tungtong* as a matter of course instead of mainstream justice systems. These are Gambung, Bugu, Sinachot, Kayapa and Poblacion. They cite the following as reasons for this preference:

- They are used to the practice.
- Most litigants prefer that their case should not be documented because of the ritual involved in clearing themselves from the dockets of the police, called *lurit*, which requires a pig as food for the members of the proceedings and as offering to the spirits that bear witness to the decisions.
- The community is always willing to participate in the settlement process but under PD 1508, only members of the *Lupon* may speak.
- The *Lupon* members are not properly trained in the circumscribed process required under PD 1508.

The remaining two *barangays* — Ampusongan and Dalipey — have interfaced the *tungtong* with PD 1508 and the Local Government Code.

Involving Section 412 of the Local Government Code, the Barangay of Ampusongan created what it called the Indigenous Council of Elders in 1999. The Council of Elders perform or observe the following rules, rules and responsibilities:

- > Complainants shall file complaints with the Office of the Punong Barangay and pay a P500 filing fee to the Barangay Treasurer.
- > Transmit the attested copy of settlement to the Punong Barangay within 10 days, so the latter can report the case to the Municipal Trial Court.
- > The attested settlement shall have the same force and effect as settlement arrived at through the Katarungang Pambarangay procedures 10 days after the Punong Barangay receives the attested copy of settlement.
- > If the case is not repudiated, the Punong Barangay forwards the case to the Municipal Trial Court with the attested settlement and agreement.
- > The assigned Councilman/Councilwoman in the concerned *sitios* (sub villages) should be present with the Indigenous Council of Elders during the amicable settlement.

There are various reasons and factors why Ampusongan and Dalipey interfaced the *tungtong* with PD 1508 and the Local Government Code.

For one, Barangays Ampusogan and Dalipey's residents are more acculturated with mainstream society; thus they tend to look at the *tongtong* as "backward." But neither do they totally resort to the legal courts, mainly for economic reasons. They cannot afford the costs involved in filing cases in the court, so they resort to the *Katarungang or Lupon Pambarangay* (barangay justice system), which still recognize the amicable settlement of disputes through customary laws.

The *Katarungang or Lupon Pambarangay* procedures, particularly documentation work, are still too complicated for the *Lupon* members to follow as most of them are either elementary graduates or illiterate. The *Lupon* procedures are also too legalistic for the villagers to understand, so the Ampusogan and Dalipey elders and *Lupon* members opted to "marry" both the *tongtong* and the *Lupon* procedures.

In "marrying" the *tongtong* and the *Katarungang Pambarangay*, more community members can participate, particularly the willing muralists. For records purposes, the settlement processes could at least be documented. But in deference to what the *Lupon*, the litigants and other participants would decide through consensus, documentation remains optional.

Barangays Ampusogan and Dalipey residents see PD 1508 as an improvement of the national justice system, but they could not totally adopt it because of the required paper work. They welcomed the Local Government Code as an improvement because it allows the settling of disputes by the Council of Elders, which involves more members of the community.

In general, the Kankana-ey-Bago people have good reasons for preferring the *tongtong* or the interface of *tongtong* and *Lupon* procedures.

First, the people's social life still revolves around the aboriginal or indigenous culture. The extent of acculturation of the Bagan people into the mainstream culture, particularly on current justice procedures, is still negligible.

Second, Kankana-ey-Bago society still highly recognizes elders as persons of traditional authority. The elders would always prefer disputes to be settled within the community through the *tongtong*. They would say it would be a "shame" if disputes or conflicts get out of hand. Letting other people outside the community settle a local dispute through the courts is a "shame" because this is akin to washing dirty linen in public.

Third, Kankana-ey-Bago society prefers that a dispute or conflict should be resolved fast to immediately restore cordial relations between and among members of a community. Because the traditional *tongtong* system ensures a speedy trial, it also follows that severed relations between warring parties and their families and clans are immediately mended and healed after a case is settled.

The fourth reason is economic. Because a *tongtong* procedure can resolve a case in a day, litigants need not worry about hiring lawyers and spending time and money for transport in attending court hearings, which last a minimum of three years.

The other reasons are cultural in nature. Through the elders' unsolicited counseling for the



offending party, which follows after a dispute is resolve, both contending parties can reconcile to restore harmonious relations. Also, there is the community's culture of word of honor and integrity. This is why some community members are uneasy about documenting the settlement process, as the *Lupon* requires. To them, documentation is unnecessary in a community where members strongly honor their words and pledges.

With the requirement to document proceedings and decisions, community elders have to grapple with the difficulty of expressing and translating their decisions into English, the official language. Their limitation and difficulty in the English language may yet hinder community folk in articulating the very essence and substance of the decision.

Despite the limitations, there are several elements in *tongtong* that have been interfaced with the *Lupong Pambansag* procedures.

One is the spontaneous participation of *Lupon* members in a settlement process, during which no one presides because every member participates in the discussion. Unlike in the mainstream courts, no single person in the *Lupon* has to bang a gavel to call the process into order.

Another is the imposition of penalties. Although it decides on the penalties, the *Lupon* always consults the litigants before making their final decision.

Similarly, *Lupon* members have adopted the *petik* prayer, which they perform before hearings a case and after it is resolved. In some barangays however, *Lupon* members and observers resort to Christian prayers in lieu of the *petik*.

Selected Cases in Barangay Ampusongan

The following cases were culled from the records of the *Lupong Tagapamayapa* in Barangay Ampusongan, which had interfaced the *tongtong* process into the procedures of the *Lupon*. So

lar, this is the only *barangay* with the most efficient filing system of records of cases that its *Lupon* and *tungtong* elders have heard and resolved. The *barangay* secretary, who recorded all the cases that passed through the *Lupon*, only finished high school. Despite some grammatical flaws, the secretary's records of cases could be understood clearly. These cases are from the files of the Ampusongan Barangay Council, which is also the *Lupong Tagapamayapa*. The names of the people involved in the cases have been changed to protect their reputation.

Case # 1: Acts of Lasciviousness. Carmi, aged 14, filed a complaint of acts of lasciviousness against Romeo, aged 16, before the *Barangay Ampusongan Lupong Tagapamayapa*. The *Lupon* called both parties, who were both students of the Ampusongan National High School, for an amicable settlement of the case. After hearing the complaint, the 20 *Lupon* members counseled respondent Romeo not to repeat what he did to Carmi, a native of a neighboring *barangay*. The *Barangay* Secretary then penned an Amicable Settlement agreement, which states:

"We, Complainant and Respondent in the above-mentioned case, do hereby agree to settle our dispute as follows:
I, respondent, accept my mistakes and ask forgiveness from the complainant;
I, respondent, would handle all expenses (for the food of the *Lupon* members and observers) incurred during this settlement of the case.
We, respondent and complainant, forgive each other, stop any misunderstanding, and (from hereon) treat each other as brother and sister."

Both also agreed to "bind ourselves to comply honestly and faithfully with the above terms of settlement," and each affixed their signatures on the written amicable settlement agreement. Of the 20 *Lupon* members, 17 signed as witnesses while three members affixed their thumb marks on the document.

Case # 2: Land Grabbing. Rosalina of Caluntuan, Ampusongan complained that Gerardo, et. al., terraced and introduced improvements over a hectare of land that she owned. The *Lupon* called both parties and heard the complaint. The respondents agreed to return the property to Rosalina, but requested P5,000 for improving the area. The complainant agreed, and the *Lupon* secretary penned an agreement which included the designation of the proper boundaries of the land owned by the complainant and the respondents. To seal the agreement, an elder offered the unseen spirits a drop from a cup of cola drink and said a *petik* prayer. Both parties drank the cup of cola drink the elder used in his *petik* prayer. This ritual was documented in the settlement agreement. In drinking the cola offered to the spirits, both parties "will (now) respect each as brothers, sisters, relatives and neighbors without hiding anything and (both parties) will live happily forever," according to the agreement.

Case # 3: Separation of Spouses. Nora, a young mother, sought the help of the *Lupong Tagapamayapa*, which called for an amicable settlement of her complaint. She said her husband, Tomas, had abandoned her and was allegedly living with another woman. In response, Tomas

said he was just forced into marriage with Nora. A *Lupon* member asked Tomas if he had signed the marriage contract, and Tomas admitted that he did. But the *Lupon* elders also confirmed that Tomas had totally abandoned Nora and their son and had not been providing for their needs.

Initially, the *Lupon* members gave Nora and Tomas, along with their parents, around 30 minutes to decide among themselves what to do with the couple's marriage. After the recess, Tomas agreed that he would honor the advice of the elders and parents. He even said he was amenable to reconciliation with his wife.

But apparently, reconciliation for the couple was difficult. The *Lupon* reset another amicable settlement meeting, during which the earlier agreement was repealed and amended. In front of the elders, both Nora and Tomas agreed to sever their marriage contract and go their separate ways. But Nora put forward some conditions. One was that Tomas should provide P15,000 which would be used in a traditional ritual to seal the couple's agreement to separate. Tomas also agreed to a consensus agreement, which designated a lot with a terraced farm as inheritance for the estranged couple's son, Sonny. Tomas also agreed to support their son in case he gets sick and when he goes to school, from daycare to college. Both affixed their signatures to an agreement and promised to "bind ourselves to comply honestly and faithfully with the above terms of settlement."

Case # 4: Alleged Violation of Liquor Ban. Having heard reports of storeowners selling liquor despite a liquor ban, officers of the Ampusongan Women's Club wrote to the Balam Chief of Police on March 26, 2000. The women's club officers named five storeowners in their report. They complained to the police after receiving reports of various abuses some men committed while they were drunk. One of the men, for example, went home drunk and created trouble within his own family. His mother pacified him but he went berserk, and his family became afraid and tense over possible violence and injury he could inflict on others while he was drunk.

The Police Chief did not decide on the women's complaint by himself. Instead, he referred the women's complaint to the *Lupon Tagapamayapa*. On April 30, 2000, the *Lupon* heard the complaint. Twenty-nine members of the Ampusongan Women's Club arrived. The Club's president, Carmen M. Contada, clarified that she and the other women did not want to sue the alleged violators of the barangay's liquor ban, but rather, to have a conciliation meeting with the five storeowners who allegedly violated the ban. All the storeowners denied violating the liquor ban. One storeowner admitted having sold liquor to the man who had created trouble in his family while he was drunk, but she said this happened before the liquor ban took effect.

Because the women's club could not provide hard evidence, the *Lupon* dismissed the complaint. The officers and members of the women's club feared that after the case was dismissed, for lack of evidence, the five storeowners named as respondents might file a counter-charge. But part of the *Lupon*'s decision was barring both parties from filing counter-charges. The club officers led by Carmen Contada were also conciliatory, appealing to the storeowners to cooperate with the women in helping "maintain peace and order" in the barangay. The storeowners agreed.

The women's club suggested that both parties sign an amicable settlement after the case was dismissed. But the five storeowners refused so the *Lupon* decided that both parties should not sign any agreement.

To clarify the implication of its decision in dismissing the complaint and ordering both parties not to file counter-charges as the case, in its judgment, was closed, the *Lupon* sought the counsel of Benguet Provincial Administrator Rodolfo U. Manzano. He replied, "The conclusion reached by the Barangay Council, acting as the conciliation body, is perfectly legal." Manzano further said he carefully reviewed the barangay resolution about the case and found that the barangay council adopted the conciliation process provided for in the Local Government Code. He said the decision which the barangay council reached was within the mandate of the *Lupong Tagapamayapa*.

Case # 5: Stealing and Oral Defamation. Laura had planted her swidden clearing with crops. But her neighbor and sister-in-law, Daria, kept on uprooting what was planted. Laura also complained that her sister-in-law's children allegedly stole her family's chickens. Daria's children would cook and eat the bigger chickens and kill the smaller ones. Laura claimed she advised and reprimanded Laura's children for their mischief. But Daria had instead allegedly threatened Laura to watch out when the children grew up as they would retaliate because she kept reprimanding them.

On the evening of April 28, 2001, Daria's husband Carlos went to the house of Laura's family. He cursed and shouted for Martin, Laura's husband, to come out so Carlos could kill him. Instead, Martin went to a neighbor's home to look for his son. As Martin was returning home, Carlos picked up a stone and was about to throw it at Martin but a neighbor pleaded with Carlos, who was persuaded to drop the stone. Carlos was yelling something about his wife's inheritance.

The dispute became so heated that Laura sought the help of the *Lupong Tagapamayapa*, which finally heard and settled the conflict on May 2, 2001. In its settlement, the *Lupon* recommended that the two couples and their families should live separately. Laura's family would remain in the sub-village of Mayan, Ampusungan, and Daria's family would go to Alacum, also in Ampusungan, to live with their parents, who needed help as they were getting old. Both parties agreed to the suggestion of the *Lupon*, but Daria's family requested that their house at Mayan be allowed to remain as the family was still using it. Daria's family also asked to be given until May 16, 2001, or two weeks after the case was amicably settled, to finally move to Alacum.

Elders and members of the *Lupon* advised members of both families to apologize to and forgive each other, resume harmonious relations as brothers, as sisters and as in-laws, and to teach and train their children on good moral character. As part of the *petik* tradition, three elders prayed for good wishes for both parties over cups of cola drink, drunk by members of both families. They then shook hands and promised to start anew and relate with each other as members of one big family. Elders and members of the *Lupon* also advised both parties "not to gossip among themselves" to avoid intrigue and another conflict. They finally bound themselves to "comply honestly and faithfully with the above terms of settlement" as they affixed their signatures

to the agreement.

The amicable settlement was reinforced by the elders, who fervently prayed and wished both parties well. The two families volunteered to secure a P3,000 pig, which was butchered and cooked for all the participants and witnesses to share after the settlement. After "reading" good signs from the liver and bile of the pig, the elders were optimistic that both parties would prosper, especially if they strive to work hard and resume good relations.

Culture as Reinforcing Factor

After the *Philippine Daily Inquirer* reported in August 2002 that Bakun had a zero-crime rate, one misconception that arose was that the town was so ideal it had no conflicts at all. But as illustrated in the preceding examples, Bakun has its share of problems just like any other communities – from land disputes to robbery and killings.

In fact, sometime in 1994, an engineer of the Luzon Hydropower Corporation was killed by two of his co-workers. Out of respect for the wishes of the victim's family, the elders and the *Barangay Lupon* decided to let the mainstream legal justice takes its course on the case. The two suspects were jailed, but even though they had admitted the crime, they were freed four years later after the courts found no corroborating hard evidence to pin them down.

Another incident occurred in the last quarter of 2002, when a farmer hacked to death a co-worker in Barangay Sinachat in Bakun's vegetable district. It appears that the suspect got irked when the victim accused him of stealing some bottles of insecticides. Both suspect and victim were not natives of Bakun however, and were only seasonal migrant workers from neighboring Cervantes town in Ilocos Sur.

Despite these occasional killings, Bakun's indigenous *longtong* justice system, whether by itself or interfused with the *Lupon Tagapamayapa*, remains the secret behind the speedy resolution of disputes within the upland town.

From January to November 2001, at least 19 civil and criminal cases in Ampungan alone were referred to the *Barangay Lupon Tagapamayapa* for settlement. Thirteen of these were settled amicably, one was withdrawn, and five were elevated to the Municipal Circuit Trial Court.

With the speedy trials, litigants cannot complain of any miscarriage of justice. Often, complaints brought to mainstream courts are the ones that get delayed. The case of Detek Balao-as in Barangay Dalipey in the 1970s is a classic example.

It was summer and Balao-as was burning the reeds and shrubs he cleared for a swollen farm. Unfortunately, the fire spread into the logging concession of Lepanto Consolidated Mining Company. The company complained before the fiscal, who issued a warrant to arrest for Balao-as. While the complaint was being heard, Balao-as was detained. His family and elders from Dalipey appealed for his release so that the community and the company could settle the case through the *longtong*. But the company would not budge.

The case dragged on and Balao-as remained in detention for four years before it was finally

resolved in court. The penalty for Balao-as carried a maximum jail term of only six months, but instead, he lost four productive years in prison simply because of the undue delay in the court settlement. During the time lost, he could have worked to send a son or daughter to college. His experience was a classic case of justice denied to a person because justice was delayed. Another tragic consequence was that Balao-as contracted tuberculosis while in prison, and he died shortly after he was freed.

In recognition of cultural norms, one advantage of the *tongtong* model is that penalties are not simply punitive. Perhaps, it is only in Bakun where one finds arbiters in a case consulting the respondents of a complaint about the weight or cost of a penalty. The main reason for this uniquely Kankanaey-Bago tradition is the importance accorded to the resumption of harmonious community relations. The penalty can be a cow or a carabao (water buffalo), but the guilty side can offer a bargain and the parties involved can finally settle for a pig. The role of arbiters is not simply to punish a person, but to help straighten out a guilty person's misbehavior. After all, penalties become counter-productive when the adjudged guilty party becomes vengeful and tries to retaliate in the future. Kankanaey-Bago tradition dictates that it is better to rebuild severed human relations rather than simply punishing a guilty person. This explains the religious rituals such as the *jette* prayer and the good wishes of elders after an animal or two are butchered to finally seal the settlement of a conflict.

The role of traditional religious rituals in the whole conflict resolution process must not be underestimated. To do otherwise means going against the verdict of the persons in authority – the elders and religious ritual holders. The non-punitive characteristic of the *tongtong* and the amicable settlement of cases through the *Lapon* is closely tied to the integration of counseling



The Papangoan of the Kankanaey-Bago people in Bakun during a meeting

into the conflict resolution process. Elders will not only pray and wish both parties good luck and prosperity. They also counsel both parties about how to start anew and how to become more productive members of the community. Most of the time, the advice of elders leave behind a lasting impact. Counseling seeks to achieve a greater good that lies beyond justice – reestablishing social relationships so friendship, camaraderie, and harmony can once again flourish in the community.

The decision of the elders is reinforced through cultural values such as *hain* or shame. The Kankamey-Bago society is a reproachful one. *Hain* can be too heavy for a person to take, so much so that it becomes enough punishment in itself. Besides *hain* or shame are three other cultural values, which also affect the Kankamey-Bago people's sense of right and wrong. These are:

- ***Panfyen***. This is fear of the unseen or the creature of humankind and other creatures, which could spell eternal suffering for the offender.
- ***Inayan***. This is fear of perceived offense to the gods, spirits, or ancestors that attacks one's conscience. Even though the gods may not impose sanctions, the offender's conscience hurts him, which can lead to sleepless nights.
- ***Tu-an***. This could be interpreted as the need to be considerate or to give due respect to another person.

All these cultural values all come into play while a case is being settled, as seen in the following example of an elder in Barangay Ampusongan who got involved in a dispute.

In the summer of 2002, the elder burned the dried reeds and shrubs at his swidden farm. Unfortunately, the wind was so strong that the fire spread to the four-hectare reforestation project of the Ampusongan Women's Club. The Asian Development Bank-funded Cordillera Highland Agricultural Resource Management Project (CHARMP) was scheduled to inspect the women's reforestation project in June 2002. Because of what happened, the women reprimanded the elder. The elders and the Barangay *Lupon* finally decided that as soon as the rains begin to fall, the elder would replant the four hectares, which was planted to arabica coffee with seedlings from the women's club nursery.

Repentant, remorseful and feeling ashamed over the unfortunate incident, the elder readily accepted the decision. The women pitied the old man because of his age, so they helped him replant the burned down area. The elder later secured a chicken, which he and his family would use in a ritual to cleanse his misfortune. In offering the chicken to the spirits, the elder prayed and hoped that the unfortunate incident would not happen again.

In some cases, a few members of the Kankamey-Bago population would resort to the courts to settle disputes for reasons such as plain ego and sibling or kin rivalry. But as expected, those who resort to the courts would have to go through the usual long delays in the dispensation of justice.

The dispute between two relatives in Barangay Baga over the division of a rice paddy is a good

example. In 1973, they sought the help of elders to designate once and for all the exact dividing line of a rice paddy. After a day's negotiation, the elders were able to help settle the case. But one of the parties was not satisfied with the elders' amicable settlement through the *tongtong*, which the Barangay government had affirmed. The unsatisfied relative elevated the complaint to the municipal trial court, which made a ruling in 1989, or 16 years later, to affirm the *tongtong* decision that the Barangay lupon government supervised.

Not content with the municipal trial court's decision, the complainant elevated his case to the regional trial court, which finally issued a decision in 1991 still affirming the *tongtong* decision. By this time, the court's decision was rendered useless because there was no more rice paddy to divide between the two relatives. Shortly before the decision was handed down, the entire rice paddy was washed out in a landslide during a strong typhoon. To the elders who had monitored the case, the typhoon was *buwang di adi buhat* (the ire of the unseen). Another way of looking at what happened is that the rice paddy would have been washed out, even if the complainant did not elevate the case to the courts. But if this happened, the elders and the community would have another perception of the landslide. They would simply say the two relatives' washed out rice field was the unfortunate consequence of a natural disaster, not heaven's anger.

On the whole, if the *tongtong* or a mix of the *tongtong* and the *Lupon* procedures is compared with mainstream courts, major differences are readily seen. Perhaps, the most important distinction is that the indigenous amicable settlement system is integral to the cultural norms and mores of the community.

Particularly absent in the mainstream judicial system, for example, are counseling and the accompanying goal to straighten out the misbehavior or crime of the wrongdoer so he or she can be reintegrated into the community. The mainstream judicial system is simply punitive. This is why government needs prison cells and lethal injection. The indigenous justice system has no need for these extreme measures to achieve the goal of conciliation.

Unlike the mainstream justice system, the indigenous conflict resolution process also has no need of defense and prosecution lawyers. All that the latter needs are elders who can play the role of impartial arbiters because of their wisdom, experience, honesty, integrity and credibility. In the court system, lawyers use all the legal tactics at their disposal to argue the case of their clients. In the *tongtong* system of Bakun, the arbiters come to a judgment through consensus negotiation arising from a strong sense of right and wrong. Community arbiters need not speak in forked tongues, unlike lawyers who can cite all technical and legal flaws to defend their clients.

Tongtong and the Bakun CADT

As the Philippines' first Certificate of Ancestral Domain Title (CADT) holder, Bakun is facing its first acid test in implementing customary laws.

A business corporation from another province has applied for a water permit to set up a hydropower project in the municipality. If approved, the water permit would allow the corporation to build a 10-

kilometer underground diversion tunnel from Barangay Dalipey to the Luzon Hydro Corporation's Powerplant at Allam, Ilocos Sur, crisscrossing neighboring Barangay Sinachai. The corporation seeks to use the diverted water for a commercial hydropower project.

Most of the residents were not in favor of the proposed tunnel construction, fearing possible shortage of water for irrigation and domestic uses, but a former mayor and some other people pushed for the project.

Noting the petition of the majority and other unresolved issues, the Sangguniang Bayan (municipal council) issued a resolution in July 2002 not to endorse the corporation's proposed water project.

The application of the Luzon Hydro Power Corporation over water resources in Bakun surprised local officials, who mailed their affidavit of protest along with the required P2,000 protest fee to the National Water Resources Board (NWRB) in Quezon City on Nov. 8, 2002. In the affidavit, Bakun Mayor Bartolome Sacia said the corporation never informed the municipal government about the water permit application. Sacia said he only learned about it after the National Commission on Indigenous Peoples (NCIP) Cordillera office informed him in early November 2002 about a letter from the NWRB. In its letter, the NWRB advised the NCIP-Cordillera office to advise Bakun officials to contest the corporation's water permit application. Otherwise, the NWRB would process Luzon Hydro's water permit application "if found to be in order."

In his affidavit, Sacia informed the NWRB that the entire 29,444.54-hectare Bakun area is covered by a CADT, which the NCIP issued on July 20, 2002. Through the CADT, the government officially recognized the Bakun peoples' right to own, manage and develop their ancestral domain and all its resources. Corporations, including national government agencies, seeking to implement projects in the CADT area have to obtain the "free and prior informed consent" of the community.

But the people of Bakun were surprised when the NWRB issued a legal opinion that water permit applications require no "free and prior informed consent" of the communities. "Please be informed that the Free Prior Informed Consent set forth in the National Commission on Indigenous Peoples (NCIP) Administrative Order No. 3 is not required in processing a particular water permit application," NWRB's Mateo said in a letter to NCIP Cordillera regional director Carantes-Gallardo.

The NWRB's stand was disturbing to many Kankanaey-Bago people who worked hard for their CADT. Fortunately, the NCIP-Cordillera office leapt to their defense, maintaining that all permit applications within indigenous peoples' ancestral domains need the free prior informed consent of communities concerned. It stressed the IPRA's provision that the CADT officially recognizes "the rights of ownership of indigenous cultural communities (ICCs) and indigenous peoples (IPs) to their ancestral domains" and these include "the right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs."

In his protest affidavit, Mayor Sacia also cited a recent letter of the Sinachai Hydro Power Corporation, a Luzon Hydro subsidiary, which assured that the company "has not applied for nor

does it intend to apply now or in the future for water rights" in Bakun. The corporation had written the Sinachat Barangay Council on Sept. 25, 2002, saying it was sending technical personnel to Sinachat merely for an inventory of existing water sources "for domestic and for irrigation purposes" and for "baseline data, which will serve as reference for all concerned." Short of saying the corporation did its water inventory in Sinachat with sinister motives, Mayor Sada reiterated the municipality's "vigorous objection and protest" against the water rights application of the corporation.

In a related development, the *Papangom* or Council of Leaders of the Bakun Indigenous Tribes Organization (BITO) passed a resolution on December 16, 2002, which it sent to the NCIP Cordillera regional office. The resolution, which 11 of the 15 *Papangom* members signed, requested a moratorium on NCIP's issuance of "certification precondition" to corporations and other entities because the Bakun people, as CADT holders, have asserted that they should be in control over the development of their natural resources.

The *Papangom*'s resolution covers not only the water permit application of the Luzon Hydropower Corporation, but also mining applications. The Australian mining firm, Odana Resources, has applied for an exploration permit from the Mines and Geo-sciences Bureau (MGB) in the villages of Gansung, Dalpey and Ampusogan. The *Papangom* members forwarded their resolution not only to the NCIP but also to the NWRR, MGB, Benguet Provincial Governor's Office, and to the Provincial Board.

For the *Papangom*, the companies that seek to exploit Bakun's natural resources are potential flashpoints of conflict that will certainly challenge the Kankanaey-Bugo people's indigenous justice system.

The Future of Tongtong

One obvious challenge to the *tongtong* system is how to sustain the practice and ensure its integrity, given its unwritten laws. In the original and pure form, *tongtong* holders are expected to hand down the practice orally to the next generation. But there's a hitch. As more and more Kankanaey and Bugo youth leave for the colleges and universities of neighboring urban centers and the cities to obtain higher education, the process of handing down traditional knowledge such as the *tongtong* is disrupted. There may be some remaining elders who can pass on the *tongtong*, but young people who get to inherit these traditional knowledge systems are becoming fewer and fewer.

During the old and glorious days of oral tradition, unwritten laws reflect a more peaceful and harmonious society. There was no need of written laws to govern individual and community behavior then, because the sense of right and wrong of every community member was an integral part of their culture. To a great extent, this setup persists in Bakun, but most residents realize they cannot stick to the romantic notion that this will continue into the future. Even the culture is changing. If the change is evolutionary – meaning culture evolving into something better by

holding on its former foundation, the challenge is to be on guard against negative changes.

On the positive side, the Kankanaey-Iligan people's rich cultural heritage can serve as their strong foundation in withstanding the possible ill effects of external and decadent culture. The challenge is simply how to keep alive in the hearts and consciousness of the young, the strong sense of right and wrong, word of honor, credibility, honesty, integrity, and wisdom. It is also important to maintain the impartiality of elders and *tongtong* holders who have helped maintain peace and harmony in Iligan since time immemorial.

One of the contentious aspects of interfacing indigenous justice with the mainstream barangay justice system is the issue of documentation. The fact that many Kankanaey-Iligan people prefer not to document the proceedings and decision of a dispute settled amicably is both a weakness and strength of the *tongtong* system.

The strength of the system rests on the notion that the Kankanaey-Iligan people's preference of not documenting a case of conflict means not keeping a record of wrongs. Once a case is settled, everything is erased, severed relations are restored, and any wrong doing is not only penalized but also forgiven.

On the other hand, not documenting a case means erasing significant lessons, that could be a source of knowledge for future generations. Just like mainstream legal cases, future disputes can always refer to a similar precedent. The wisdom, impartiality, and sense of fairness in settling a previous conflict can serve as a good reference point for making decisions and amicable settlements in future conflicts.

If they do decide to keep records, one problem is the lack of skills within the barangay to document the cases. Official records of the Barangay Lupon are written in English, and most barangay officials are uneasy about their lack of proficiency in the language. Thus, it is understandable that only Ampusongan has kept documented cases among the seven barangays of Iligan. Ampusongan happened to have a Barangay Secretary who gained experience in taking down minutes of meetings when he worked as a municipal secretary.

Based on the case study's findings, the government and indigenous peoples' advocates could benefit from the following policy recommendations and courses of action:

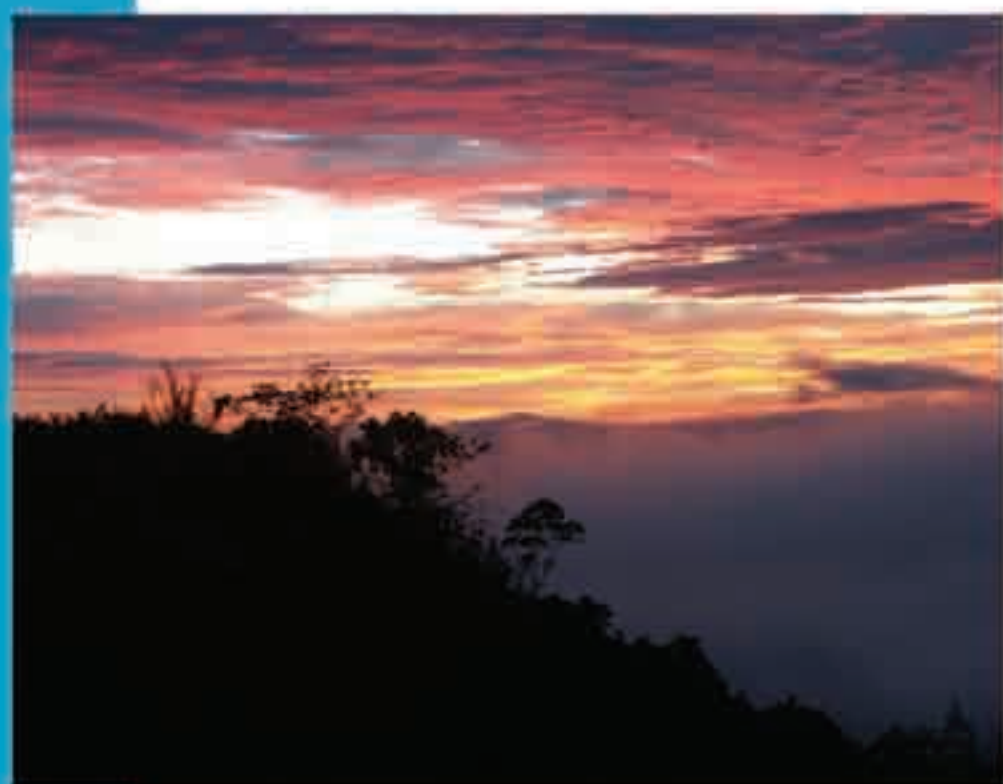
1. Local government units must recognize more individual members of the informal elders' council, who possess wisdom in settling conflicts within indigenous peoples' communities. Membership in the Lupon does not have to be limited to 20 members.
2. Local government units must start documenting customary laws that have been enforced, applied and tested in resolving conflicts within indigenous peoples' communities. Concerned government agencies such as the National Commission on Indigenous Peoples, the Department of Interior and Local Government, and the National Commission on Culture and the Arts can be tapped to extend help in this documentation effort.
3. Indigenous peoples' communities should resolve conflicts on natural resources and environment according to their respective customary laws. As the various examples in this

case study have shown, disputes over lands and resources were settled faster and more efficiently through *tongtong* than through the mainstream justice system.

4. Local government units and concerned indigenous communities must be informed and consulted about permits and franchises over the use, extraction and/or destruction of natural resources within indigenous peoples communities. As earlier mentioned, one corporation appears to have taken advantage of the hospitality of the Kankamary-Bago people in pushing for a proposed 10-kilometer water diversion tunnel and applying for a water permit without informing the people.
5. Lupon staff must be encouraged to pen their settlement agreement in the local language or dialect if the English language proves to be a constraint in capturing the essence and substance of a settlement agreement.
6. Lupon members and staff must respect the option of litigants who prefer not to document the proceedings of their cases for cultural or religious reasons.
7. The amicable procedure of settling disputes can be applied not only to indigenous communities but to non-indigenous lowland communities as well, in order to help speed up the slow process of justice delivery in the country.
8. To help transmit to the young the spirit and essence of the *tongtong* justice system, whether by itself or harmonized with the *barangay* justice system, local initiatives to develop curricula that incorporate the teaching of indigenous justice systems must be encouraged and supported.



*This case study was prepared by members of the Bakun Indigenous Tribes Organization. They interviewed key respondents such as elders, who had had direct knowledge and experience about the *tongtong* process, and closely observed several disputes that were resolved either purely by *tongtong* or through a combination of *tongtong* and the government's *barangay* (village) *Lupong Tagapamayapa* (Peace Council). Written references include records of amicable case settlement and relevant national laws.*



CHAPTER 4

BUILDING PEACE IN ARAKAN VALLEY

The ancestral domain or “*yutang kabilin*” of the Cotabato Manobos, Mambus, Tumanons, Kulamanons, Ilanons and Arumanens (collectively referred in this case study as Manobos) is located along the periphery of the Arakan Valley. The 10,000-hectare domain is covered by eight Certificates of Ancestral Domain Claims (CADC) and includes Mt. Sinaka. It is all that is left of the original vast territories known in the olden days as the Manobos’ Arakan Valley. The area is located along the boundaries of Cotabato and Bukidnon provinces, as well as Davao City. It covers the barangays of Tumunding, Gamutan, Kulaman, Meocan, Kinawayan and the sitios of Bagtok, Valencia, Kapat, Kiatao and Kutindhi.

The Manobos were adversely affected by *luggayans*, or settlers, who began to enter their domain in the early 1930’s. Historical records attest to the disturbance caused by groups of bandits and rebels that sowed terror among the Manobo communities in Arakan Valley. Many *datus* and members of the council of elders who refused to get involved in the conflict were slain, and several communities were massacred. Fearing for their lives, the Manobos left their ancestral domain to take refuge in the highlands, deep into the forests where they stayed safe for many years. Settlers took advantage of the Manobos’ displacement and began taking over the ancestral domain.

The killing of several elders and *datus* left a leadership vacuum in many Manobo communities. They were scattered in the hinterlands, and with no means of communicating with one another, their chances of existing as a single community became almost hopeless.

As early as the 1900s, the national government encouraged emigration to Mindanao. Thousands of families from the Visayas and Luzon settled in the island. Many natives resented the policy and blamed the government for what they deemed as an “invasion” into their land. The situation worsened when multinational companies and absentee landlords started to control the Mindanao economy.

The displacement of indigenous communities led to conflicts in many parts of Mindanao. Clashes were reported between Muslim and Christian civilians. Tension escalated in the 1960s

with the emergence of purported Christian vigilante groups called *Ilegas* and *Ladlad* who fought against suspected Muslim bands called “blackshirts” and “barracudas.” All of these groups were generally perceived as having been supported by politicians.

Politics and culture were crucial factors that contributed to the growing armed conflict.

A separatist movement called the Moro National Liberation front, founded and led by Nur Misuari, a former professor at the University of the Philippines, brought another dimension to the conflict. The tension was eased with the signing of the Tripoli Agreement in 1976, which provided for an autonomous government in certain parts of Mindanao.

But the problem was not over. In the 1970s, the communist movement had also taken root in Mindanao. With the weakening of the Muslim separatist movement, communist rebels eventually became the main adversary of the government.

The communist New Peoples Army (NPA) of the Communist Party of the Philippines, founded by Jose Ma. Sison, began to make its presence felt in Arakan Valley during this time. Communist cadres infiltrated the hinterlands and conducted “teach-ins” among the natives, which gave the military a reason to deploy more troops. Violent encounters between the military and the NPA took a heavy toll among civilians caught in the crossfire. Evacuation and further displacement resulted from the conflict.

As a community, Manobos lived peacefully. Conflicts are resolved primarily through the *Lumad* (native) system of conflict resolution, with the *datu* (chieftain) as lead figure in the process. Vestiges of this practice have remained despite the introduction of the government’s judicial system and the *katarungat pambarangay* (barangay justice system). Manobos prefer to exhaust all means of dispute settlement among themselves through the tribal judicial system before resorting to filing of cases in courts and other judicial, quasi-judicial, and administrative bodies of government.

The Manobos’ indigenous system of resolving conflict is effective in the maintenance of peace and administration of justice within their community. It is part of their custom and traditions, and has stood the test of time. It helps maintain peace not only within the community, but with other tribal groups as well.

Whenever Manobos are drawn into conflict, it is usually not of their own making. This is especially true when the government, rebels, or settlers encroach on their lands. In recent decades, government policies have dispossessed them of their lands, introduced development contrary to their culture and beliefs, and brought conflict to their concept of land ownership. As a result, the Manobos have become impoverished, marginalized, and become a politically and socially deprived segment of society.

They are powerless in putting a stop to armed encounters, even as they are the ones caught in the crossfire and suffer the most number of deaths. The government has been negotiating for peace with the communist rebels, but the process does not include any significant representation from the most affected communities, including the Manobos.

Manobos contend that they should be given the chance to fully participate in the peace process, not only because they are the ones most adversely affected, but also because they have something to contribute as a legitimate segment of Philippine society.

Arakan Valley

Arakan Valley lies in the province of Cotabato. Its name comes from the word Aakan, meaning abundant. Manobo leaders further explain that the word means the convergence of two rivers that brings forth abundance of vegetation and riverine resources. Other accounts say the word Arakan is believed to have been derived from the Manobo terms "ARA" which means abundance of natural resources in the valley and "KAN" which means bravery and valor of the early Manobo settlers in the area.

Arakan is also the name of a river weaving through three municipalities in the once forest-green mass of land, from which the valley takes its name. Today, Arakan Valley is composed of five municipalities – Antipas, Arakan, Magpet, Mataham and President Roxas. The area can be reached from Kidapawan City, the capital of North Cotabato province.

Arakan is home to a number of ethnolinguistic groups, predominantly the Cotabato Manobo, Mambo, Kulamanon, Tinanunan, Ilianon and Arumanen. They are believed to have come from the string of islands on the Malay Peninsula and Borneo, on account of the Malay roots of their language structure. Through the years, they maintained contact and inter-married with neighboring communities such as the Matigaling and Bagobo tribes.

The municipality of Arakan lies in the eastern section of the Arakan Valley. It is inhabited by various ethnic groups, the most dominant of which are the Mambo, Tinanunan, Kulamanon, and Ilianon. It is strategically located in the northeastern tip of the Province of Cotabato. It has a land area of 69,452 hectares, with the Pulangi river coursing through the borders of President Roxas in the northwest, and the eastern boundary with Davao City marked by Mt. Sinaka, the highest peak in the area. Arakan has 28 barangays, 20 of which are occupied by the Manobo whose population is estimated at 24,000 people.

The landscape of the Municipality of Arakan is dominated by undulating to rolling and scattered hills, from wide to narrow valleys, and mountain ranges. Plains and small lakes can also be found in the area. Several river tributaries, the largest of which are the Kulanan (derived the sub-tribe Kulamanon) and Tinanan (from the Tinanunan communities) rivers, crisscross the municipality. These two, along with Arakan river, empty into Pulangi river.

Since 1995, the Manobos in Arakan valley have succeeded in securing formal recognition of the remaining portions of their vast ancestral domains. Some areas are identified in at least eight Certificates of Ancestral Domain Claims (CADCs), such as Lanao Kiran, Gunatan, Tumanling, Kinawayan, Katindia, Datu Sandangan, Datu Iada, Sinayawan and Toromon. Other areas like Allah, Meocan, Malibatuan and Datu Ladayon as well as Libertad, Lumao, Kurabok and Mt. Sinaka are in the process of being covered by Certificates of Ancestral Domain Title (CADT) under the IPRA.

The Manobo of Arakan Valley

Legend has it that there once lived a male giant named Agasi who killed and terrorized the ordinary people for hundreds of years. One day, after many attempts of conquering him, Apo Aglo, one of the greatest Manobo ancestors, shut all the lights out for him forever with a magical poisoned *bughaw* (spear). Before he died, Agasi stomped and “danced” in terrible pain. The strongest tremor shook the entire valley as he fell to the ground. The place on which he “danced” is now called Sinayawan. His one foot landed in Nassot, his palms somewhere in Maobapalad, his sex organs in the area between Tamanding and Salasung. His death carved indelible remembrances of his horrible existence; the different parts of his body have all become natural landmarks in the area that through the centuries would mystically help define the shape of the great valley, now called Arakan.

The Manobos believe that the first man and woman created by Manama were placed inside a bamboo and were called Tugahai (the male) and Tiglibon (the female). They believe that they are descendants of the divine ancestors, the greatest of whom is deemed to be APO TULALANG, who is likewise the central figure in their epic the *Ulahingan*. Manama bestowed upon him a great mission to defend the Manobo land and unite all the people living on earth. It is believed that Apo Tulalang did this by bringing home a wife after every adventure in a faraway land, thus uniting many tribes surrounding the Manobo land.

Countless of generations were born into the Manobo clans after the period of their divine ancestors. Most, if not all the Manobos, descended from the major families of tribal chieftains. They have confined themselves to distinct territories, carefully defined by their ancestral origin. Because there have been several intermarriages among the members of the clans, Manobos virtually belong to a very wide web of kinship relations.

In general, the Manobos follow the rule of matrilocacy in choosing their residence after marriage. However, they usually trace their lineage only on the father's side. Hence, the clans now living in Manobo land may have originated from other territories within the valley, or from neighboring tribes in the region.

In their research study, the Kaliwat Theatre Collective describes the ancestral domain as follows:

“Manobo territories are not just masses of earth and water. Nor are they just huts and farms and fishing and hunting grounds. Rather, they are the manifest world of Manobo ancestral heritage, the bosom of the people's life sources, and wellspring of Manobo culture.”

The Manobo ancestral domains are demarcated by natural ecological formations which all bear significance to Manobo folklore and local history. The territorial landmarks bear names with historical, cultural and ecological significance. The meanings are traced to the name-word's etymology that usually refers to the name of an ancestor who once lived in the area, a significant mythical or historical event, or the natural characteristics of the place.

To the Mambos, as manifest in their epics and folklore, survival is both internally driven as well as externally destined. They value the principle of sharing the produce of the land with both the living and the dead, the human and the divine. They believe this is essential to survival, but at the same time, sharing is also dependent on the capacity of their ecosystem to provide for their material needs.

The people are rooted not only to the land but to all land and water formations in the domain. All aspects of their lives, including intra and inter-tribal relationships, find special connections through the great rivers and tributaries.

This relationship is described in detail in the Kaliwat study:

"Mt. Sinaka, the sacred mountain of the Mambos, is known to have eight peaks. It is where the Mambos people's greatest Spirits reside, and is believed to be the place where the magical Sinalinba landed to bring the greatest epic hero Tufatang and his people back to the heavens. The landmarks around the mountain are vessels of numerous legends and folktales about humans and spirits in Mt. Sinaka.

"Higher grounds are refuge, sanctuaries and sacred places, often being the abodes of great spirits. Sacred grounds continue to be the direct link of the people to their ancestors. If these are destroyed, the identity and history of the tribe will be virtually lost. It is such that the Manobo ancestors and epic heroes provide the tribe with a higher sense of pride and a deeper sense of identity."

The Manobo belief system is largely characterized by the strongly felt presence of supreme beings that guard and protect the natural environment and the people from danger and destruction. All activities that utilize environmental life sources should therefore seek the blessings of concerned deities and spirits. The Mambos find their lives' meanings and a coherent sense of the totality of their world in this relationship between the land and its human and divine protectors.

Rituals are usually community celebrations that strengthen human relationships and their connections with the divinities, their ancestors, and their life sources. Often, rituals celebrate various stages of a person's life from birth to marriage to death, to heal the sick, and to invoke the blessings of Manana and the deities during political and economic endeavors. Because the entire community participates, feasting always follows after the ceremonies.

Religious rituals generally follow a pattern of an elaborate performance. The *Baylan* (Shaman) always leads the ceremonies. A *Tambaka* (altar) is first prepared using a bamboo pole about 5 feet long, with one end split to form a fan hamel to hold a leaf. The vessel is filled with rice bent nut, pepper leaf sprinkled with *apug* (lime made from burned seashells), and eggs. These days, ritual offerings include liquor, money and tobacco. In many instances, an antique china plate has replaced the leaf.

The ritual starts with a *pingumauw-umauw*, invoking on Manana and the specific deities they need to invoke, followed by the killing of the sacrificial offering, usually a chicken or a pig.

Cooked food is offered to the deities. After the ceremony, part of the sacrificial chicken is cooked and the guests are invited to a feast.

The *panuvad tuwad* (Prayer) is an obligatory ritual, especially when the people engage in economic activities. Before hunting, fishing or planting, a *panuvad tuwad* is always said in a *tambala*.

The Manobos have rituals for all aspects of life including birth, marriage, agriculture, fishing, hunting, healing and death. They also have a *Pangayaw* ritual where a tribal warrior, dressed in his *ampae* (traditional garb) with the top colored red which is attributed to *Isidemis* (Avenger), offers a prayer to the gods of war and protection, *Mandaugas* and *Talabesaw*, before leaving for war.

Community Life

Of the Manobo social structures and leadership, Kaliwat narrates:

"Like other indigenous communities in Mindanao, Manobo communities are always kinship bound. Social formations depend on the interplay of a lot of factors, especially on how the people organize themselves for subsistence. Manobo communities are characterized as warrior societies because they have distinct war classes in which membership is won by personal achievements, entails privilege, duty and prescribed norms of conduct."

In his book "Filipino Indigenous Ethnic Communities," anthropologist F. Linda Jocano classifies the Cotabato Manobos under the *Banawa* type of social organization. Structurally, the *banawa* is the most complex of the five types of ethnic social organizations. The term comes from the Manobo word *banawa* meaning "domain." This type of social organization covers a much larger territory that includes villages, loosely organized into districts led by a *datu*.

According to Jocano, the different villages constituting a *banawa* remain discreet, independent, and self-sufficient units. But at the same time, they maintain regular and intensive social interaction. They also carry out extensive trade with each other. Social and economic alliances are formed for mutual benefit and protection. Trading pacts are established between partners to ensure uninterrupted flow of goods and to strengthen economic ties.

Kinship, while recognized as important in inter-personal and inter-familial relations within the village, is not considered very significant in defining the *banawa* identity. Jocano stresses: "Banawa membership is frequently evaluated in terms of residence and religious-political allegiance with the central leadership. The community, more than the family or neighborhood, is the center of important activities. The political influence, power and authority of the *datu* prevail, in most cases, over kinship as the cohesive force in bringing different villages together into a single political community, the *banawa*."

The concept of property is an inherent part of the social organization. There are three distinct types: personal, familial and communal. Personal property includes those owned by an individual,

like clothing, weapons, jewelry, bolos, knives and headgears that can be disposed of easily. Family property includes the house, furnishings, ritual paraphernalia, rights over fruit trees, work animals, fowl and livestock, and similar items which require family decisions before they can be disposed. Land is conceived to be communal property, although the right to access, cultivate and harvest is recognized and respected as individual and/or familial.

Communal ownership is extended to hunting, foraging, gathering, and fishing areas. Among the Manobo "certain acts (hunting and gathering of wild fruits) cannot be done within the territory of another village. Trespassing is punishable and can generate violent feuding. In order to insure that no mistakes are committed, village boundaries are marked, so are other kinds of land and crop ownership. Betel nut trees, bamboo groves, dye yielding plants, and other relatively permanent and non-removable landmarks are used to establish and mark ownership." According to community elders, there is a custom called *Dampas*, where one may get a handful of harvest in another's farm without the owners' consent under exceptional circumstances; however, the one who takes part of the harvest must leave something as a gesture of respect for the owner.

Leadership is vested in an elder called *Datu* or *Bugyabon* who is acknowledged as the adviser in the community. The leader-figure used to be called *Liputan* or *Pukilabanon* among the Ilanon, *Pukilbugayon* among the Tanaunan, and *Silabanon* among the Kulamanon. Followers of a *Datu* are called *Banaditan* and the territory over which he exercises power is called the *Jugpod* or *Banwa*. A *Longgaban* or Chairman leads a council composed of a number of *Bugyabon*. Other persons of authority in a *Banwa* are the *Balian* or spiritual adviser and the *Babani*.

A *Bugyabon* usually comes from royal bloodlines among the Manobo. Aside from lineage, however, *Bugyabons* must have the gift of leadership received by anointment from a deity spirit called *Dabagang-nakurang*. This is tested through his life by *Pantibong* or life experiences sent by the deity. *Pantibongs* test the *Bugyabon's* prowess in settling disputes among the members of the *Banwa* or *Talibung* (native peoples), and even with outsiders or *Rapo* (migrants). Elaborate custom law and supernatural sanctions support the political leadership of the *Datu*.

The *Datu* has considerable juridical, political and ecclesiastical influence within his territorial domain. The most respected among the *datu* within the village exercises a wider sphere of influence and authority. Sometimes, his



Peace-loving Manobos prefer dialogue over war

influence extends to neighboring villages. He may be called upon to settle disputes which cannot be easily resolved in one village for some reason. These arrangements provide additional mechanisms for the establishment of inter-village and inter-domain relations, in terms of reciprocal rights and obligations, and channels of support for political hegemony.

The most influential *datu* heads the *banua* through various forms of alliances. His duties include the coordination of various social and religious activities, leading important ceremonies, and protecting the *banua* from its enemies. While vested with influence and power, the *datu* does not govern as an absolute ruler; he leads according to custom laws. He exercises authority through persuasion, consultation and consensus.

Among the functions of the *datu* are:

- * *Social* – receiving guests; arranging marriages, matches, accumulating the necessary bride wealth for that purpose.
- * *Economic* – deciding when and where the village has to move for the next cycle of *swidden* activities in accumulating wealth and surpluses;
- * *Religious* – mainly settlement of cases
- * *Political* – keeping the peace, making vengeance expeditions and little wars, and concluding inter-village alliances and pacts.

A case study on Arakan valley by the Episcopal Commission on Indigenous Peoples on the political organization of the Manobo quotes writing made by John M. Garcia, 1931 on the qualities of the *datu* and the workings of the *datu* system, as follows:

“... the chief is a man who, by his fluency of speech and by his penetration and sagacity in unravelling the intricate points of a dispute, by his personal prowess, combined with sagacity and fair dealing, has won influence. Personal prowess appeals to the Manobo, so that in time of hostility the warrior chief is looked up to more than any man who in time of peace might have enjoyed more influence and prestige.”

The study continues :

“It must be borne in mind that the whole political organization of Manobo kind, including the system of government, social control, and administration of justice, is essentially patriarchal, so that the chieftainship is really only a nominal one. The very entity of a clan springs from the kinship of its individual members, and, as in the family, the stronger or abler brother might be selected on a given occasion to represent, defend, or otherwise uphold the family; so in a Manobo clan or sect the stronger or the wiser member is recognized as chief. However, he cannot lay claim to any legal authority nor use any coercion unless the more influential members of the clan sanction it, is approved by public opinion, and is in conformity with customary law and tribal practices.”

The most important group assisting the *datu* is the *babunt* or warriors. Key informants say

the term *Bahani* literally means retaliation or revenge, and the *Bahani* came to be known as the avenger for the tribe/*Banwa*. These warrior groups are composed of families headed by men of valor who are entrusted with protecting and avenging the honor of the community. They are well-versed in warfare strategies and tactics.

The *Bahanis* are in charge of military activities in the district. They generally spend considerable time practicing the art of fighting, and like the *datu*, they get assistance from the community in cultivating their fields. In return for these services, the community receives ample protection. The *bahanis* are said to be under the protection of the spirits.

From the turn of the century up to the mid 1900s, the *bahani* held a very prestigious social status in the Manobo society. This was achieved through the demonstration of formidable courage and ability in fighting. Each member of the village knew and respected their local *bahani*. Most often, the *bahani* was also the headperson of the village. Only men can become *bahanis*, although during the *pongayaw* (tribal wars of Katindu) in the late 1960's, women and children joined the war parties, hiding deep in the forest of Arakan and Magpet. While a number of women actively joined the raiding parties, most of them stayed to protect children and look for food.

Before going on a war journey, the *bahani* does a traditional *pongayaw* ritual offering to the gods of war Mandarangan and Darago. Then with his/her *bangkaw* (spear), *juna* (bow and arrow), and/or *cutalang* (bolo), the *bahani* would then set off on his/her journey. The first guns were acquired from the Moro during World War II. Since then, some *bahani* have been able to devise locally made guns.

As they set out for war, the *bahanis* are divided as follows: the one who leads the party and takes the front position is called the *talabuno*, the *mungayaw* is in the center, while the *muhaminog* is positioned at the end of the line.

The *bahanis* carry their own provisions, enough for the number of days planned. On the journey, they keenly observe omens through the *alimukon* bird. When an enemy is killed, the *bahani* let out a war cry and yet another note of victory upon returning home.

A *bahani* will always be a *bahani*. The title remains even when a warrior gets old and can no longer fight for the tribe. Even if a *bahani*'s war activities were considered unlawful in specific circumstances, he/she would still be called a *bahani*. However, the status of the *bahani* has weakened in the contemporary times. Vengeance and retaliation to right wrong—the two major objectives of the *bahani*'s war activities—have significantly ebbed because of the dreadful picture brought home by a few *bahanis* and Manobo "civilians" who have been put in municipal or provincial jails, and of the fears of retaliation by the Philippine Constabulary and the police who now have greater political control in the area.

Manobo Indigenous Justice System

According to key informants, the Manobos' traditional justice system revolves around the *Gantungan Panceyan*, a set of unwritten laws instilled in their hearts and minds through chants

and stories. The *Gunkagun* prescribes rules and punishments in a number of situations including coveting another's spouse (*Agatcan ng Asawa or Paniguan*), Adultery, Murder, Rape, Defamation, Breach of Promise or *Oon*, and Boundary conflict. Among these situations, boundary conflicts and coveting another's spouse can cause a *Pangyayay* (Tribal War) until the *Datu* or *Bayyabon* exercises jurisdiction over the matter.

When this happens, Jocano writes that the *Banwa* can be said to constitute a legal entity. It specifies the condition, manner and circumstances where behavior is acceptable and where it is outlawed. The threat to force or to use force in order to exercise authority and social control comes from a duly constituted body of persons who are recognized as having the power to impose obedience, if necessary. Customary practices are legitimized by a body of legal norms called *addat*, which literally means "respect that is due to the customs and the village authorities."

Every member of the community is expected to follow the legal norms as expressed in customs and practices. Any deviation from what is traditionally approved is frowned upon, and if it interferes with the activities of others or "blocks" the normal flow of day-to-day affairs, the devian is punished. In most cases, "public opinion is sufficient to prevent most crimes, the fear of offending the spirits is a further deterrent, while the final bar is the drastic punishment meted out by the *datu*."

Jocano writes:

"The legal system is well developed among the ethnic communities with the *Banwa* type of social organization. Even the interpretation of laws and the administration of justice are not done arbitrarily by any one man. Of course, the *datu* has the final say. However, in overseeing the affairs of the *Banwa*, he is generally assisted by an advisory council composed of respected elders (who are either religious or secular functionaries) from the different dominant warrior families in the villages composing the political community. Most decisions are arrived at by consensus and proper consultation with members of different villages, particularly kinmen and religious leaders. In other words, the authority of the *datu* is also tempered by the collective sentiments and wise counsel of the village elders, as well as by the custom laws and religious morality."

Aside from the council of elders, there are respected members of the village who assist the superior *datu* in the performance of many duties—particularly with respect to management and delivery of community services. These persons are known among the *Manobo* as *tankum* and the *tu'usay*. These respected elders hear cases and pass judgment, and they also settle cases informally before these reach the stage of formal hearings, during which fines and punishments can be meted out. The offices of the *tankum* and the *tu'usay* are institutionalized. It appears that the *Tu'usay* had no court and the *tankum* held one, but it was the former who rose to great eminence in case of inter-village or inter-tribal disputes or wars, for they usually accompanied

the dates in concluding *paikbung*, or peace pacts between tribes, and in arranging alliances between villages.

Other specialists assisting the dates or serving the villages for a fee are the *maikae* or go-betweens. They are the skilled negotiators who are often hired to arrange marriages or settle disputes before these can cause serious troubles. They do the "legwork" for concerned parties until acceptable terms are agreed upon. Their forte are small cases, or those which might be termed "civil cases" in legal parlance. More serious criminal cases are assigned to the *ka'way* or the date.

Respect for others forms the foundation for crime prevention among the Mambo. Any act that would cast dishonor, prejudice, and cause damage, constitute disrespect to the right of individuals and the whole community. The commission of crime or felony does not only affect the victim but the perpetrator's family and the entire community as well. Every problem that may arise is the concern of all, for it may lead to graver consequences and vendetta between families. Revenge killings usually occur if the date does not act immediately. Customs dictate that conflicts should be resolved immediately so that aggrieved families will not go after the offender.

Though there are no punishments such as imprisonment, torture or whipping, all social dealings by which one contracts an obligation with another are regulated by the principle that all actions shall have to proceed in accordance with established customs. This principle governs even the chiefs and influential men when they endeavor to bring about a settlement through the weight of their influence.

Disputes are generally settled by paying damages to the aggrieved party in the form of work animals, harvest, pieces of land, gongs and other material articles. With the in-migration of lowland settlers into their territory, cash has now become another form of damage payment.

Among the causes of conflict in the Mambo communities are marital infidelity, boundary disputes, malicious destruction of plantations and farms, rape, homicide and in recent times, theft of livestock, crops and other properties, nonpayment of debts, gossip or intrigue against one's honor.

Marital conflict occurs when one's wife is taken by another man. It is considered a great insult to the husband whose manhood and sexual capacity become suspect to the community because his wife eloped with another man. The act dishonors not only the husband but his whole family and the erring wife's family, and that of her lover as well.

Marital laws allow polygamy. Among the Mambo in Arakan valley however, key informants explain that the first wife usually recommends and actually does the negotiation and choosing of the subsequent spouses. The industriousness of the husband and the economic activity he is engaged in may prompt the first wife to seek other spouses who can help him. Polyandry however, is not common, and adultery and concubinage are unacceptable.

Boundary disputes are common causes of inter- and sub-tribal conflicts. Each sub-tribe maintains a territory where they hunt for game such as deer, wild pigs, and fish in the rivers.

Within these territories, they gather root crops and fruits and do their kaingin or swidden farming for corn and upland rice. Similar activities by other sub-tribes within one's territory are allowed only by consent. However, the right of way and refuge is given to all without qualifications.

Territory is defined and determined by natural boundaries consisting of hills, mountains, and rivers. Datus of sub-tribal groups and their members respect and uphold each other's territories. Encroachment upon the territory of another is considered a great breach of respect, not only to the group violated, but also to the group where the offender belongs. At this point, the two concerned communities must actively participate in resolving the conflict.

Conflict resolution in Manobo communities is anchored on the principles of dialogue, mediation, and arbitration. This is done upon the instance of the datu with the consent of the parties, and depends on the gravity of offense, status of parties involved, and circumstances of offense. It is accompanied by immediate actions of the datu in resolving the conflict and negotiation for its settlement as soon as permitted.

Manobos believe in speedy disposition of their complaints, corresponding payment of damages, and service of penalty imposed. The datu affords equal opportunities to all parties to state their case and defense. Datu Antayan Baguin of sitio Kuman in barangay Timanding, Arakan said: "Conflicts should be resolved before sunset to allow everyone to sleep peacefully on their beds without fear of what tomorrow might bring as an effect of the offense committed."

The datu sits as the facilitator of dialogue between parties involved. In case of adversarial communities, the supreme datu take charge of the dialogue. He is mandated by customary law to make an independent inquiry by fulfilling the following tasks:

- * Define the complaint or the cause of action by complainant against the respondent
- * Determine strength of evidence of complaining parties and damage caused and demands, if any
- * Demand confession from respondent and the possibility of settlement.

Dialogues are conducted to determine the position of the whole community and solicit opinions and suggestions on the best method of resolving the problem. During this process, the datu, upon consultation with the council of elders and concerned parties, may order a ritual consisting of soaking of hands of the suspect in boiling water to determine his guilt. This is called *tibi*. It is said that if the hands of suspect are not burned, he is innocent and the charges against him will be dropped. But if his hands are burned and he experiences great pain, he is considered guilty and penalty is imposed.

The datu is given blanket authority to determine the following:

- ☐ Extent of damage caused to aggrieved party, including his family
- ☐ Possibility of reconciling both parties
- ☐ Possibility of revenge against the accused or any of his family
- ☐ Whether or not the accused would commit the same offense in the future
- ☐ Community sentiment against the perpetrator

The influence of the *datu* over his tribe, the soundness of his verdict and its acceptability to all parties and the whole community, and the speedy disposition of the case are key factors for resolving conflict.

In case the *datu* inhibits himself from presiding over the dispute settlement, for personal reasons or upon the suggestion of the community, a member of the council of elders takes his place and acts as negotiator between families. This usually occurs when dialogue between two concerned groups and initial efforts at settlement fails.

Initially, a truce is declared to enable involved parties to sit down and negotiate. During the first meeting, each group states their case and cause of action against the other party. In subsequent meetings, the *datu* or whoever is designated to preside over the meeting determines the nature of the complaint and the original offense that caused the vendetta. The party that drew first blood is deemed the original offender, and he and his family must make the first offer to reconcile and pay damages to the offended party.

The act of revenge does not totally exempt the other family. Refusal to accept the offer of the offender is an insult to the *datu* or presiding official. Avoidance of offending their *datu* coupled with the dictates of their tradition are compelling factors for the acceptance of an offer for peace.

The *datu*, with the assistance of the council of elders, will determine whether the subject of the act complaint constitutes an offense. He will decide on the penalty to be imposed and how it should be paid based on the gravity of the offense, damage caused to the aggrieved party, prejudice to the community, and status of the parties involved in the process. He shall also consider the demand of the offended party and his family. The verdict is meted out with due regard for equity and justice.

A fine, consisting of payment of damages, is imposed. This is called *tamok* and is made in the form of livestock such as pigs, horses, cows, and carabaos; musical instruments such as agongs, farm implements such as bolos, or in cash, an innovation in recent times. These are given to the aggrieved party under the process of *sablagan* or *sablag*.

In case of theft, the *datu* will direct the thief to return the property he had stolen from the complainant and to pay equivalent damages. If the stolen property is too valuable and cannot be possibly restituted, the offender is directed to pay the complainant damages which are double the amount of the stolen property. For example, if the offender steals a goat, the same goat will be returned to the complainant in addition to one goat as penalty. If it is no longer possible to return what has been stolen, he is ordered to pay two goats instead.

In case the offended party is a woman and the act under consideration is an offense against her honor, the penalty imposed upon the offender is called *panasak*. It is a form of payment meant to symbolically cover the eyes of the offended party to blind her to the act as a sin, the ears to deafen her from considering the act as sin, and the mouth so no more words of complaints will set forth from it.



Manobos have managed to keep their traditions alive in the face of numerous conflicts in Mindanao

If rape is committed, the offender shall offer marriage to the offended party if they are not close relatives. However, when offer of marriage is not accepted, *pananak* is imposed. The offender or his family shall provide support to the child borne by the offended woman.

The *datu* shall order the banishment of the offender from the community when his safety cannot be guaranteed, or if the offended party and the concerned families demand for this penalty in addition to payment of damages. This usually happens in the case of murder, when the presence of an offender would constantly remind the victim's family of his crime, and when reconciliation between the offender's family and his victim becomes impossible because of his presence. The *datu* can also order the banishment of a married woman and her lover from the community to lessen the shame of the offended husband and their families.

When the offense involves the destruction of another's farm with malicious intent, the offender shall be directed to pay the offended party damages equivalent to produce from the destroyed plants and disturbance caused by his act so that he will not repeat the crime. He shall be directed to help the offended party in cultivating the latter's farm as repayment.

The offender must immediately comply with the penalty imposed and payment of corresponding damages as soon as verdict is made. The decision of the *datu* is final and executory upon pronouncement. It does not only bind the offender but his or her whole family as well, particularly in raising the necessary amount for payment of damages. Time is of the essence because delay is considered an insult to the offender and the whole family. When payment cannot be raised immediately, the offender and his family must provide a collateral or guarantee to insure their performance and to request for sufficient time to raise payment. Collateral can be in the form of use of personal things or land or working animals, with consent from the *datu* and the knowledge of council of elders.

The role of the *datu* does not end with the verdict and imposition of fine. If the offender and his family have no capacity to raise the fine, he must help raise the amount by soliciting assistance from other *datu*s and his members. This is not done out of sympathy to the offender and his predicament, but in order to preserve peace in his community, which is his utmost consideration.

The offender is not imprisoned during the process. He remains in the care and custody of his family, or of another family who remains neutral in the controversy. Nonetheless, the offender's family must make an agreement with the *datu* and council of elders that the offender shall be presented whenever he is needed.

As part of the reconciliation process, a ritual called *panu'ar* is performed. This provides the offender an opportunity to ask for the forgiveness of sins he committed to the offended party, the latter's family, and the community. In the ceremony of breaking the rattan stick, which symbolizes his breakage from his evil ways, he declares to the whole community his remorse, promise to reform, and pledge to embrace only the good. He is made to face the sun and embrace the light as a symbol of his new life in goodness. As a sacrifice, he offers a black and a white chicken which is butchered, cooked, and eaten by the *datu*, council of elders, and other dignitaries. All expenses for the ritual, including animals that are offered, are borne by the offender, his family, and relatives.

The blood compact is a ritual of reconciliation between two communities or sub-tribes. This is carried out when good relationship between communities is severed by transgresses committed by their members against each other, or during boundary disputes and cases of encroachment upon each other's territories. This is made after the process of *pakung*, when adverse communities both agree to set off their demands and payment for property. The blood compact ensures that the two communities shall reaffirm and go back to their original agreement to settle the dispute.

Comparison of Tribal and Mainstream Justice Systems

The Manobos maintain that the tribal system of conflict resolution is effective and acceptable. They contend that disputes are resolved easily, speedily, and without expense on both sides. It is simple in its approach, and goes directly to the substance of dispute. The community is given the opportunity to participate in the resolution of the problem through a dialogue which puts premium on the maintenance of good relationship, harmony, and unity.

The effectiveness of traditional systems of conflict resolution in maintaining peace and harmony in their community is proven by the fact that the practice has endured for centuries. Under the system, no offender is detained or locked up in jail while awaiting trial. The wisdom of the *datu* is highly respected. The system allows the indigenous principle of justice and cultural norms to rule in the community.

The use of mainstream justice system, particularly when the parties involved are from the same tribe, is unacceptable. Their preference for customary law is strong even in modern times, as most Manobos can hardly comprehend the intricacies of the penal laws and the concepts and procedures of the mainstream justice system.

They are not comfortable with the long and slow process of court hearings and trials. They believe that justice should be speedy and that retribution by offender to offended party be exacted and satisfied without delay. As one of the *datu*s said: "Under the government system, the accused will be convicted and imprisoned even if he is guiltless if he has no money to pay the lawyers and the expenses of hearing."

The mainstream judicial system is disadvantageous to many indigenous communities who have no money for the expensive judicial process. The venue for court action is usually inaccessible.

to indigenous people who live in far-flung sites. For instance, the Municipal Circuit Trial Court of Pres. Roxas-Antipas-Aralcan is located some 50 kilometers away from the nearest Manobo community. The Regional Trial Court is located in Kidapawan City, which is even farther.

It is sad to note that several Manobos have been detained at the provincial and municipal jails, awaiting trial and disposition of their cases. Many have been in detention for a long time. According to Datu Dalunday Tumanding: "Under our tribal system, there is no need for prison to detain offenders. Imprisonment is not one of the penalties imposed for commission of a crime, so no Manobo has ever been detained because conflicts were resolved solely under the process and customary laws of their tribe. Unlike what is happening in the present, cases are submitted to the courts for adjudication. Under our system, it is enough that the offender will be made to *pay tumok or pamasak*."

The Manobos believe that their own conflicts should be resolved through traditional justice systems and practices. These are understandable and acceptable to concerned parties, and are more meaningful and effective in maintaining peace, harmony, and unity.

In this manner, their existence as a people with their own indigenous knowledge systems and practices (IKSP) and distinct culture will be recognized and respected. They need not be forced to embrace the western culture adopted by majority of Filipinos. Indigenous communities must be given their independence and freedom to govern themselves using their own cultural systems and institutions. The government should only intervene with the consent of the indigenous peoples, but not before the communities have exhausted all means to resolve their problems by themselves.

One datu asserted that: "Problems in our community should be resolved solely by us, without the involvement and interference of outsiders or the government. We know what is best for us because we will be the ones to suffer the consequences if we make the wrong decision."

The formula of resolving conflicts through dialogue, mediation, and negotiation with due regard for amicable settlement and imposition of due penalties have proven to be effective. Some members of the council of elders suggested that government should learn the ways of the indigenous peoples, so it can have a better understanding of the indigenous peoples as a people and as citizens of the republic.

The leadership of the *datu* and council of elders must be institutionalized with the implementation of the Indigenous Peoples' Rights Act. Tribal *barangays* can be declared in Arakan, Cotabato for areas where Manobos make up the majority population. Indigenous systems and customary laws must also be put in place as soon as possible.

Role of the Manobos in the Peace Process

The Manobos point out three general causes of conflict in their communities. These are: encroachment by outside settlers and boundary disputes, conflicting ideologies, and external interference of outsiders e.g. religious groups, NGOs, companies.

The earliest migrant settlers from the Visayas arrived in the 1930s. There was massive

clearing of forest areas for agricultural and settlement purposes. Due to the encroachment, the Manobos were forced to settle in the inner portions of the forest, away from the areas occupied by Visayans. Through time, they were pushed farther and farther away until they permanently inhabited the highlands of the valley to avoid social and cultural interaction with the migrants. However, as hordes of Visayan and Luzon settlers increasingly became interested to migrate, the problem of land encroachment became more and more critical.

With the entry of settlers also came the introduction of non-indigenous religions and belief systems which caused great internal turmoil among the Manobos, thus assaulting their inner peace. This has led to the destabilization of the community's moral and cultural fiber, forcing them to accept ways which violate their own cultural beliefs.

Disenfranchisement has also resulted from the practice of treating indigenous peoples as inferior citizens. Even NGOs purporting to assist indigenous peoples often prescribe development strategies that are contrary to customary beliefs and practices. Interference in decision-making processes usually lead to conflict and divisiveness among community members.

The geographical location, forest cover and economic conditions in Manobo villages are perfect conditions for rebels and bandits to take refuge in Arakan Valley. Deep-seated discrimination against indigenous peoples and impoverishment as a result of unjust laws and structures make the indigenous populations easy prey for allegedly progressive movements. Often, when indigenous peoples decide to join one ideological group, they find themselves confronting their own kin and neighbors who have joined the other side. This conflict of ideologies erodes the kinship-based unity that had allowed equitable and peaceful existence in Manobo communities for a long time.

In an article entitled "Social Cohesion and Development, A Cultural Perspective," Jaime C. Laya of the National Commission on Culture and Arts writes:

"The recurring problem of peace and order in the southern Philippine island of Mindanao, and to a lesser degree in the Cordillera ranges in Luzon, has deep historical and cultural roots. Large minority groups in Mindanao and the Cordillera remained free of Spanish domination, and it was only in the early 1900s that these cultural communities effectively became part of the Philippine Nation. Over the 350 years of the Spanish Colonial period, the many ethnolinguistically distinct lowland peoples had become Catholic. They developed strong trade and personal linkages, lived under a uniform legal system and shared the same (westernized) music, dance, drama and other arts. The Muslim and Cordillera peoples were unknown to most of the lowland population. Indeed there was enmity between the lowland and Muslim groups."

Laya brings forth the following lessons from the Philippine experience:

- Major underlying causes of disputes can be avoided if traditional practices concerning land and resource use are recognized in the formulation of national law and policy.

- Community leadership and dispute settlement can be more effective if cultural differences are considered in designing laws on local governance and justice systems
- Mutual understanding, respect and trust among cultural communities can be enhanced through education that covers the history, culture and arts of cultural communities.
- Socio-economic development plans and projects can be better designed and implemented if there is heightened sensitivity to cultural factors.
- Cultural tourism and other ways of raising the economic value of the uniqueness of indigenous communities would help reduce income disparity and achieve social cohesion.
- Existing tensions can be reduced through greater awareness of and sensitivity to the beliefs and traditions of cultural communities.

Through the years, several communities have made positive contributions to the peace process in Mindanao. One of the initiatives that is worth a closer look is the establishment of Tulumon, North Cotabato as a Peace Zone:

Tulumon is a municipality in the province of North Cotabato, located 24 kilometers away from Kidapawan City. Its peace zone is composed of two barangays, Bituan and Nabundasan, and two amos, New Alimodian and Mianah. The area covers 1,623 hectares and has a population of about 1,700 people.

The peace zone was borne out of the people's clamor for peace. Military raids and NPA attacks have caught the Manobos in the crossfire too often, leading to massive displacement and evacuation. The residents of the villages took the initiative to get in touch with government and non-government organizations to help them. They passed a resolution calling for the declaration of their area as a "Peace Zone." It states:

"The path to political peace in the Tulumon Peace Zone has been very difficult. The years following the declaration of the peace zone were marked with sporadic cooperation and transgressions by both conflicting groups in the protracted war. Attempts to recruit local residents to rightist paramilitary units continued and NPA forces were accused of ambushing government soldiers stationed on the peripheries of the Peace Zone. Through these episodes of conflict, the community leaders remained firm in their efforts to implement their peace declarations. They continued to communicate with both sides through face to face dialogues or radio announcements. The local peace leaders were not alone. They received strong political support from their Catholic Bishop and parish priest, a radio station, some NGOs and a popularly elected congressman. At a later stage of the community's peace struggle, support was likewise received from sympathetic institutions and individuals in higher government posts affiliated with the President's Office, especially from the Office of the Peace Commissioner. Through all these, the Peace Zone residents hope to see the day when they will no longer live in fear."

Building on concrete experiences in the southern Philippines, including that of the Manobo, peace advocate Eliseo Mercado proposes some conditions for peace building and enumerates ten specific lessons to guide the journey toward peace:

1. A peaceful settlement is possible even given the deep cleavages in a community such as Mindanao.
2. The peace process does not end with the signing of the "final settlement." Achieving peace and development, and particularly reconciliation and the resolution of deep-seated cleavages in society, is a long, difficult and multi-level process. There are no quick fixes. We learn as we journey along.
3. The first things to undertake in this long journey is the ownership of the peace accord by all the major stakeholders in the community. No settlement of political, social, cultural and religious cleavages is possible when major parties and stakeholders in the community are alienated. The final peace accord (or any settlement, for that matter) needs to find a home in the hearts and minds of people in the community. Involvement and participation of people, including local government units and the civil society, in the owning process is a condition *sine qua non* for achieving social cohesion.
4. Elementary to the owning process is a drive to make basic information available to the peoples in Southern Philippines. This basic lack of information and the proliferation of wild notions about the final peace accord and its transitional mechanisms have exacerbated the cleavages in the southern Philippines.
5. External assistance in the implementation of the accord must not only be responsive, but also politically, socially, culturally and religiously sensitive.
6. There is a need to focus on the development of human resources – on building capacity to meet the challenges of leadership and governance.
7. The cleavages in the southern Philippines are not only very real but also emotional and passionate. The divide is historical as well as real. There is an urgent need to bridge the communities through a program of rehabilitation, reconstruction and healing.
8. Peace making, peace keeping and peace building constitute a process. That process must continue for the sake of peace, and it must involve all stakeholders. The key words for stakeholders are: involvement, participation, responsibility, accountability and transparency. As stakeholders, the peoples in southern Philippines need to be involved in the peace process. They must be responsible for, or at least feel responsible for, charting the peace journey. Above all, their demands for accountability and transparency in both governance and stewardship of the assistance funds must be addressed.
9. For all practical purposes, investment means confidence in the peace process. More investment means more jobs and development. More investments means more infrastructure, both social and physical—more farm to market roads, more bridges, more schools and clinics, more shelters, more irrigation and post-harvest facilities, expansion

of credit facilities and access to credit facilities, particularly by micro- and medium-scale entrepreneurs.

10. The peace process needs visionary leaders and stewards who can lead and inspire. It is a shared vision for all, not exclusively for one group or sector. It is a vision that can be the basis for a new pact—a real partnership working toward rehabilitation and reconstruction not only of the economy and the physical infrastructure but also of communities.

It is very unfortunate that Arakan has been turned into battlefields and war zones time and time again. Datu Baguio once said: “We do not look for trouble but usually it comes.”

This painful and calamitous reality has led the Manobos of Barangay Libertad in Arakan Valley to declare their area as a peace zone, using their own customary law as basis and using their own *bahani* to enforce and maintain the zone. This declaration, made in 1983, has not been breached by any of the warring parties up to the present.

A major factor in the success of this peace zone is the deep respect and adherence of the people to customary laws and indigenous justice systems, and the people's common alliance and loyalty to the datu and his council. The role of the *bahani* in keeping the agreement intact is also very important, because its stable institutionalization in the community has allowed the warring forces to respect the declaration for a long time.

In the book, **Cry Out For Peace: Social Psychological Notes on Peacemaking in Local Governance**, by the Ateneo Center for Social Policy and Public Affairs, the authors write:

“Local political peace making in the Philippines is still at a young stage, feeling its way in resolving conflicts that continue to rend the socio-political fabric of the nation. Attempts at community-based or indigenous peacemaking and local leadership peace initiatives are generally experimental, a case of trial and error. There is still much resistance to be found particularly among those tasked to engage the problem of insurgency through institutional power.”

The authors made some tentative suggestions for social peace making:

- ❑ Encourage the evolution of local creative ways of peacemaking through discussion and direct trial and error practice among various political and military groups.
- ❑ Actively support the right kind of local community leaders during electoral campaigns, and in the peace making effort when in the local government office.
- ❑ Assigning the right military field officers in the area.
- ❑ Optimizing the influence of the church in mediating situations of conflict.

From the experience of the Manobo of Arakan Valley, the following recommendations could enhance the peace process:

• **Documentation of Indigenous Justice System**

The documentation process should benefit from the initiative and consent of the communities involved. As part of capability building measures, the Manobo can undertake the documentation themselves through full participatory research, guided by responsible experts. The research can

serve to update and augment published material about the system.

Integration or Harmonization of Conflict Resolution Mechanisms

Harmonization at the level of the Barangay Justice Systems has worked for some communities. There are possibilities for institutionalizing traditional conflict resolution methods within the mainstream justice system, and there are sufficient bases in law that can support such an initiative.

• Promotion of Community Peace Building Processes

The IPRA and international instruments on the rights of indigenous peoples enshrine the policy that the social, cultural, religious and spiritual values and practices of the indigenous peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them, both as groups and individuals. The laws also mandate the respect for the integrity of the values, practices and institutions of the indigenous people, and that policies should be aimed at mitigating the difficulties they experienced in facing the new conditions of life, with their participation and cooperation.

Community peace building process is an aspect of the overall justice system of the Manobo. It is worthwhile to consider the "*Melars*" or go-betweens as spokespersons in the process of forging peace agreements among the warring parties, i.e. the military and the rebels. Continuing studies must be undertaken to understand the different roles of personalities in the Manobo social structure, particularly those that have a responsibility for peace building. These representatives must be involved in the peace process.

To conclude, it is worthwhile to cite the experience of the Indigenous Peoples of Guatemala in the peace process and how their community peace building processes have been recognized:

Guatemala: The peace process and Convention No. 169

Since 1987, the Government of Guatemala and the four insurgent groups which comprise the Guatemalan National Revolutionary Union (URNG) have engaged in peace negotiations. A milestone in the peace talks was the conclusion of a global agreement on human rights, under the auspices of the United Nations (UN), in 1994. It was also agreed that separate negotiated agreements would be held on the issue of the identity and rights of the indigenous peoples, socio-economic aspects and the agrarian situation, strengthening the civil society and the role of the army in a democratic society, and constitutional reforms and the electoral regime. On 31 March 1995, after six months of negotiations, the ILO, at the request of the UN, assisted the moderator in the negotiations. The Agreement covers a broad range of issues, including education, language, gender, cultures, traditional knowledge, land rights and common law. Mention of Convention 169 is made and both parties urge the concerned actors to facilitate the process of ratification of the convention, whereas the Government commits itself to promote its approval by Congress. The practical aspects of the Agreement are to be discussed by the various actors involved, including indigenous peoples, in the so-called *mesa paritaria* or joint committees. Since April 1996, the ILO, through a technical cooperation project Indigenous and Tribal Peoples Poverty Alleviation and Democratization, financed by DANIDA, has been assisting indigenous

organizations and support groups, and has engaged in legal advice, training and development work, to strengthen the capabilities to articulate and defend their views in peace-related activities. Another goal of the project is to establish conditions and opportunities for analysis and debate between the State, indigenous peoples, and other social parties of issues concerning indigenous peoples.



This case study was prepared by PANLIP- Tunggopang Pangkal ng Katutuhong Pilipino (Legal Assistance Center for Indigenous Filipinos) and MALUPA- Mammu Lumadnong Panaghina sa Arakan (United Marobo Tribes in Arakan), an indigenous peoples' organization in the southern island of Mindanao.

REFERENCES

Chapter 1

- Agra, Alberto C. Current Issues and Emerging Policy Trends in Local Autonomy, 46 *Ateneo L.J.* 1 (2001).
- Alim, Guiamel M. The Bangsamoro Struggle for Self Determination, Presented at the European Solidarity Conference on the Philippines at Hoidorn, Germany (June 23-25, 1995), available at: <http://www.philsol.nl/solcon/Guiamel-95.htm>
- Arao, Danilo A. What Constitutes Mindanao? IBON Facts and Figures – Mindanao (July 15 & 31, 2000).
- ARMM Oversight Committee Preliminary Report, First Oversight Committee Meeting for ARMM Pursuant to Republic Act No. 9054 (May 9, 2002)
- Baddini, Edilwaif T. Islam and the 1987 Philippine Constitution: An Issue on the Practice of Religion, 45 *Ateneo L.J.* 163 (2001)
- Ballahorno, John Jerico Laudel. Ancestral Domain Ownership and Disposition: Whose Land, Which Lands, 42 *Ateneo L.J.* 159 (1997)
- Bernas, Joaquin G. SJ. The 1987 Constitution of the Republic of the Philippines: A Commentary (1986)
- Candelaria, Sedfrey M. The Rights of Indigenous Communities in International Law: Some Implications Under Philippine Municipal Law, 46 *Ateneo L.J.* 273 (2001)
- Christian Conference of Asia, Minoritized and Dehumanized (Reflections on the condition of Tribal and Moros Peoples in the Philippines) Through the efforts of the International Study Program on Minorities on the Philippines, April 21-30, 1983
- De Leon, Hector S. and De Leon, Hector Jr. Administrative Law: Text and Cases (4th Edition, 2001)
- Del Rosario-Manzano, Jennifer T. Defining the IPs, IBON Facts and Figures, April 15, 2001
- Dikaya, Watamania. The Indigenous People's Rights, *Homeland* 12 (September-October 1998).
- Report of Erica-Irene Daez, Chairperson/Rapporteur of the Working Group on Indigenous Populations, United Nations, available at: <http://www.uit.no/ssweb/dok/series/n02/en/102daez.htm>
- Flavier, Senator Juan M. Sponsorship Speech of S.B. No. 1726, Guide to IPRA 51 (1999)
- Guan, Jojo and Guzman, Ros-E. IPRA: Legalizing Dispossession? IBON Special Release, March 1999
- Gutierrez, Eric. The politics of transition, available at http://www.c-r.org/accord/acc_min/gutier.htm
- Gutierrez, Ronaldo R. Reconciling IPRA with the Regalian Doctrine, 46 *Ateneo L.J.* 821 (2002)
- Jumaani, Datu Amlusion A. Overview of the Moro Struggle, available at: <http://www.philsol.nl/A00b/Jumaani-history-oct00.htm>
- Lingga, Aboud Syed M. Understanding Bangsamoro Independence as a Mode of Self-determination, available at: www.mindanao.com/kalinaw/peaceproc/bmorcindependence.htm
- Mable, Jing A. Uneasy road to Peace, Philippine Free Press, December 1, 2001
- Malonzo, Jennifer T. History of Marginalization, IBON Facts and Figures, August 31, 2001

Mercado, Leonard N. SVD, ed. *Working with Indigenous Peoples: A Philippine Resource Book* (1994)

Mogato, Manny. *Mindanao: Torn Between Autonomy and Independence*. Politik, May 1999

Muslim, Macapado A. *Sustaining the Constituency for Moro Autonomy*, accessed at http://www.o-r.org/accord/acc_min/muslim2.htm

Vitug, Marites D. *Bungling in Mindanao*, Politik 27 (May 4, 1999)

Chapter 3

Contada, Marcelo B. and Calama, Herbert T.C. *Creating Indigenous Council of Elders* (Administrative Order No. 02 Series of 1999). Ampusongan, Bakun, Benguet: Office of the Punong Barangay.

Manzano, Rodolfo U. *Letter to Ampusongan Punong Barangay Marcelo Contada*. La Trinidad, Benguet: Office of the Provincial Administrator. 24 May 2000.

Mateo, Rodolfo D. *Letter to National Commission on Indigenous Peoples Cordillera Regional Director Leilene Marie Carantes-Gallardo*. Quezon City: National Water Resources Board. 18 October 2002.

Pe, Cecilio L. and Tadiar, Alfredo F. *Katarungang Pambarangay: Dynamics of Compulsory Conciliation*. Quezon City: Publishers' Printing Press. 1979.

Pimentel Jr., Aquilino Q. *The Local Government Code of 1991: The Key to National Development*. Manila: Cacho Publishing House, Inc. 1993

Ronquillo, Rene B. *Letter to Sinacbat Barangay Council*. La Trinidad, Benguet: Sinacbat Hydropower Corporation. 25 September 2002.

Sacia, Bartolome C. *Affidavit of Protest and Opposition against Luzon Hydropower Corporation's Water Permit Application*. Bakun, Benguet. 7 November 2002.

Chapter 4

ECIP, *Case Study 1: The Manuvus of the Arakan Valley, Cotabato*.

F. Landa Jocano. *Filipino Indigenous Ethnic Communities, Patterns, Variations and Typologies*. Puriad Research House Inc., 2000

ILO, Geneva and International Center for Human Rights and Democratic Development, Montreal. *Indigenous and Tribal Peoples: A Guide to ILO Convention 169*. ILO, 1996

Laya, Jaime C. *Social Cohesion and Development, a Cultural Perspective*, in *Social Cohesion and Conflict Prevention in Asia*. World Bank, 2001

Manuvus of Arakan as recorded by the Kaliwat Theater Collective Inc., Arakan: Where Rivers Speak of the Manuvu's Living Dreams, Kaliwat Theater Collective, 1996

Mercado, Eliseo R. *Social Cleavages and the Peace Process in the Southern Philippines*, in *Social Cohesion and Conflict Prevention in Asia*. World Bank, 2001

Montiel, Cristina Jayme and Fr. Briones, Adelfo V. *Cry out for Peace: Social and Psychological Notes on Peace Making in Local Governance*, Ateneo Center for Social Policy and Public Affairs, 1995