

Granted that the formation of a tribal barangay would greatly improve the economic, social and cultural well-being of the IP communities, it is submitted that the geographical concept of a barangay should be reconsidered in favor of a tribal barangay in order to bring together the IPs regardless of their locations *within* the municipality.

V. CONCLUSION

The right to self-determination and governance would be rendered nugatory if the basic unit of governance cannot conform to the institutions of the IPs that the State has sworn to respect. Consequently, developments should be undertaken to uphold said rights to maintain the socio-cultural integrity of the IP communities.

Interfacing Indigenous Conflict Resolution with the National Justice System: The Bakun Kankanaey-Bago Experience*

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I. INTRODUCTION

The efficient and speedy administration of justice through the *tongtong* or through a mix of the *tongtong* and the *katarungang pambarangay* ensures peace, harmony and stability in the Bakun community. This is the reason why the community can proceed with other pursuits such as socio-economic and

* This was a case study presented during the first day of the Colloquium. Its present form was purely based on the presentation of the Mr. Beta-a and the outline he provided to the Colloquium Secretariat Committee, headed by Ms. Jill Marie Lopez.

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human resource development. The result of this study¹ may help give one model for the continuing search for efficient and effective justice systems, which continue to elude many of us in this country. Further, the result of the study may also help other indigenous communities to strengthen, if not to revive, their own traditional justice systems.

II. BACKGROUND INFORMATION ON THE *Tongtong* (BAKUN SETTING)

A. Features of the *Tongtong* Justice System

The *tongtong* is a justice system based on consensus. The system has been passed on from one generation to the next through venerated ancestors. Consequently, it has been accepted as partly sacred and unchanging. Nobody knows who instituted the *tongtong* procedures and system and whether the *tongtong* has ever been amended. What is clear is that the system existed in the memory of wise, old men and women called the *Papangoan*, who are considered to be the best arbiters in the village.

Public opinion enforces whatever decisions the best arbiters make. Interestingly, *Bain* or shame is the ultimate sanction for a crime and it makes living for a convicted person intolerable in a unanimously reproachful community. The *tongtong* covers all aspects of behavior - from marriage problems and land disputes to petty theft, murder, rape and physical assault. It must be noted that although it is moderated by the elders or *Papangoan*, the *tongtong*'s ruling process is participatory. Under the system, no one judges, and no one presides.

The *tongtong* primarily aims to restore cordial relationship between and among members of the community. Both litigants, (the complainants and the accused), are required to speak for themselves. Moreover, the public is encouraged to express its sentiments and comments on the statements of the protagonists. The whole family and the community to which the litigants belong are subject to the final judgment made during the process. The aggressor's culpability is attached to his or her family and community.

Public participation is spontaneous. There is no prior oath or assignment of roles for those who participate orally. The final decision is inferred from the pronouncements of the litigants. Participants who speak during the process are therefore mere moralists and not decision-makers. Litigants are consulted before imposing the penalty. Implementation of the decision rests on the community. Hearing is continuous until a decision is reached. As no one presides, the system possesses a participatory character.

1. The study covered the seven barangays of Bakun and cases and disputes recorded by the local police and the various Barangay Councils. The respondents interviewed were members of the *tongtong* justice system and the *Lupong Tagapamayapa*, who were actually involved in settling cases or disputes.

B. *Tongtong* Procedures

Together with their relatives, both contending parties go to the *tongtongan* or community court and sit among the elders and leaders of the community or village. As soon as both parties are duly accounted for, an elder opens the *tongtong* process with a *petik* or prayer. Offering a drop of *tapuy* or rice wine to the spirits, the elder, through the *petik*, would then say a prayer.²

After the *petik* prayer, an elder may start the session either by presenting the background and bone of contention of the case or by immediately calling the complaining party to present its case. A complainant, who cannot speak for himself 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. Any of the elders, however, can speak out to guide and direct the arguments when these are going nowhere or when arguments become heated. All speakers remain seated during the *tongtong* process. The council of elders or the community folk can reprimand anyone who stands up or points fingers at somebody.

The council and the community folk gathered also 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 alike, who joins in the discussion actually helps interpret the custom law under the *tongtong* system. The custom law interpreter, however, has no power to persuade or mobilize public opinion to back his or her argument.

Anyone who joins the *tongtong* deliberations acts essentially 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.

The *tongtong* system is participatory and no particular person or persons has or have been assigned beforehand to make judgment. It is done in public and in view of as many people as possible. This set-up makes transparency the norm and lying defacing.

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. At the same time, elders and representatives from both parties huddle in a corner to arrive at a common decision. The decision has to be unanimous for voting is not the norm.

2. The prayer is couched in the following form:

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

Once it reaches a decision, the group meets again, and an elder with a clear, loud voice announces the verdict. As both parties accept 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.

Indubitably, the *tongtong* is a speedy process. In fact, a decision can be reached in a day. To finally seal the decision, an elder again does a closing *petik* prayer.³

Traditionally, part of the penalty for the guilty party is providing the meals for the participants and observers of the *tongtong* process. This usually calls not only for a few chickens, but perhaps a pig or two, depending on the number of people gathered for the *tongtong*.

Another additional ritual is called *sabosab*, during which an additional chicken is killed and sacrificed for a special purpose — to cleanse whatever unsavory or inflammatory remarks uttered during the *tongtong*. An elder in the know facilitates the *sabosab* rite and he has to “read” the liver and bile of the chicken offered.

III. PRESIDENTIAL DECREE (P.D.) 1508⁴ AND REPUBLIC ACT (R.A.) 7160⁵

A. Presidential Decree 1508

P.D. 1508, also known as the *Katarungang Pambarangay* Law, was promulgated by the late 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 Philippines and is at the root of Filipino culture.⁶

3. The *petik* prayer goes:

Oh 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.

4. Presidential Decree 1508, An Act Establishing a System of Amicably Settling Disputes at the Barangay Level (1978).

5. Republic Act 7610, An Act Providing for a Local Government Code (1991).

6. *Id.* The complete text of the Whereas Clause of P.D. 1508 says:

WHEREAS, the perpetuation and official recognition of the time-honored tradition of amicably settling disputes among family and barangay members at the barangay level without judicial resources would promote the speedy administration of justice and implement the constitutional mandate to preserve

B. Republic Act 7160

Repealing P.D. 1508, R.A. 7160 or the Local Government Code of 1991 was subsequently enacted. Pursuant thereto, the Implementing Rules of the Local Government Code mandates that each barangay in the country to create a *lupon tagapamayapa*, composed of the *punong barangay* or barangay captain as chairperson and 10 to 20 members.⁷ The *lupon* shall be constituted every three years. The qualifications of the *lupon* members are simple. Aside from being actual residents or workers in the barangay, the members 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.⁸ The *lupon* shall bring controversies among barangay residents to “an amicable conclusion.” The creation of the *lupon* as a body of settling disputes is without prejudice to the settling of disputes among members of indigenous cultural communities through their traditional cultural structures like the *datus* or elders of their communities.

IV. CURRENT TRENDS AND FINDINGS

At present, five of the seven barangays (villages) of Bakun still resort to the *tongtong* practice *en toto*. These are Gambang, Bagu, Sinacbat, Kayapa and Poblacion. One of the reasons for retaining the system is that, they are used to the practice itself. Also, most litigants prefer that their case would not be documented because of the ritual involved in clearing themselves from the dockets of the police.⁹ The community is always willing to participate in the settlement process. Under P.D. 1508, however, only members of the *lupon* may speak. In addition, the *lupon* members are not properly trained to apply the circuitous process P.D. 1508 requires.

and develop Filipino culture and to strengthen the family as a basic social institution; *casia*

WHEREAS, the indiscriminate filing of cases in the courts of justice contributes heavily and unjustifiably to the congestion of court dockets, thus causing a deterioration in the quality of justice;

WHEREAS, in order to help relieve the courts of such docket congestion and thereby enhance the quality of justice dispensed by the courts, it is deemed desirable to formally organize and institutionalize a system of amicably settling disputes at the barangay level

7. Rules Implementing the Local Government Code of 1991, art. 196 (1992).

8. REVISED PENAL CODE, art. 152.

9. A ritual involved in clearing one's self in the dockets of the police called *lawit* requires a pig.

A. Process of Interfacing

At least two barangays, Ampusongan and Dalipey, however, have interfaced the *tongtong* with P.D. 1508 and R.A. 7160.

In accordance with the Local Government Code, the Barangay of Ampusongan created what it calls the Indigenous Council of Elders in 1999. The Council of Elders have sought to perform or observe many rules and responsibilities. For instance, complainants file complaints to the Office of the *Punong Barangay*. Upon filing the complaint, the complainant pays a P500 filing fee to the Barangay Treasurer. Further, when the attested copy of settlement is transmitted to the *Punong Barangay* within ten days, the *Punong Barangay* then 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 ten 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 or Councilwoman in the concerned sitios (subvillages) should be present with the Indigenous Council of Elders during the amicable settlement.

B. Reasons/Factors why Ampusongan and Dalipey interfaced the *tongtong* with PD 1508 and RA 7160

Barangays Ampusongan and Dalipey's residents are more acculturated with mainstream society. Thus, they tend to look at the *tongtong* as backward. They resort to the *Katarungang* or *Lupong Pambarangay* because they cannot afford the costs involved in filing cases before the higher courts. However, they interface the two systems because the *Katarungang* or *Lupong Pambarangay* procedures (particularly paper works) are still too complicated for the *lupon* members, most of them elementary and unschooled, to follow. In "marrying" the *tongtong* and the *Katarungang Pambarangay*, community members, particularly willing moralists, could participate. Now, at least the settlement processes are documented.¹⁰

The residents of Barangays Ampusongan and Dalipey see P.D. 1508 as an improvement of the national justice system, but they see it as not totally adaptable to the customary practice because of its paper works. They perceive the Local Government Code, however, as an improvement of P.D. 1508 because it permits the settling of disputes by the Council of Elders, which involves more members of the community.

10. Documentation, however, is optional.

C. Reasons Why the Kankana-ey-Bago Peoples Still Prefer To Retain The *Tongtong*

The peoples' social life still revolves around the aboriginal or indigenous culture. The extent of acculturating the Bakun people into the mainstream culture, particularly on current justice procedures, is still negligible. The elders are recognized as seats of traditional authority. In this connection, the *tongtong* system guarantees the restoration of cordial relations between and among members of a community after a dispute is settled.

This system also provides a speedy and low-cost delivery of justice and settlement of disputes. Moreover, under the *Tongtong*, while counseling is unsolicited, it is nonetheless sincere and meant to be internalized by the protagonists.

Unlike in the *lupon* procedures, documentation is not necessary in the *tongtong* process because word of honor and integrity are strong. In having to document proceedings and decisions as the *lupon* requires, community elders have to grapple with the difficulty of having to express and translate their decisions into the English language. Their difficulty with the English language may yet hinder community folk in articulating the very essence and substance of the decision.

D. *Tongtong* elements interfaced with the *Lupong Pambarangay* procedure

One *tongtong* element incorporated into the *Lupong Pambarangay* procedure is the spontaneous participation of *lupon* members. The *lupon* decides on the penalties, but always in prior consultation with the litigants. Moreover, the adoption of the *petik* prayer before hearing a case has been made.¹¹ The *petik* prayer, during which an elder prays to heavenly spirits as he pours a drip of *tapey* (rice wine) or other beverage, to finally seal the settlement of a dispute. Once a dispute is sealed through the *petik*, every misdemeanor is cleansed and cordial relations between and among the litigants resume.

V. CONCLUSIONS AND RECOMMENDATIONS

The low crime rate in Bakun can be credited to its amicable settlement of cases. Even Barangay Ampusongan, Bakun's most metropolitan community, for example, relies on the amicable settlement procedures of the *Lupong Tagapamayapa*. From January to November 2001, at least 19 civil and criminal cases (land disputes, physical injuries, malicious mischief, assault, etc.) in Ampusongan alone were referred to the Barangay Tagapamayapa for settlement. Of the 19 cases, 13 were amicably settled, one was withdrawn,

11. In some barangays, *Lupon* members and observers resort to Christian prayers in lieu of the *petik*.

and five were elevated to the Municipal Circuit Trial Court. Settling disputes amicably either through the *tongtong* or through the *Lupon* will definitely unplug the courts of cases. We can just imagine the consequence, for example, if all the 19 cases in Ampusongan for 2001 alone were referred to the courts.

To facilitate the interface of indigenous conflict resolution into the mainstream system of justice, it is submitted that local government units must recognize more individual members of the informal council, who possess wisdom in settling conflicts or disputes within indigenous peoples communities. They must also document customary laws that have been enforced, applied and tested in resolving conflicts within indigenous peoples communities.

Moreover, indigenous cultural communities should be able to resolve conflicts on natural resources and environment according to their respective customary laws. Local government units and concerned indigenous communities must also be informed and consulted about permits and franchises over the use, extraction and/or destruction of natural resources within indigenous peoples communities.

It is also necessary, for the promotion of this integration, that *Lupon* staff be encouraged to pen their settlement agreement in the local dialect if the English language proves to be a constraint in capturing the essence and substance of a settlement agreement; *Lupon* members and staff should also respect the option of litigants who prefer not to document the proceedings of their cases for some cultural or religious reasons.

The amicable way of settling disputes need not apply only in indigenous communities, but in non-indigenous lowland communities as well, if we are to help speed up the slow process of justice delivery in this country. Of course, the time-tested approach of indigenous communities like Bakun in settling their disputes must be documented as reference points in the search for good precedents and models.

Customary Laws on Biodiversity Conservation Among the Tagbanwa of Palawan*

Raoul M. Cola**

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WWF-Philippines has a written agreement with the Tagbanwa, represented by their organization *Ya Boses Ka Katutubo*, in Malampaya Sound, to undertake the research for the report. The written agreement is required under Republic Act No 8371 and its Implementing Rules and Regulations. The members of the organization provide the information contained in the report.

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