and five were elevated to the Municipal Circuit Trial Court. Settling disputes amicably either through the *tongtong* or through the Lupon will definitely unclog 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*

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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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INTRODUCTION

Laws are necessary instruments of order for people to live together in a group. These are conceived and promulgated to govern the conduct of group members and their relationships. The mechanisms that enforce the law are both external and internal to the individual. The external mechanisms are the institutions and persons of authority and other members of the group. They impose sanctions to punish the law-breakers and reward the law-abiding. The internal mechanism within the individual is inculcated through the process of socialization within the group. It is a lifelong process that begins at birth where the individual learns to be a member of the group.

One of the lessons imbibed in the individual is the value or the shared concept of right and wrong as defined by the group and expressed in its system of law. Through socialization, the individual's behavioral pattern is molded to meet the standards set in the group's system of law. Because of such pattern, the individual can move around in the group and relate to other members with ease. In relating with other members, the pattern of behavior enables the individual to automatically act in a manner considered right under the group's legal system even in the absence of external mechanisms. The action of the individual reflects not only the values but also marks their distinction relative to the other groups.

I. COLONIAL INTERVENTION AND THE PHILIPPINE SYSTEM OF LAWS

A. Divergence of Collective Values and Existing System of Laws

When the system of laws evolved within a society, the collective values underpinning are imbibed upon each individual. But for societies with long colonial experience such as the Philippines, the evolution of the indigenous legal system is halted and replaced with the system that evolved in the society of the colonizer. The replacement is mainly meant to serve the interest of the colonizer and does not articulate the values of the colonized society. The resulting divergence between the operational system of laws and the values

of the colonized society makes enforcement largely dependent on external mechanism. The legal system has no roots on the individual whose pattern of behavior is customized to his own society's concept of right and wrong.

Operating only at the societal level, the system of laws is upheld only by an institutional apparatus copied from the colonizer's society and run by the persons educated under its norms. The continuous operation of such legal system even after the colonizers are long gone, has left behind a deep cleavage within the former colonies. The cleavage is seen on the wide variance not only between the formal and informal standards of behavior but also between the requirements of the laws and the extent of enforcement and compliance.

B. Integration of Collective Values in Customary Laws

The reach of colonial control in the Philippines. Due to geographical isolation and various degrees of resistance to such control. Many groups in the Philippines retained much of their way of life including their legal system. These groups presently constitute the indigenous people of the country.[1]

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1. Republic Act 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 (1997). For purposes of IPRA, the following terms shall mean:

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

   i) *Indigenous Political Structure* - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processed for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;

Their system of laws largely survive the colonial imposition of the Western legal system. The legal system of the indigenous people evolved separately from the imported legal system and may have gradually changed in form and function since the outset of the colonial period. But the changes are an adaptation to the changing environment of the group and not a result of massive displacement of societal structures. Such a legal system does not only represent the collective home-grown values, but also, they hold the wisdom of the people distilled from living together as a social group until colonialism cut short its further refinement.

The legal system of the country's indigenous people is a product of their own long and repetitive experiences. The lessons are slowly molded into customs practiced from generation to generation with little variation. Over a period of time, the practice develops into a hard set-pattern. Then, its suitability to common needs sharpens until it crystallizes into law. Unlike in mainstream society, most of the laws of the indigenous people evolved from common practice and have been carried out before promulgation. It thus results to common knowledge of the law among group members and ease in enforcement. These results are some of the reasons obviating the need to formally write the law. In its unwritten form, it is called customary law.

C. *Importance of Customary Laws to the Philippine Legal System*

The documentation of customary laws in the Philippines is limited, reflecting the country's low appreciation for its modern-day importance. But these laws hold the key in attuning the existing legal system to the basic values of its people. Reintegrating the legal system with the basic values will not only ease law enforcement and increase compliance, but will also diminish the gap between the formal and informal standards of behavior. But most of all, it will tighten the loose bond between the government who represent the legal system and the people who hold the basic values of society.

Another importance of customary laws lies in the strategies of order embedded in them. These strategies must be tapped to respond to many confounding national issues. Because these strategies have been developed and applied within the country, history has attested to their effectiveness. Through these strategies, the indigenous people have physically and socially sustained themselves through the centuries in spite the onslaught of colonial expansion, misguided government policies and other external threats. Indeed, customary laws are not just a country's link with its past; it is a heritage that the country must use to solve its present problems and chart its future direction.

II. THE *Tagbanwa* AND BIODIVERSITY CONSERVATION

A. *The Tagbanwa as Indigenous People*

The earliest human fossils found in Palawan are dated between 24,000 – 22,000 B.C.[2] The direct descent of the *Tagbanwa* from these early inhabitants of Palawan cannot be determined but their presence in the island before Spanish colonization is firmly established. Their use of the various ecosystems in the island is said to date back to as early as 1000 AD.[3] Their ancient alphabet and the artifacts indicating trade with other groups are evidence of their long and continuous habitation in the island. Their alphabet is widely studied among scholars and is still in use among the older *Tagbanwa*.[4] Chinese porcelain pieces of Sung (960–1279 AD) and Ming (1368-1644) dynasties have been unearthed in their places of settlement.[5]

The *Tagbanwa* are distributed from central to northern Palawan. They are reported in the municipalities of Narra, Aborlan, Roxas, Taytay, San Vicente, El Nido, Linapacan, Coron, Culion and the city of Puerto Princesa.[6] Their traditional domicile is along the coast but historical circumstances, the frequent depredation of Muslims and heavy in-migration from Luzon and Visayas[7] have pushed many of them to the uplands.

The *Tagbanwa* selectively interact with the outsiders, keeping their social structure and cultural integrity largely intact. The movement to the upland is particularly evident in central Palawan. But in the extreme northern portion, the *Tagbanwa* are still present along the coast using it as part of their domicile

2. For a more extensive study, see ROBERT B. FOX, TABÓN CAVE: ARCHEOLOGICAL EXPLORATION AND EXCAVATIONS ON PALAWAN ISLANDS (1970) (discussing the issue within the context of archeological history).
3. *See generally* J.H.Kress, *Contemporary and Subsistence Patterns on Palawan*, 41 CULTURAL-ECOLOGICAL PERSPECTIVES ON SOUTHEAST ASIA (1977).
4. For similar expressions, see Harold C. Conklin, *Preliminary Report on Fieldwork on the Islands of Mindoro and Palawan, Philippines*, 2 AMERICAN ANTHROPOLOGIST (1949); ALFRED MARCHE, LUZON AND PALAWAN (1970); Manuel H. Venturello, *Manners and Customs of the Tagbanuwas and other Tribes of the Islands of Palawan, Philippines*, 48 SMITHSONIAN MISCELLANEOUS COLLECTIONS (1907).
5. H. Otley Beyer, *Outline Review of Philippine Archeology by Islands and Provinces*, 77 THE PHILIPPINE JOURNAL OF SCIENCE 298-9 (1947).
6. NATIONAL STATISTICS OFFICE, 1995 CENSUS OF POPULATION REPORT NO. 2-72D: SOCIO-ECONOMIC AND DEMOGRAPHIC CHARACTERISTICS (1997).
7. For a more thorough discussion, see INDIGENOUS PEOPLE IN THE PHILIPPINES: KNOWLEDGE, POWER AND STRUGGLES (1996).

and food range. The word *Tagbanwa* means people of the village.[8] The *Tagbanwa* live in settlements usually composed of households who are related to each other by kinship.

B. *The Tagbanwa in the Study Site*

The study site is Malampaya Sound, a 602.6-square kilometer protected landscape and seascape prepared for inclusion in the National Protected Area System (NIPAS). It is located in the municipality of Taytay in northern Palawan. Apart from its endemic plants and animals, the value of Malampaya Sound to biodiversity conservation rests on its diminishing population of Irrawady dolphins. It is the only population of Irrawady dolphins in the Philippines.

Within Malampaya Sound are scattered *Tagbanwa* settlements. They call themselves *Tagbanwa* Tandulanon to distinguish themselves from other *Tagbanwa* groups. The *Tagbanwa* word for the coastal area is "*tandul.*" Until the heavy migration of outsiders that began in the 1950's, the entire area of Malampaya Sound was part of the *Tagbanwa*'s home range. But the present area of their ancestral domain is confined to a 7.8-square kilometer land covered by a Certificate of Ancestral Land Claim (CALC) signed in 1992.

The *Tagbanwa* obtain their requirements from the whole range of ecosystems within Malampaya Sound. They hunt and forage in the upland forest and cultivate swidden plots in the lowland forest. They glean and forage in the marshlands and mangrove areas. They fish in the rivers and sea. In all these ecosystems, they get materials for food, crafts, condiments, tools, dwelling and medicine. Because they rely on these ecosystems exclusively, the *Tagbanwa* use their resources in a manner that ensures the sustainability of its natural regeneration capacity. Underpinning their use is the belief on the oneness of the physical, social, and spiritual worlds. In the use of the resources, the needs of people, nature and spirits must be reconciled to maintain harmony. The needs of people are meet in such a way that the needs of nature and spirit are not compromised. The way the *Tagbanwa* integrate these various needs in a holistic manner is seen in their customary laws on biodiversity conservation.

C. *Tagbanwa Customary Laws and Biodiversity Conservation*

Biodiversity is the full expression of the variety of life forms on earth. The interconnection of these life forms makes human life possible on earth. The loss of biodiversity is a direct threat to human life. But at the same time

8. Robert B. Fox, Religion and Society Among the *Tagbanwa* of Palawan Islands, Philippines (1954) (unpublished Ph.D. dissertation, University of Chicago) (on file with the author).

human activities are posing direct threat to biodiversity. Such activities involve not only mass extraction, but also, destruction of ecosystems serving as habitats to innumerable plants and animals. The result is an extinction rate unprecedented in history since the mass extinction of the dinosaurs. The impact of biodiversity loss on all aspects of human life including food security, water availability and cultural variability alarmed the world. This resulted in policies and actions implemented at the national and international levels to conserve biodiversity.

The Philippines is one of the areas in the world that is considered as a biodiversity hotspot. While its biodiversity is very high, it is also the most endangered having lost more than 75 percent of its pristine ecosystems. In response to this situation, the Philippine government has adopted certain policies and various sectors have carried out actions. Most of these policies and actions, however, are patterned after strategies developed in the West. Using Western strategies as a model is to be expected from decision-makers accustomed to looking for external solutions to internal problems. While biodiversity loss is intensifying, the strategies to deal with it are still in the experimental stage. But through their customary laws, the *Tagbanwa* have been implementing workable strategies of biodiversity conservation long before it became an international and national issue. These experience-tested strategies are already incorporated into their daily life and for generations, thus thwarting the loss of biodiversity in their area.

III. Biodiversity Conservation in the Customary Laws of The *Tagbanwa*

A. *Principles and Strategies of Biodiversity Conservation in Tagbanwa Customary Laws*

The multiplicity and ingenuity of the customary laws that the *Tagbanwa* use to conserve biodiversity cannot be completely known. Nonetheless, the principles and strategies behind these laws can be seen in a sample of these laws in five resource uses: crop cultivation, marine resource extraction, medicinal application, honey gathering and house building. Five principles are behind the strategies: waste prevention, precautionary management, sustainable harvesting, user's pay arrangement and natural pattern replication.

1. Waste prevention: The resources harvested must be entirely used such that no waste is generated;
2. Precautionary management: The methods of resource extraction must have built-in measures to prevent or mitigate adverse impacts and ensure that natural processes are not disrupted;

3. Sustainable harvesting: Resources can be harvested only to the extent that it will not deplete the supply and disturb its natural regeneration capacity;

4. User's Pay Arrangement: The greater the amount of resource used, the higher the cost of compensation given to other potential resource users for foregone opportunities.

5. Natural Pattern Preservation: The patterned processes that preserve and maintain nature must be preserved in implementing an intervention to avoid adverse impact.

The strategies that implement waste prevention are harvest sharing and total utilization of the product. By sharing the harvest with kinsmen and other community members, excess is used up and the number of harvesters are reduced. Through total utilization, all parts of the products end up being used, thus eliminating any waste.

The principle of precautionary management is executed in four strategies. Extraction scheduling and use of multiple species prevents over-exploitation of a species and secures it from stock collapse. The no-take zones are operated to function as a bank of genetic materials for replenishment in case of stock collapse. Hedge measures are carried out to prevent the realization of damage from an activity with potential risk to the environment.

In sustainable harvesting, the *Tagbanwa* differentiates between the producer unit and end product in appraising the resource. For instance, the tree is a producer unit and the sap is an end product. They collect the end product but preserve the producer unit to ensure continuity of supply.

The user's pay arrangement considers the needs of other community members and the environmental spirits sacrificed for one to use the resource. The resource user compensates other community members by feeding them as part of resource use preparation and sharing with them the harvest. For the spirits, the resource user conducts a ritual and gives an offering in exchange for the use of the resource.

In preserving natural processes, the *Tagbanwa*'s extensive knowledge on the physical and biological environment comes to fore. One strategy is mix-cropping that involves growing a wide range of plants of various uses and habits. The variety of plants provides the swidden plot high floral diversity, a patterned characteristic of a tropical ecosystem. Another strategy is to install water and soil conservation mechanism composed of slope suitability crop selection, intercropping, multi-cropping, mulching and hedgerow. Extraction scheduling is not only a precaution against stock collapse. It also preserves the natural process because it leaves animals used for food undisturbed during their breeding and rearing season.

B. Application of the Biodiversity Conservation Principles and Strategies in Crop Cultivation

The *Tagbanwa* get most of their starch requirements from a swidden plot. Their main crops are rice, sweet potato, cassava and banana. The plot holds as many as 50 species of plants that creates a multi-layer canopy protecting the soil from impact of rain. The extensive root network that develops also protects the soil from run-off and facilitate groundwater recharge. The plants also support various dependent organisms preserving the food chain even as it is used for cultivation. Although the multi-floral characteristic of a swidden plot maintains the natural processes, it is still an intervention on the natural state. The *Tagbanwa* manage a swidden plot using their customary laws to conserve biodiversity and harmonize their needs with the requirements of nature. The application of these customary laws are seen in selected activities comprising the management of a swidden plot.

The application of customary laws starts at site selection. Not all sites can be cultivated even if it is physically suitable. Sites identified as spirit abode are part of no-take zones. If it is not a spirit abode, the site must be outside the primary forest and areas with climax-stage trees.[9] This law does not only

9. Examples of *Tagbanwa* Customary Laws on Crop Cultivation Relevant to Biodiversity Conservation 2002:

The area of a prospective plot must not be located in primary forest and areas with climax-stage trees because the amount of time and effort required for clearing is much more than in other areas.

Before opening the plot, the site must be tested to ensure that it has enough humus soil to support the crop and prevent further erosion of weathered soil.

The person opening a plot must organize a clearing crew composed of relatives and community members to hasten the clearing period. The clearing crew has to be provided with food for breakfast, morning snack, lunch and afternoon snack.

The clearing crew must end their work by late afternoon and leave the plot before nightfall. The animals out to feed before nightfall must not see a person in the plot.

The bigger trees are cut before burning and the logs are set aside. The logs are bundled so that these can be used as markers of planting areas boundaries and fence to protect the plot from wild pigs.

Two fire lines around the plot have to be set before burning the vegetation to contain the fire. The inner fire line that follows the boundary of the plot is about two meters wide. The outer fire line is at three meters.

After planting the rice seeds, the area is covered with fresh branches and leaves to regulate water flow and deflect the impact of rain. Too much

spare the primary forest and its functions in conserving biodiversity. It also responds to the principle of waste prevention and user's pay arrangement. Clearing the primary forest entails the cutting of greater volume of trees than in the secondary forest. Because such volume will exceed the boundary marking and fencing requirement of the swidden plot, waste is generated. The bigger trees in the primary forest also need more labor input during clearing. Because the person who opens the swidden plot provides the food for the clearing crew, it means higher expense will be incurred.

When the site is selected, the person who opens the plot has to test the soil to ascertain that it has accumulated enough humus to support a crop. A small bamboo tube of about half a meter long is cut diagonally on one side. The sharp side is stabbed to the ground. When it is lifted out, the soil must fill at least half of the tube for the area to be considered ready for cultivation. If less than half of the tube is filled, the ground is considered too weathered for crop production. The result of the test provides options for precautionary measures. Clearing a site with weathered soil exposes it to erosion that makes the restoration of original vegetation cover harder.

The investment required to clear a swidden plot automatically restricts the size of the area opened. The bigger the size of the plot, the more persons needed to compose the clearing crew. Although the crew is usually composed of kinsmen, the person who opens the plot has to provide them with breakfast, lunch and two snacks. The food is not only compensation for the labor rendered but also a user's pay for the land. The window for clearing operation is limited because the plot must be ready for planting when the first of the monsoon rains comes during May. It takes three to seven days to clear a hectare depending on the size of the crew. If only one

water action erodes the soil and ruins the seeds. When it is sunny, the covering minimizes evaporation that may dry the area around the seeds.

Cassava must be planted around the area devoted to rice to protect it from wild pigs, conserve soil and regulate water flow. It is planted in the higher slope because its root's stronger system holds soil more firmly and slows down the flow of run-off ensuring that it will not flood or uproot the rice crops in the flatland.

A person with harvestable rice crop must not refuse an offer to help in harvesting. The harvester gets half of the harvest if it is less than one cavan. If the harvest is more than one cavan, the harvester gets one-third as a share.

The prescribed rituals must be performed in opening and closing the swidden plot, planting and harvesting rice and planting sweet potato, cassava and banana. The rituals ensure bountiful harvest and continuous patronage of the spirits.

person will do the clearing, it will take about a month to do a hectare. Site clearing is usually done from February to April.

Work for site clearing starts at 5:30 in the morning and ends between 10:00 and 11:00 o'clock to minimize exposure to heat. It resumes 1:30 in the afternoon and continues until 4:30. Everybody must be out from the swidden plot before nightfall. The wild animals that feed before nightfall must not see anybody working in the swidden plot. It is believed that if a person is still in the swidden plot by nightfall, the crops will be afflicted with disease and rice grains will be empty. But this prohibition also prevents disturbance to the feeding routine of wild animals and preserves a natural process.

To clear the site, the bigger trees are first cut. The logs are bundled and placed as markers in the boundaries between planting areas. These are also used to fence off the swidden plot from wild pigs. Used as such, the cut trees are not wasted. Whether used as a marker or a fence, the bundled logs are laid down horizontally as precautionary measure against erosion. In this position, the logs serve as a retaining wall holding the soil against the run-off. When the logs are not enough, bamboo poles are used for fencing. The poles are stuck to the ground in line and close together.

When the trees are cut, the small branches and leaves are left to dry and burned with the remaining vegetation. But before burning, fire lines are set to contain the fire within the designated area and spare everything outside of it from burning. Two fire lines are set for maximum security. The inner fire line that follows the boundary of the swidden plot is about two meters wide. The outer fire line is wider at three meters. Burning is necessary because the ash fertilizes the seeds planted. While setting the fire line is a precautionary measure, the burning makes use of the vegetation debris and prevents wastage.

After burning, rice seeds are planted. The pole is used to poke a hole on the ground. Five to ten rice seeds are dropped on the hole. The holes are set about 18 centimeters apart. The holes are left open until the ashes from the burned twigs and leaves cover these through wind and water action. The planted area is covered with branches and leaves of trees. Serving as mulch, the covering regulates water flow and deflects the impact of the rain. Too much water action erodes the soil and ruins the seeds. When it is sunny, the covering minimizes evaporation that may dry the area around the seeds. The covering performs the same function as the canopy of the forest and preserves natural processes.

The *Tagbanwa* plant 14 varieties of upland rice. The rice varieties planted are chosen based on the needs of the household, suitability to the planting area and meteorological assessment. For instance, four to seven varieties of different maturity period may be planted to have a harvest at different times.

The rice varieties with longer stem are planted in flat areas where water flow retards while those with shorter stalk are in the sloping part. Matching rice varieties and physical conditions highlight the mastery of the *Tagba:wa* in adapting rather than controlling the changing moods of nature.

Other crops in the swidden plot are likewise matched with the physical conditions and planted to ensure a conservation function. For instance, sweet potatoes and cassava are planted around the area devoted to rice to conserve the soil and regulate water flow. Because of its stronger root system, cassava is planted in the higher slope to hold the soil more firmly. At the same time, it slows down the flow of run-off ensuring that it will not flood or uproot the rice crops in the flatland. This way, cassava performs the same functions as other shrubs in the forest. The cassava is also planted so that the wild pigs can feed on it instead of the rice crop.

During harvest season, most community members are busy in their swidden plots. The household members usually do the harvesting of their own crop. But if somebody offers to help in the harvesting, refusal is said to bring bad luck. The helper gets half the harvest if it is less than a cavan. If the harvest is more than a cavan, the helper gets one-third. The helper gets more when the harvest is less to make it worth the effort and to ensure that his household will not go hungry. Harvest sharing prevents wastage. It not only increases the chance that the whole harvest is consumed, but also, it makes the cultivation of a large swidden plot impractical, reducing pressure to use areas with natural cover for cultivation.

The required ritual regulates expansion of the cultivated area. Through the ritual, the swidden cultivator compensates the spirits for the use of the land. The ritual is performed to express one's intention. The intention may be any of the following: (1) seek permission to use a resource; (2) pay for a resource to be used; (3) atone a transgression; (4) protection from the spirit's adverse activities; and (5) court the spirits blessing for an undertaking. For swidden cultivation, a ritual is performed to open and close the swidden plot at the start of planting and harvesting. A ritual must be done as prescribed or the offended spirits will bring bad fortune.

The rituals make evident the view among the *Tagbanwa* of the interdependence of the lives of physical, social and spiritual beings. The action of one affects the other. This view prevents them from destroying the natural mechanisms that generate resources. To upset the natural order is to upset the social and spiritual order. For this reason, the *Tagbanwa* designed resource use practices that promote biodiversity conservation.

C. *Application of the Biodiversity Conservation Principles and Strategies in Marine Resource Extraction*

When the *Tagbanwa* are concentrating on swidden cultivation during the rainy season, they meet their protein requirement mainly through hunting. They only venture to the coast to glean and collect edible plants and animals to break the monotony of eating meat.

After the rice harvest, the intensity of farming and hunting activities tapers off. The *Tagbanwa* move to the coast starting October as the northeast monsoon brings in calmer weather. They leave their more permanent houses in the swidden site and construct lean-to in the coast for the fishing season. At this time of the year, the water is not only less choppy, but also more salty. When the salinity is high, more fishes are found closer to the shore.

The *Tagbanwa*'s customary laws on marine resource extraction contain the same principles and strategies as in other resource use activities. For instance, performance of ritual in launching the fishing boat operates the user's pay principle. The sharing of the catch among community members prevents waste. Some areas are no-take zones. These areas are considered spirit abode and are off-limits to fishing.

The customary laws on marine resource extraction best highlight the application of precautionary strategies of multiple species use and extraction scheduling. Multiple species is used from boat building to selection of target species. For boat building, nine species of timber are considered suitable. Each species is graded in terms of the durability that can be made out of it. The target species for collection includes a wide range of organisms in the rivers, marshlands, mangrove area, tidal flats and marine waters. There are species that they harvest at anytime. Among these species are groupers (*lapulapu*) and siganids (*samaral*).

Many species are harvested by schedule. By scheduling the extraction activities, the *Tagbanwa* provide time for resource restoration. The natural rhythm under various time frames determines the appropriate time for extraction. The time frame can be a day.[10] Within a day, the octopus and

10. Selected Coastal and Marine Species and Appropriate Harvest Time Identified by the *Tagbanwa*: 2002

Species	Harvest Time
Alimango (mangrove crab)	New to quarter moon and low tide
Alimasag (blue crab)	New to quarter moon
Tamilok (seq borer)	Feb- May at medium or low tide
Kabitzen (mussle)	Low tide
Embaw (mangrove clam)	June-October at low tide
Munglo (clam)	Low tide

various types of shellfishes should be collected during low tide. The time frame can be a month. The position of the moon points out when is the time to harvest. The blue crab (*alimasag*) is harvested only at a time between the new and first quarter moon. The best time to fish spotted scot (*kitang*) is between half to full moon.

Harvesting is done on a specific time of the day within a specific time of the month. The mangrove crab (*alimango*) is only harvested when the low tide coincides with time between the new and first quarter moon. The window for harvesting may be only a month or two within a year. For instance, anchovy is harvested between on May and June while squid is reserved between June and July. The appropriate time may be a specific time in a month or two. An example is the sea borer (*tamilok*) which should be gathered only between February and May when the tide is either medium or low.

The timing of the harvest of various species is determined based on the *Tagbanwa*'s observation of natural patterns. The blue crab, for example, is said to have more meat when the moon is new compared to other times. The shellfishes are certainly easier to collect when the tide is low. The barracuda tends to swim close to the shore between February and April. The airborne ashes from the swidden plot carried to the sea reportedly attract the barracuda. There are also species that the *Tagbanwa* do not intentionally hunt. One of them is the sea cow. It is difficult to catch because the members of the herd reportedly help each other out in outwitting the fisher. Besides, people are sympathetic to the *dugong* because its cries are human-like.

D. *Application of the Biodiversity Conservation Principles and Strategies in Honey Harvesting*

Among the bee products, honey is the most widely used and harvested. The *Tagbanwa* developed customary laws on honey harvesting to ensure sustainable yield. It is a forest product with multiple-use to the *Tagbanwa*. It

Salawaki (sea urchin)	May-June during low tide
Pugita (octopus)	Low tide
Pusit (squid)	June-July
Hasa-hasa (mackerel)	May-June
Dilis (anchovy)	May- June
Barakuda (baracuda)	March –April
Kanduli (cat fish)	June-July
Salay-salay (caranx)	April
Kitang (spotted scot)	From half to full moon

is consumed at home as food and medicine or sold to generate cash. Apart from honey, the *Tagbanwa* collect bees wax and larvae. The wax is used to make candles and sealant. The larvae are eaten as food. Their intense use of bee products indicates their high dependence on the upland, lowland and mangrove forest where the bees are.

The *Tagbanwa* harvests honey from five types of bees. Each type has its own habitat and habits. But harvesting of honey from certain species of bees has its time. The honey of two species is harvested from December to June. Harvesting intensifies only from March to April for one species and from May to June for another.

Harvest time coincides with the dry season. During this season, many forest trees are in bloom and honey is considered to be in best quality and quantity. Furthermore, the thicket is less dense providing easier access to the hives. Although honey from two other species is harvested throughout the year, December to May is also considered the best time to harvest it. The honey from one species is best harvested in November.

When rainy season comes, harvesting of honey slackens. Many hives may be empty of honey. During this season, the bees rebuild their honeycombs. The abundance of water hastens the recovery of plants damaged during harvest. It also brings back to the forest its luxuriant growth that makes honey harvesting difficult. The *Tagbanwa* return to their swidden plots to grow crops while water is available. Meanwhile, the forest is left to restore itself so that honey can be harvested again in the coming dry season.

Honey is harvested with minimum disturbance to the bees and their habitat. The collector must not cut or burn the host tree although branches can be selectively cut. The hive must not be destroyed so that the bees can return after the harvest and easily re-colonize it. Cutting down the tree or destroying the hive can result to exodus of the bees and scarcity of honey supply. To have a sustainable harvest, the natural regeneration capacity of the resource must be preserved. At the same time all the organisms using the tree or its parts as habitat or food are protected.

Harvesting is done in the morning before 9:00 o'clock when the bees level of aggressiveness is still low. It rises with the heat of the day. To drive away the bees from the hive, coconut husks are burned to produce the smoke. The burning husk must be managed to produce only smoke and no flames must flare up. The flame can burn the hive, kill the bees and prevent them from re-colonizing the hive.[11]

11. Examples of *Tagbanwa* Customary Laws on Bee Product Harvesting Relevant to Biodiversity Conservation: 2000.

The hives in big trees involve a more elaborate harvesting process. The first step is to remove the thicket around the tree within seven days. Afterwards, the area is fumigated with smoke from native incense. Then, the tree trunk is rinsed with water mixed with roots of *pandag*, a tree that is enclosed by roots of another tree. The trunk and area around the tree are cleansed to entice the spirits to get down and give way to the harvesting operation.

The harvesting ritual must be done on a Tuesday or a Friday because these days are considered favorable to the spirits. The bees are less inclined to bite once the ritual is done. The ritual again serves as part of the compensation for the use of the resources. Big trees can hold as many as seven hives yielding as much as 10 gallons of honey.

E. *Application of the Biodiversity Conservation Principles and Strategies in Using Plants for Medicinal Application*

The *Tagbanwa* have prescribed remedies for all ailments known to them. Plants are the main source of these remedies. An example of these plants show that the *Tagbanwa* depend on all types of ecosystems for remedies.[12] In

Honey and other bee products can only be harvested on the designated time of the year. The time of the harvest varies according to the bee species.

The collector must not cut or burn the tree harboring the bees. The branches can be selectively cut. The hive must not be destroyed so that the bees can return after the harvest and repair it with ease.

In producing smoke to drive away the bees from their hives, the burning coconut husk must be managed to prevent flames from flaring up. The flame can burn the hive, kill the bees and prevent them from re-colonizing the old hive.

For hives located in big trees, the prescribed ritual must be performed to entice the spirits to vacate the tree and ease their passage to the ground before harvesting can be done.

Harvesting of bee product from big trees can only be done on Tuesday and Friday because these days are propitious to the spirits.

12. Examples of Medicinal Plants Used by the *Tagbanwa*, Parts Used, Habit, Habitat, Preparation Process and Relevant Illnesses: 2002.

Local Name	Part used	Habitat	Preparation Process	Illness Applied
Apalang	Bark	Primary forest Secondary forest	Boiled and drunk	Diarrhea

using these plants, the *Tagbanwa*'s practice of sustainable harvesting is seen. For medicinal application, the customary laws of the *Tagbanwa* prescribe to use only parts of the plant.

The parts are extracted without destroying the whole plant and preserving the source of medicine. Because the plant is left whole, it continues to perform its function in the ecosystem after the slight disturbance during harvesting. The harvesting is carried out without displacing any organism or interrupting a natural process where the plant is a part. The parts used are leaves, flowers, bark and sap. Leaves and flowers are picked from the plant. The bark is obtained by scraping a branch and sap is squeezed out from a branch cut from the plant. The plant parts are either applied directly or processed by mashing, boiling or grilling.

F. *Application of the Biodiversity Conservation Principles and Strategies in House Building*

The *Tagbanwa* usually have a house in the village and a temporary shelter in the swidden plot. A lean-to shelter may be constructed close to the shore during the fishing season. The house of the *Tagbanwa* is not just made for shelter and protection from external threats. It is also a tool to harness the positive energy in the environment and enhance the capacity of the occupants to have a good life. For the house to have this function, customary laws in site selection and construction are observed. In these laws, the principles and strategies to conserve biodiversity are embedded.

Sambung	Leaves	Cultivated area	Boiled and drunk; mashed for juice; direct application of leaves	Cough Fever Headache
Tayonton	Sap	Secondary forest	Applied directly to the eyes	Blurry eyes
Kamantige	Flower	Cultivated area	Applied directly to the wound	Wound
Duhol-duhol	Bark	Mangrove	Boiled and drunk	Stomach-ache Headache
Pinpin	Leaves	Primary forest	Burned to produce smoke	Skin disease
Bakaw	Bark	Mangrove	Boiled and mixture is drunk	Cholera

When a site is selected for a house, a ritual is performed to determine the spirits' inclination. If the site is considered auspicious, a more elaborate ritual is performed before construction begins. The purpose of the ritual is to imbibe the house with positive characteristics and shield it from negative events. The positive characteristics are harmonious family relationship, obedient children, material sufficiency and self-efficacy. In the customary laws on house construction, great care is exercised for the same purpose but the implementation of these laws also conserves biodiversity.[13]

In the customary laws on house construction, emphasis is put on consistency. This emphasis is seen in four laws: (1) the house's opposite sides must be of the same length to have family harmony; (2) the floor must be laid lengthwise to have obedient children; (3) the placement of the beam and the post must be uniformly done or the household will experience hardship; and (4) the tying method used must be uniform throughout the house. The consistency eases the estimation of the materials needed for the house and results to more efficient use of materials. Efficiency reduces waste and conserves the materials.

A customary law on roof installation attains the same result. A law states that the palm leaf shingles on the walls must have their lower end pointing downward or the household will never have enough to sustain itself and will always be dependent on neighbors. The part of the palm leaf on the side of the tip is smaller and less sturdy than the other side. If the side of the tip is used, more leaves are needed for roofing. Furthermore, the roof will have a shorter lifespan and a new roof requires new materials. The prescription of the law reduces not only waste but also resource exploitation.

13. Examples of *Tagbanwa* Customary Laws on House Construction Relevant to Biodiversity Conservation 2002:

The opposite sides of the house must be of the same length to have family harmony;

The floor must be laid lengthwise to have obedient children;

The placement of the beam and the post must be uniformly done or the household will experience hardship;

The tying method used must be the same throughout the house;

The palm leaves shingles on the walls must have their tip pointing downward or the household will never have enough and be dependent on neighbors;

The floor must be elevated from the ground for the occupants to be safe from the heat emitted from the ground. Such heat causes sickness such as gas pain and cough;

The materials used in building a house must be a combination of hard and soft so that the energy produce will not overpower the occupants.

One customary law prescribes that the floor must be elevated from the ground so that the occupants are beyond the reach of the heat from the earth that causes certain ailments. Raising the floor high from ground provides space in between. The space serves as corridor for the wind-borne seeds, dust-attached nutrients and small winged animals. Bigger animals can use the ground below for passage. Because of the space, the obstruction that the house creates to natural processes is mitigated.

Although the *Tagbanwa* uses a wide range of materials for housing, these are all derived from plants. The post is usually a hardwood but the rest of the frame uses soft wood. Palm fronds and shingles or thatched grass and rattan leaves are used for roofing. Bamboo and palm timber are used for walling and flooring. The mix of materials follows the customary laws that require the mixing of hard and soft materials in construction to give the occupants self-efficacy because the energy of the house will not overpower them.

This law is based on the belief that the physical environment influences the characteristics of occupants and vice versa. But at the same time, the law conserves biodiversity through the use of multiple species. Hardwood is used sparingly because it takes longer to grow. Soft materials (softwood, bamboo, palm leaves and grass) are used more intensively because these are more common and can regenerate faster.

But the *Tagbanwa* do not use all trees as construction material. Some are taboo such as Ficus balete. The tree and its immediate vicinity constitute a no-take zone because of its association with the spirits. But the tree also has a very high ecological value because of the number of animals depending on it for food. Its flowers that bloom in April feed a number of insects. A variety of birds and mammals eat its fruit. Among the birds are the doves, crows, myna, oriole and hornbill. The mammals are the civet cat and the bear cat. The tree also has a high soil-holding capacity, reducing erosion and sediment flow to water bodies that smother aquatic organisms.

IV. Use of Customary Laws in Global and National Biodiversity Conservation Policies

A. Indigenous People and UN Convention on Biodiversity

The universal recognition of the role of indigenous people in conservation in the context of self-determination is enshrined in the 1992 United Nations Convention on Biological Diversity.[14] Apart from expressing such recognition in the preamble, the document has two specific provisions to

14. United Nations Convention on Biological Diversity, 5 Jun. 1992, *reprinted in* 31 ILM 818 (1992).

guide the signatory countries' actions in dealing with indigenous people with regard to conservation. These provisions are as follows:

> Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with approval and involvement of the holders of such knowledge, innovations, and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.[15]

> Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable requirement.[16]

These provisions indicate international recognition that the indigenous people have a critical role in biodiversity conservation. Included in the recognition is the value of indigenous knowledge in conserving biodiversity. Because such knowledge is in their customary laws, these laws must be known and harnessed for biodiversity conservation. Without their customary laws, the indigenous people are bereft of tools to effectively play their role as conservator of biodiversity.

B. *Indigenous People and National Policies on Biodiversity Conservation*

The country's policy echoes this universal recognition of the indigenous people's role in conservation. Its policy is rooted in the Constitution where it is expressed in a number of provisions.[17] But in Article 12 Section 5,[18] the Constitution specifies the rights of indigenous people to their ancestral lands. This provision affirms that their survival and development is inextricably linked with natural resources. Indigenous peoples have subsisted on these resources for generations and their culture has evolved from them, ensuring the sustainable use of these resources. The provision also recognizes the mechanisms and capability of the indigenous people to manage natural resources to sustain their own development. This provision is the key for the

15. *Id.* art. 8 (j).

16. *Id.* art. 10 (c).

17. PHIL. CONST. art. II, § 22; art. XII, § 5; art. XIII, § 6; art. XIV, § 17.

18. "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain."

indigenous people to continue practicing their customary laws on biodiversity conservation.

The Department of Environment and Natural Resources (DENR) initially exercised the task of identifying, delineating and recognizing ancestral domain.[19] The DENR has the general mandate to manage natural resources in public domain. The protection of the rights of indigenous people to their ancestral domain extends to sites under the National Integrated Protected Areas (NIPAS). The NIPAS Act is one of the laws that express the policy of the Philippines on biodiversity conservation.[20]

The NIPAS Act Implementing Rules and Regulations emphasize the importance of indigenous people in biodiversity conservation by instructing that the preservation of their ancestral domain and customary rights must be a park management objective.[21] The Indigenous Peoples Rights' Act validates such importance.[22] The act provides not just for the indigenous people's rights to ancestral domain but a comprehensive description of all their rights and the institutional mechanism to promote these. Their other rights include self-governance and empowerment, social justice and human rights and cultural integrity.

The location of ancestral domain within NIPAS sites does not curtail or abridge the indigenous people rights to ancestral domain. Even within these sites, the indigenous people retain all their rights in full. The NIPAS Act Implementing Rules and Regulations enjoins all government agencies to support the promotion of the rights of indigenous people.[23] Concomitant with such rights is the task of conservation within ancestral domain. The indigenous people have the responsibility of maintaining the ecological balance within their ancestral domain and restoring denuded areas.[24] Through self-determination in natural resource management, the country does not only fully serve the rights of indigenous people, it also puts to effective use their age-old conservation strategies in order to arrest the continuing loss of biodiversity in the country.

19. Department of Environment and Natural Resources Department Order 2, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims (1993).

20. Republic Act No. 7586, National Integrated Protected Area Systems Act (1992).

21. National Protected Areas System (NIPAS) Implementing Rules and Regulations. Department Administrative Order No. 25 (1992) [hereinafter DAO No. 25].

22. IPRA, *supra* note 1.

23. DAO No. 25, *supra* note 21, § 58.

24. IPRA, *supra* note 1, Chapter III, § 9.

Conclusion

The persistence of the *Tagbanwa*'s use of their customary laws testifies not only of their cultural resilience but also of the continued relevance of these laws. These laws are not just part of the past but also of the present. Serving as evidence of their highly developed capability for natural resource management, their customary laws must be supported and must never be supplanted by laws conceived at much later times that are patterned after western models. To the mainstream society who lost most of their indigenous identity to colonial exposure, the customary laws of the *Tagbanwa* are enriching. Through such laws, the *Tagbanwa* reveals how sustainable development was done in the past and should be done at present. They also serve as a guide to inspire the nation to attain sustainable development for the future.

A Synthesis on the Colloquium on Indigenous Peoples*

*A. Edsel C. F. Tupaz**

I. The Process of Inquiry

This Synthesis presents the output of the Colloquium on Indigenous Peoples, held on November 14-15, 2002 at the Ateneo de Manila University School of Law. Articulating various insights formulated during the proceedings, it seeks to point out the emergent problem areas that were raised throughout the course of the proceedings, and to assemble the different propositions and recommendations of the participants into one coherent solution set. Specifically, it intends to abstract the various issues raised and discussed during the colloquium. The Synthesis is principally based on the opening remarks of key speakers, the presentation of research papers by various research institutions, the comments and debates held during the open fora, and to some extent, the author's own thoughts and observations while facilitating the conference. It may, therefore, serve as a digest of the actual proceedings. That this essay incidentally summarizes the Colloquium, however, is not to lose sight of its basic purpose: to engage the reader in a process of abstraction. To be comfortable with the analysis, therefore, it will be noteworthy to first review the speeches and position papers taken during the proceedings.

As this essay is titled, only the work product of the process will be outlined. A step-by-step comprehensive discussion on the methodological journey will not serve the purpose of this Synthesis. Propositions, therefore, will only constitute either of two things: the emergent problem areas or the set of principled standards.

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* This article is based on the author's synthesis of the first day of the Colloquium.

* Moderator and Master of Ceremonies during the first day of the Colloquium.

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