

## WITNESSETH THAT:

WHEREAS, it is hereby the policy of the State to protect the rights of indigenous peoples to their ancestral domains to ensure their economic, social and cultural well-being by recognizing the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains;

WHEREAS, IPRA provides that indigenous peoples have the right to claim their ancestral domains;

WHEREAS, claims over ancestral domains have been identified in various portions of some existing \_\_\_\_\_ (reservation site type), in particular: \_\_\_\_\_ (name);

WHEREAS, there is a need to ensure the peaceful and orderly implementation of IPRA in regard to the processing of IP claims over these ancestral lands and/or domains within land reserved and/or owned by the SUC's;

WHEREAS, it would be beneficial to all stakeholders to immediately address these claims in order to pursue educational, economic, and social development in these areas; and

NOW THEREFORE, in consideration of the foregoing premises the parties have agreed that they shall abide by the following GENERAL FRAMEWORK AND POLICY in dealing with claims over ancestral domains within land reserved and/or owned by the \_\_\_\_\_ (government agency/instrumentality);

1. The NCIP, in coordination with \_\_\_\_\_ (head department) and other appropriate agencies of government, shall initiate and undertake the survey for purposes of this MOU in preparation for the eventual processing of the claims in accordance with the provisions of IPRA;
2. The \_\_\_\_\_, through its Chairperson, hereby agrees to immediately facilitate the entry and access to the \_\_\_\_\_ (site) by the NCIP and such other agencies of government which will form part of a team tasked to conduct a survey of the areas claimed by the IP's;
3. NCIP shall request assistance from the PNP as the need arises for a peaceful and orderly conduct of its functions and to prevent any untoward incident during the survey; and NCIP and \_\_\_\_\_ shall form a joint technical working group to provide technical and secretariat support in the undertaking of the above-mentioned functions.

## Diverting the Mainstream: An Attempt to Reconcile Local Administration with IP's Right to Self-Governance\*

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## I. INTRODUCTION

The Local Government Code of 1991 (LGC) provides that "the barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities, and forum wherein collective views

\* This is an abridged version of the case study commissioned by UNDP-NCIP Program to PANLIPI. The study was done in collaboration with the Sulodnon of Barangays Busog and Culiat, Municipality of Valderrama, Antique. The research team was headed by PANLIPI lawyers, Attys. Danny Valenzuela and Victor Decida, assisted by PANLIPI Para-legal Alejo Zata and the staff of the Provincial Planning and Development Office. The Project was supervised by the PANLIPI Executive Director, Atty. Ma. Vicenta P. de Guzman and Institution Development Director, Atty. Christine A. Tomas-Espinosa.

Worthy of special mention are Messrs. Stanley Fabito and Mark Enojo for their thorough and accurate reconstruction of the article.

\*\* The author of this article is Christian Castillo, an intern of Tanggapang Panligal ng Katutubong Pilipino or the Legal Assistance Center for Indigenous Filipinos (PANLIPI).

of the people in the community may be expressed, crystallized and considered and where disputes may be amicably settled."<sup>1</sup> Because of these functions, the barangay, within the context of the right to self-governance and empowerment of the indigenous peoples (IPs), plays an indispensable role.

It is within this context of empowerment that the Indigenous People's Rights Act (IPRA) declares that "the State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development."<sup>2</sup> In this regard, the IPRA provides for the formation of a separate tribal barangay in accordance with the LGC.<sup>3</sup> However, this allusion to the LGC poses the fundamental problem of inconsistency for the policies enunciated in the IPRA are not adequately reflected in the former. This discrepancy gives rise to two dilemmas: 1) How should a tribal barangay be created? and 2) What structures and fiscal policies should govern the tribal barangays?

The right to self-determination would be rendered nugatory if the basic unit of governance cannot conform to the institutions of the indigenous peoples that the State has sworn to respect. Consequently, actions should be undertaken to uphold said right to maintain the socio-cultural integrity of

1. Republic Act No. 7160, The Local Government Code of the Republic of the Philippines, § 384 (1991). The text provides:

As the basic political unit, the barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community, and as a forum wherein the collective views of the people may be expressed, crystallized and considered, and where disputes may be amicably settled.

2. Republic Act No. 8371, An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds therefor, and for other Purposes, § 13 (1997). The pertinent provision states:

The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

3. *Id.* § 18. The section provides:

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 IP communities. This is the reason why the study sought to develop guidelines on how a barangay can be converted into a tribal barangay and identify what possible structures and policies should govern such tribal barangay. The study gathered information on leadership patterns, institutions for governance and processes for installing political leadership of the indigenous peoples, which information will be used in determining the possible structural and fiscal policies for governing the tribal barangay.

The continuing struggle of the IPs of the world to self-determination can never be over-emphasized. An important aspect of this struggle is the IPs' quest for self-governance in the pursuit of political, economic, social, religious and even cultural integrity, which has provided the impetus for widespread advocacy and initiatives for national legislation in order to actualize such aspirations. Regrettably, however, the establishment of tribal barangays pursuant to IPRA has been stalled due to the lack of implementing guidelines and established procedures. Issues on structure, administrative and fiscal affairs, selection of leaders and other governmental matters likewise need to be clarified. It has therefore become imperative that a careful analysis of the knowledge, attitudes and customs of the Sulodnon on mainstream governance and their tribal practices, and the possible areas of interface, be made in order to formulate workable policy guidelines on the effective creation of tribal barangays in pursuance to the mandate of IPRA on the IP's right to self-determination.

To address the issues presented, research was conducted to determine existing legislation and jurisprudence. Furthermore, focus group discussions (FGDs) and interviews were conducted in select IP communities in Panay, as represented by either the barangay captain or the tribal chieftain.

## II. THE CASE STUDY<sup>4</sup>

4. The study focused only on two barangays — Culiati and Busog, Valederrama, Antique, hence, whatever findings the study may produce may not be true to the other IP communities, as each IP community is in different levels of acculturation. However, the experience may still guide the process of developing the policy guidelines needed for the establishment/ creation of tribal barangays, or the conversion of mainstream barangays to tribal barangays. Owing to time constraints/ limitations, data were gathered through Focused Group Interviews and Informal discussions only.

Specifically, the case study aims to:

1. Come up with a concrete understanding of the knowledge, practices and attitudes of the members of the Indigenous Peoples of Barangays Culiati and Busog, Valederrama, Antique on Tribal Governance;
2. Come up with a concrete understanding of the knowledge, practices and attitudes of the IP members in Culiati and Busog, Valederrama, Antique on

For this perception survey and legal research, Focused Group Discussions (FGDs) and interviews were conducted in selected IP communities in Panay, as represented by either the barangay captain or the tribal chieftain, and their respective local government units. A copy of the interviewees and a matrix of the perception surveys included in the body of this report.

The discussions focused on four areas:

1. the IP concept of a tribal barangay;
2. their model and political structure;
3. their rights and obligations under a tribal barangay; and
4. their expectations from the tribal barangay and/or from the LGU.

The main thrust was to differentiate a tribal barangay from a regular barangay.

#### *E. Free and Prior Informed Consent*

A series of consultations was done among the residents of Barangay Busog and Culiati, Valderrama, Antique. On September 5, 2002, the PANLIPI met leaders of the two barangays and thoroughly discussed the purpose of the study with them. The Indigenous Peoples agreed to the research and to participate actively in its conduct. The document embodying the IP's Free and Prior Informed Consent was signed on September 21, 2002, after it was discussed at community level.

#### *F. The Locale and the Participatory Research Members*

Culiati is composed of 35 households with a population of 310. Busog on the other hand, is composed of 48 households with a total population of 320. The total area of both barangays based on their Certificate of Ancestral Domain Claim (CADC) is 6,700 hectares. The two barangays are more or less 36 kilometers from the town proper of Valderrama, Antique.

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mainstream barangay governance as provided for by the Local Government Code of 1991;

3. Identify issues/gaps between their knowledge and practices which could provide for policy guidelines in achieving and interface between tribal governance and mainstream barangay governance;
4. Propose guidelines which are not yet in existence in the declaration or creation of tribal barangays; and
5. Propose resolution of issues on the structure and fiscal policies that should govern the tribal barangay.

The participatory research members are recognized tribal and barangay leaders of the two communities. Twenty two leaders participated, ten from Barangay Culiati and 12 from Barangay Busog.

Participating in the case study as respondents are representatives from various Local Government units, including the LGU of the Municipality of Valderrama, Antique, the LGU of the Province of Antique, the past and present governors of Antique and the officers and staff of the past and present Provincial Planning and Development Office of Antique.

### III. PROCESS OF DATA GATHERING AND SCHEDULE OF CONSULTATIONS

Data were principally gathered through focused group discussions with the community leaders of Culiati and Busog, as well as informal discussions with Local Offices of the Municipality of Valderrama and the Province of Antique.

On September 21-22, 2002, the first discussion was held at the Municipal Hall of Valderrama. The twenty-two participatory research members from both communities were divided into four discussion groups. Using uniform guide questions, a team composed of lawyers and volunteer paralegals of the Center for Alternative Law of the University of San Agustin in Iloilo City, probed on knowledge, practices and attitudes of the participating tribal leaders on tribal governance, barangay governance, avenues for interface, problems and issues in both tribal and barangay governance, as well as related concerns.

Officials of the Municipality of Valderrama were also met and engaged in informal discussions on their views on the creation of tribal barangays based also on relevant issues in the guide questions for the focused groups. Another informal discussion was arranged among some officials of Valderrama and the Province of Antique on October 29, 2002. A round table discussion was done to further elicit information using another set of guide questions.

#### *A. Analysis and Interpretation of Data*

The data gathered from the focused group discussions and the informal interviews were collated and organized into a narrative, depicting the issues which were the subject of the guide questions.

Data were then presented and organized as follows:

Questions were propounded to the participants in focused group discussions on their tribal political structure, powers, functions, and qualifications of their tribal leaders or officials and the fiscal policy observed by the tribe.

Due care was observed in collating the information. Utmost attention was given to the translation of their responses in order to capture the exact information relayed by the informants with the least of errors.

From the descriptive presentation of the data, implications and recommendations were then drawn.

#### B. Validation

Consistent with the participatory approach with which the case study was conducted, the data as collated and interpreted were presented to the indigenous peoples concerned for validation.

### IV. PERCEPTION SURVEY AND LEGAL STUDY

#### A. Creation Of Tribal Barangays

The LGC provides that a barangay may be created by law or by an ordinance, subject to approval by a majority of the votes cast in the plebiscite to be conducted by the COMELEC in the LGU/s directly affected.<sup>5</sup> Hence, notwithstanding the population requirement, Congress may enact a law creating a tribal barangay,<sup>6</sup> but still conditioned on the plebiscite requisite.

5. R.A. 7160 § 385. The text provides:

A barangay may be created, divided, merged, abolished, or its boundary substantially altered, by law or by an ordinance of the sangguniang panlalawigan or sangguniang panlungsod, subject to approval by a majority of the votes cast in a plebiscite to be conducted by the Comelec in the local government unit or units directly affected within such period of time as may be determined by the law or ordinance creating said barangay. In the case of the creation of barangays by the sangguniang panlalawigan, the recommendation of the sangguniang bayan concerned shall be necessary.

6. *Id.* § 386. The section states:

(a) A barangay maybe created out of a contiguous territory which has a population of at least two thousand (2,000) inhabitants as certified by the National Statistics Office except in cities and municipalities within Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where such territory shall have a certified population of at least five thousand (5,000) inhabitants: Provided, That the creation thereof shall not reduce the population of the original barangay or barangays to less than the minimum requirement prescribed herein.

To enhance the delivery of basic services in the indigenous cultural communities, barangays may be created in such communities by an Act of Congress, notwithstanding the above requirement.

The Congress interpreted the phrase "political units directly affected" to mean the *whole* municipality.<sup>7</sup> The difficulty arising from this construction is on "how to muster the requisite majority votes given the level of concern and recognition of IPs in the present day Filipino society"<sup>8</sup>

On one hand, it is noteworthy that the Supreme Court has squarely decided the issue as to who should participate in the plebiscite. In *Paredes v. Executive Secretary*,<sup>9</sup> it held that "the acceptable construction is for those voters, who are not from the barangays to be separated, should be excluded in the plebiscite." On the other hand, the COMELEC was of the opinion that the plebiscite to be conducted for tribal barangays would not be different from that of regular ones. Hence, in its resolutions prescribing rules and regulations governing plebiscites to ratify the creation of barangays,<sup>10</sup> it 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.

Given these provisions of law and their interpretations, the inconsistency of the IPRA and the LGC is readily apparent for how can the IPs freely pursue their development when the creation of tribal barangays becomes a contentious issue with non-IPs. Foremost, the Internal Revenue Allotment of a regular barangay would be diminished when a tribal barangay is carved out of it because of the reduction in population.<sup>11</sup>

(b) The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The governor or city mayor may prepare a consolidation plan for barangays, based on the criteria prescribed in this Section, within his territorial jurisdiction. The plan shall be submitted to the sangguniang panlalawigan or sangguniang panlungsod concerned for appropriate action. In the case of municipalities within the Metropolitan Manila area and other metropolitan political subdivisions, the barangay consolidation plan shall be prepared and approved by the sangguniang bayan concerned.

7. Republic Act No. 9032, § 3.

8. For a more thorough discussion, see Valenzuela, *A Quest for Tribal Barangays: Finding a Workable Interface Between Indigenous and Local Governance*, HORIZONS (2000).

9. 128 SCRA 6 (1984).

10. See, e.g. COMELEC Resolution No. 3154, § 7 (2000).

11. R.A. 7160, § 285. In full, the provision states:

The share of local government units in the internal revenue allotment shall be allocated in the following manner:

(a) Provinces - Twenty-three percent (23%);

(b) Cities - Twenty-three percent (23%);

### B. Conversion Into Tribal Barangays

Converting regular barangays into tribal ones poses fewer problems than an outright creation because most, if not all, of the inhabitants of the proposed barangay are IPs. Furthermore, the officials in the municipalities Jamindan, Capiz and Valderamma are amenable to the idea of merely passing a resolution to convert the barangays inhabited by IPs into tribal barangays.

The Department of Interior and Local Government (DILG) has yet to establish rules with respect to such conversion. In this regard, the COMELEC was of the considered view that a resolution would suffice for conducting a plebiscite would necessarily be accompanied with high costs and delays in budgeting.

Another problem with a resolution-based conversion is the politics involved. For example, in Valderamma a municipal councilor has opined that the resolution creating the tribal barangays of Busog, Culiati and San Agustin was already in the Office of the Mayor. Upon inquiry with the Mayor, she said that the resolution was still under study because the Sangguniang Bayan is yet to comprehend the import of a tribal barangay.

(c) Municipalities - Thirty-four percent (34%); and

(d) barangays - Twenty percent (20%) Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population - Fifty percent (50%);

(b) Land Area - Twenty-five percent (25%); and

(c) Equal sharing - Twenty-five percent (25%) Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand pesos (P=80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population - Forty percent (40%); and

(2) Equal Sharing - Sixty percent (60%)

(b) On the second year:

(1) Population - Fifty percent (50%); and

(2) Equal Sharing - Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population - Sixty percent (60%); and

(2) Equal Sharing - Forty percent (40%). Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

However, a strong lobby from the IP communities themselves can overcome such difficulties.

### C. Structural and Fiscal Policies

Having established a tribal barangay, the attention shifts into the micro level — the internal administration of the barangay. The Implementing Rules and Regulations of the 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 (EJV) Procedure to effectively recognize the IPs' political systems.<sup>12</sup> The EJV, which is found in the Universal Declaration of Human Rights,<sup>13</sup> is a principle in international law recognizing the alternative ways of expressing the will of the people other than through secret vote.

However, despite such rule, Republic Act No. 9032 recognizes that in the event a tribal barangay is approved, the COMELEC shall also hold elections for officials of said barangay.<sup>14</sup> Thus, the law effectively disregards the declared policy of the State to recognize the rights of the IPs to preserve and develop their institutions.<sup>15</sup>

To realize the recognition given by the State to the values, practices and institutions of the IPs,<sup>16</sup> indigenous political structures should be integrated in the tribal barangays. Thus, according to the participants<sup>17</sup> in the FGD conducted in Valderamma, Antique, they prefer that the tribal chieftain

12. National Commission on Indigenous Peoples Administrative Order 1, Implementing Rules and Regulations of R.A. 8371, Rule IV, Part 1, § 8 (1998).

13. G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 21(3). The pertinent subsection provides:

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

14. Republic Act No. 9032, § 4.

15. PHIL. CONST. art. II § 22. The constitution states:

The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

16. Republic Act. No. 8371 § 13. The law provides:

The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

17. Doroteo Canja (Brgy. Busog) and Narciso Jurada (Culiati), Tribal Chieftains.

should be the head of the barangay. 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 chose 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<sup>18</sup> in Jamindan, Capiz were in accord. 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 were of the view that if the tribal leaders work in direct conjunction with the LGUs, projects directed to the IP communities would be efficiently administered.

In having 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. As maintained by the participants, the allotment would be used in improving the agricultural technology of the community and in upgrading their means of transportation. Hence, taking these into account, the right to determine and decide priorities for development is actualized.

#### D. Recommendations

Given the benefits that would accrue to the IPs by having a tribal barangay, it perplexes one why 5 years after the IPRA's enactment a tribal barangay has yet to come into existence.

Although Republic Act No. 9032 attempts to establish the first tribal barangay, funding problems have defeated the initiative. According to the COMELEC, funding for conducting the plebiscite comes from the LGU concerned. This presents a problem if the LGU does not include the expense item into their budget inadvertently, or otherwise. Since the creation of a tribal barangay is an initiative of Congress,<sup>19</sup> it would also be in its competence to include in the budget for the fiscal year the required disbursements. It is noteworthy that the initial draft of Republic Act No. 9032 provided that the COMELEC should defray the plebiscite expenses, however Section 7 of the Act shifted the burden to the municipality. Furthermore, the construction made by the Supreme Court in the aforementioned case of *Paredes v. Executive Secretary* should be implemented for it would give due recognition to the will of the IPs.

18. Gerardo Florentino (Agloloway), Romeo Ucag (San Juan), Julieta Balbino (Agbun-od), and Romulo Franco (Jaena Sur).

19. Republic Act No. 7160, § 285.

It was noted earlier that a resolution would suffice for the conversion of regular barangays into tribal barangays. In this regard, it would be of utmost urgency that the DILG promulgate rules to facilitate such conversion to avoid the situation presented earlier, wherein the change of classification becomes subjected to the caprice of the municipal council.

As expounded previously, recognition should be given to the indigenous political systems. Hence, the NCIP should expeditiously come up with the guidelines concerning EVF procedures to integrate said systems into the tribal barangay.

The barangays are given taxing powers<sup>20</sup> to provide income to the unit. However, given the level of economic development in most of the proposed tribal barangays, taxation as a form of income generating mechanism provides negligible revenue. Hence, in the distribution of the IRA, population should not be the controlling factor, but rather the level of development of the unit concerned.

An inquiry was made by the *Sangguniang Bayan* of Valderamma as regards the effect of the creation of tribal barangays to the comprehensive land use plan of the municipality as mandated by the LGC.<sup>21</sup> Considering

20. Republic Act No. 7160, § 152. The section provides:

The barangays may levy taxes, fees, and charges, as provided in this Article, which shall exclusively accrue to them:

(a) Taxes - On stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P=50,000.00) or less, in the case of cities and Thirty thousand pesos (P=30,000.00) or less, in the case of municipalities, at a rate not exceeding one percent (1%) on such gross sales or receipts.

(b) Service Fees or Charges - barangays may collect reasonable fees or charges for services rendered in connection with the regulation or the use of barangay-owned properties or service facilities such as palay, copra, or tobacco dryers.

(c) Barangay Clearance - No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the sangguniang barangay may impose a reasonable fee. The application for clearance shall be acted upon within seven (7) working days from the filing thereof. In the event that the clearance is not issued within the said period, the city or municipality may issue the said license or permit.

(d) Other Fees and Charges - The barangay may levy reasonable fees and charges:

- (1) On commercial breeding of fighting cocks, cockfights and cockpits;
- (2) On places of recreation which charge admission fees; and
- (3) On billboards, signboards, neon signs, and outdoor advertisements.

21. Republic Act No. 7160, § 447. The provision, in full, states:

human resource development. The result of this study<sup>1</sup> 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.<sup>2</sup>

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.

(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:

xxx

(vi) Prescribe reasonable limits and restraints on the use of property within the jurisdiction of the municipality;

(vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;

(ix) Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of the Fire Code;

(x) Subject to national law, process and approve subdivision plans for residential, commercial, or industrial purposes and other development purposes, and collect processing fees and other charges, the proceeds of which shall accrue entirely to the municipality: Provided, however, That, where approval by a national agency or office is required, said approval shall not be withheld for more than thirty (30) days from receipt of the application. Failure to act on the application within the period stated above shall be deemed as approval thereof;

(xi) Subject to the provisions of Book II of this Code, grant the exclusive privilege of constructing fish corrals or fish pens, or the taking or catching of bangus fry, prawn fry or kawag-kawag or fry of any species or fish within the municipal waters;

xxx

(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permits or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:

xxx

(vii) Subject to existing laws, provide for the establishment, operation, maintenance, and repair of an efficient waterworks system to supply water for the inhabitants; regulate the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protect the purity and quantity of the water supply of the municipality and, for this purpose, extend the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulate the consumption, use or wastage of water;

the provisions of the IPRA indicating that the domains occupied by the IPs have a specific purpose, *i.e.*, necessary to ensure their economic, social and cultural welfare,<sup>22</sup> the comprehensive land use plan should take into account such considerations. Furthermore, the Implementing Rules and Regulations of the IPRA deems that the area and resources in the domains are destroyed if: 1) 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.<sup>23</sup> Hence, any plans should be made with this caveat in mind.

The most pressing obstacle in the development of most IP communities is the absence of a land to farm. This is exacerbated by their inability to organize themselves into a barangay to enhance the delivery of basic services. A case in point is the Ati in Aklan, who are widely distributed in the municipality of Malay. They were given 25.9 hectares of land in Sitio Kurong in Barangay Cogon, which according to the Ati is infertile. Hence, they have to migrate as far as Negros to find work. Because of their dispersal to look for work, some barangays have as low as only 6 families of Ati, whereas the whole municipality has approximately 260 families.

(viii) Regulate the drilling and excavation of the ground for the laying of water, gas, sewer, and other pipes and the construction, repair and maintenance of public drains, sewers, cesspools, tunnels and similar structures; regulate the placing of poles and the use of crosswalks, curbs, and gutters; adopt measures to ensure public safety against open canals, manholes, live wires and other similar hazards to life and property; and, regulate the construction and use of private water closets, privies and other similar structures in buildings and homes.

22. Republic Act No. 8371, § 3 (a). The law states:

Subject to Section 56 hereof, ancestral domains refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

23. Rule III Part I § 4 ¶ 3.

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\*

Presented by Mr. Amos Beta-a\*\*

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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.

\*\* Mr. Beta-a is a member of the Bakun Indigenous Tribes Organization and was the presenter of this case study commissioned to the Bakun tribe by the ILO-UNDP.