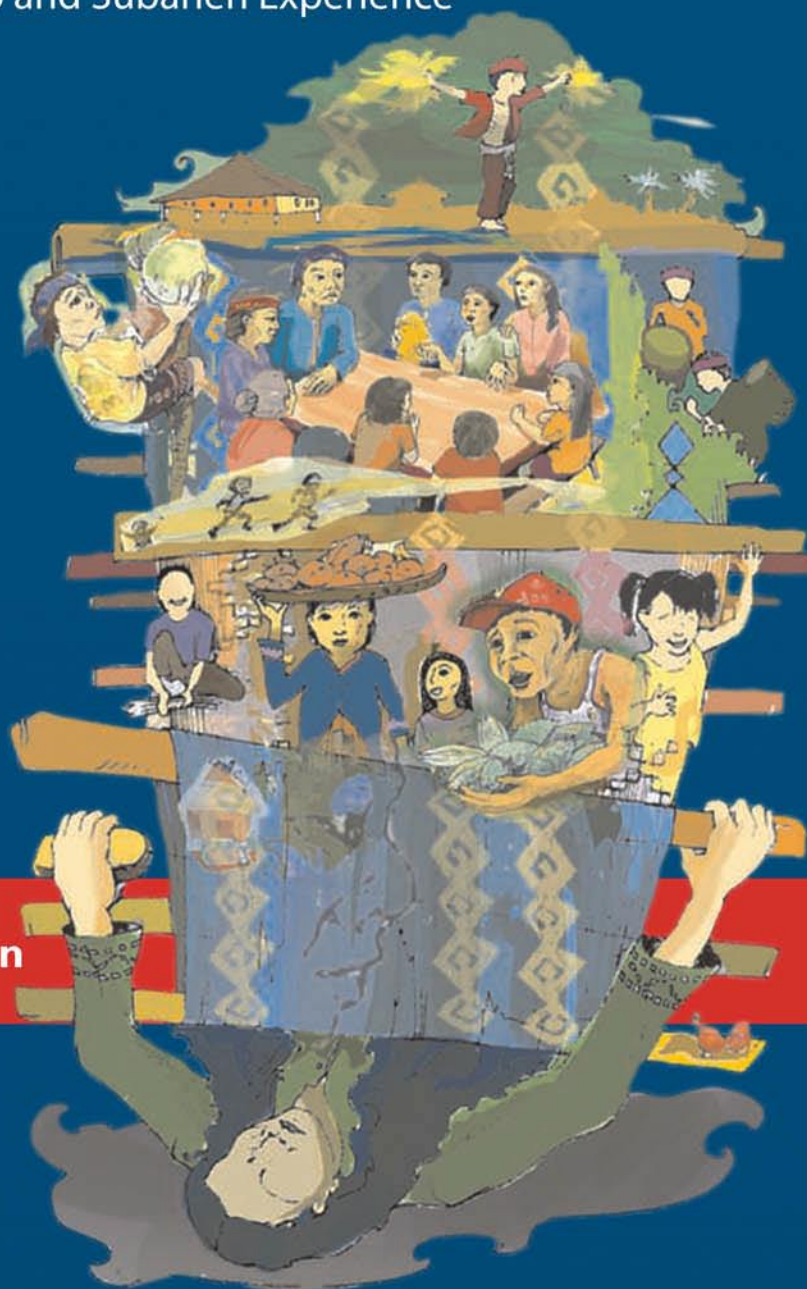


Indigenous Administration of Justice

and its Impact on the

Protection of Children:

The Tagabawa-Bagobo and Subanen Experience



Save the Children
UK

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UK

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Indigenous Administration of Justice and its Impact on the Protection of Children: The Tagabawa-Bagobo and Subanen Experience

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1

Introduction

The period of indigenous people's¹ (IP) retreat to their ancestral homelands has ended. Indigenous societies and cultures are now in the process of change and transition. No longer can any IP community exist in isolation from the larger society; nor can it be free from the incursions of poor settlers, rebel groups, state agencies, religious organisations, non-government organisations, speculators, traders and moneylenders, and big businesses. These external factors have imposed both positive and negative influences that jointly set off changes in IP culture, including its administration of justice.

Although these changes do not occur at the same pace, IP communities whether intact, semi-assimilated or assimilated, are all facing the danger of extinction of their own cultures even before the State and the larger society have recognised and appreciated their distinctiveness; or before they have been compensated for their marginalisation. Notwithstanding this threat, the prevailing practice of the Barangay Justice System in some culturally mixed communities, especially in upland and remote areas, still gives due recognition to the Tribal Council as the legitimate and effective institution in resolving conflicts involving members of indigenous communities.

This remaining viability, therefore, still makes it worthwhile to examine the justice system of indigenous peoples since in many cases, it remains very well related to their distinct worldview and communal objective of maintaining social cohesion, which is akin to the concept of restorative justice. The IP system of justice basically seeks to restore order and harmony to the community, adequately address grievances and bring forth reconciliation rather than retribution.

However, this justice system and its processes only apply when, among others, the following elements are still palpable in the community:

- Functionality of indigenous **socio-political structures** (eg, local tribal Chieftains and the Council of Elders);

¹ Indigenous Peoples (IPs)/Indigenous Cultural Communities (ICCs) refer to a group of people or homogenous societies identified by self-ascription and ascription by others, 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, become 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 (Indigenous Peoples Rights Act of 1997).

- Observance of **customary laws**² in conflict resolution processes (eg, mediation and arbitration, sanctions, fines, etc.);
- High degree of **social cohesion** among community and clan members; and
- Availability of **community resources** to support the fines imposed on “offenders” and the readiness of both the aggrieved and the party of the offenders to enter into a **social contract and ritual towards restoring positive social relations.**

This view of justice and the directions it would take are in stark contrast to today’s situation of CICL in the country where children are incarcerated as punishment for the crimes they committed. This situation persists despite a set alternative procedure for dealing with children. At the Pagadian City Reformatory Center, for example, there are 129 inmates now, two (2) of whom are children accused of theft and qualified theft. As is often the case in other facilities, these children are placed in jail cells together with adult offenders. In the Ma-a City Jail in Davao City, there are 78 imprisoned juveniles living in close confinement with over 700 adults in a facility designed to accommodate a maximum of 300 occupants.

Indeed, children in conflict or contact with the law (CICL) continue to go through a system that is at best, meant for adults. This occurs despite the Philippine government’s official commitment to internationally accepted human rights instruments protecting CICL. While a general provision on IP children has been made in Philippine law, (Article IX of the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), there are no set distinct procedures for dealing with IP CICL. Even the idea of registering the ethnicity of CICL has certainly not been part of the judicial process.

While the most desirable approach would be to reform, re-educate or redirect CICL, today’s system is unable to offer these as an option. Partly due to lack of resources, current mainstream practice actually aggravates the situation of CICL and makes it virtually impossible for them to later rejoin their community as productive members. Because of this, there is a need to vigorously work towards the adoption or implementation of a more effective, appropriate and socially productive approach to dealing with CICL.

It is in this context that Save the Children UK, an international organisation working in the UK and around the world, has commissioned this study to the Mindanao-based Paglilingkod Batas Pangkapatiran Foundation, Inc. (PBPF, Inc.). to gather information on indigenous justice systems that can

² Customary Laws refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs (Indigenous Peoples Rights Act of 1997).

contribute to the development of a more systematic approach in diverting CICL based on the principles of restorative justice and the United Nations Convention on the Rights of the Child.

Conducted by PBPF Inc. in collaboration with the Kaliwat Theatre Collective Inc³. (KTCl), another Mindanao-based organisation, this research takes the form of a case study focused on how IP communities handle offences committed by IP children and young adults and the interaction of the above-mentioned elements. Conducted in two separate IP communities in Northern and Southern Mindanao⁴ that have experienced varying degrees of assimilation to and integration with the lowland political structures, the study documented five to seven cases handled by the Tribal Council in the research areas over the last five years (1999 to 2003).

The study emphasises the experiences of working with the victim or the aggrieved party, the offender who may be a child or young person, and the involvement of community members. It also looks closely at how the interrelated elements of the IP Justice System operate in the context of changing indigenous cultures, specifically in handling cases of CICL.

Objectives

This study seeks to contribute to strategies and approaches that will facilitate the rehabilitation and re-integration of the child-offender into the community without resorting to custodial measures of any sort. Specifically, the study aims to:

For Save the Children UK:

1. Describe and analyse specific strategies, methods and approaches on how justice is administered in two IP communities to include similarities and variations in conflict resolution processes (eg, mediation, negotiation, arbitrations, etc);
2. Analyse the impact of such a justice system on the victim, offender and the community;
3. Identify how the IP Justice System relates with the *Katarungang Pambarangay* or the prevailing Village Justice System, noting issues, gaps and problems;
4. Identify positive and negative elements in the administration of justice as practiced by indigenous communities in the Philippines vis-à-vis international standards and instruments on human rights and drawing out lessons from these;

3 Kaliwat Theatre Collective, Inc. (KTCl) is a pioneer of Theatre-for-Advocacy and Cultural Action among the grassroots in Mindanao. Kaliwat is known for its dramaturgical approaches that are rooted in popular, community-based and folk traditions of the Mindanao people.

4 Mindanao is the southernmost island of the Philippines' three major island groupings.

For the IP communities involved in the study:

5. Facilitate the raising of issues and concerns in the institutionalisation and/or disintegration of the IP's traditional system of administering justice;
6. Raise their awareness on the lowland justice system that affects IP children in particular and the entire IP communities in general; and
7. Pinpoint specific advocacy issues concerning IP children in conflict with law who are entangled in the dominant justice system.

The Focus Areas

The IP communities identified as focus areas for the study exhibit distinct variations in the degree of assimilation to the culture of the majority. Both IP settlements are situated in upland areas with elevation ranging from 500 to 1,000 metres above sea level and in critical watersheds.

These settlements are:

1. The Tagabawa-Bagobo⁵ in Barangay Tungkalan, Toril District, Davao City who have exhibited a greater degree of assimilation to the lowland majority culture. The community can be reached through public transport, some forty-five minutes from Davao City; and
2. The Subanen⁶ in Barangay Bag-ong Matalang, Lakewood Municipality, Zamboanga del Sur, who still live in a very remote area and have a relatively intact culture. The settlement is situated some 22 kilometres away from the centre of the Municipality of Lakewood and can only be reached after a one-hour motorbike ride and a four-hour hike on foot. The Municipality of Lakewood is 35 kilometres away from Pagadian City, the capital of Zamboanga del Sur Province.

5 One of the largest tribes in Mindanao, the Tagabawa is considered a sub-tribe of the Bagobo tribe. Traditionally, they occupy the protected areas around Mt. Apo.

6 The largest ethnolinguistic tribe in Mindanao, usually found in the northwestern part of the island

7 A generic term referring to lowland, mainstream people. The name is derived from the dominant mainstream dialect, Visayan. Among IP communities, contains negative connotations of the term include being an outsider and being unscrupulous and untrustworthy.

The lowland barangay political structure is already in place in both communities. The barangay officials of Tungkalan are a mixture of Bisayan⁷ and Bagobo while the officials of Barangay Bag-ong Matalang are all indigenous Subanen. Nevertheless, a functioning Tribal Council and identified Tribal Elders exist in both settlements.

These areas were chosen for the study because of the extent of work and engagement of the collaborating implementing organisations in the said areas. Both PBPF and KTCI have gained enough ground in working with the communities and have achieved a considerable level of acceptance among community members.

Methodology

The case study was conducted in accordance with the customary laws of the tribe. The informed consent and involvement of IP traditional leaders and elders (both men and women) were sought for the entire duration of the study. The research team ensured that children as well as the other members of the IP communities have been properly informed on the nature and intent of the study and that they are able to express their free and informed consent in the validation of the findings.

The actual fieldwork in the Subanen and Bagobo IP settlements spanned a period of three months and utilised the following methods in generating information or data from the community and the actual cases handled or settled by their respective Tribal Councils:

1. Basic community profiling;
2. Focus group discussions (FGDs) with Tribal Elders and Chieftains, indigenous women, and IP children;
3. Key informants in-depth interviews with Tribal Chieftains, victims and offenders and their families, and Barangay Captains; and
4. Review of barangay records, and the records of the Municipal/District Police Outposts/Precincts, Provincial/City Jails.

Participatory Rapid Appraisal (PRA) was also employed during the fieldwork but this was limited to the duration of the FGDs including pre and post FGD activities when the researchers were still in the community. The sources of data and methodologies needed for data-gathering are summarized in the succeeding table.

Table 1: Data Sources and Methodologies

DATA SETS	COLLECTION TECHNIQUES	SOURCES
A. Basic Community Profiling		
Basic Socio-Economic and Demographic Profile	Records Review, Interviews	NGOs, barangay officials, local leaders, agencies
Existing Dominant Agro-Ecosystem	Records Review, Field Observation	NGOs, local government units (LGU), local farmers, agencies
Existing Traditional Governance Structure	Records Review and Key Informant Interviews	Local IP organisations, IP elders and leaders, National Commission on Indigenous Peoples (NCIP) ⁸

⁸ The National Commission on Indigenous Peoples (NCIP) is the primary government agency that formulates and implements policies, plans and programmes for the recognition, promotion and protection of the rights and well-being of Indigenous Peoples (IPs) with due regard to their ancestral domains and lands, self-governance and empowerment, social justice and human rights, and cultural integrity. This agency is under the Office of the President.

Community/household access to social services and programmes for women and children	Records Review and Key Informant Interviews	NGOs, barangay officials, local leaders, agencies, FGD with women
B. Traditional Justice System and Children		
Concept/ Elements of Traditional Justice System	Focus Group Discussion (FGD 1)	Local leaders and leaders, including women
Concept of Children and Understanding of Children's Rights	Focus Group Discussion (FGD 1)	Local leaders and leaders, including women
Nature/bulk of cases (conflicts/disputes) handled in the last five years	Key Informant Interviews	IP leaders and elders including women
Frequency of cases involving children and young persons	Key Informant Interviews	IP leaders and members of IP councils
Modes of resolving conflicts/disputes	Key Informant Interviews	IP leaders and members of IP councils
Perception of the impact of the resolution on the families (of both the victim and offender) and the entire community	Focus Group Discussion (FGD 2)	Local leaders and elders including women and children
Problems/issues concerning the continuance of the indigenous justice system	Key Informant Interviews	IP leaders, women and children
C. Status/ Situation and Roles of Indigenous Women		
Perception on the roles and rights of children and women in the IP context	Focus Group Discussion (FGD 3)	Indigenous Women
Views on the traditional domains or roles of women in dealing with cases of children as victims and as offenders	Focus Group Discussion (FGD 3)	Indigenous Women

Experiences of IP women in conflict processes/ administration of justice	Focus Group Discussion (FGD 4) and Key Informant Interviews	Indigenous Women
Problems/burdens of women in active participation in the tribes' conflict resolution process	Focus Group Discussion (FGD 4) and Key Informant Interviews	Indigenous Women
D. IP Children's Views on Children's Rights and the IP Justice System		
Perception of IP children on their roles, responsibilities and rights in IP society	Focus Group Discussion (FGD 5)	IP children
Contribution of children in the development and cultural integrity of the tribe	Focus Group Discussion (FGD 5)	IP children
Awareness of experiences on cases of IP children in conflict with the law	Focus Group Discussion (FGD 5)	IP children
Perception and views of children on indigenous justice system	Focus Group Discussion (FGD 5)	IP children

Scope and Limitation of the Project

The project only covered two identified IP settlements in Mindanao—Barangay Bag-ong Matalang and Barangay Tungkalan. Findings are, therefore, limited only to cases documented in these areas. The project team has relied on local informants in the two communities in generating information, limiting the coverage of the research to the facts and opinions expressed by these informants. The study does not attempt to present a comprehensive discourse of the topic, but the study findings provide us with a guide in understanding and appreciating the indigenous justice system in two IP communities.

In relation to the cases that were elevated to the Barangay Justice System, the research is also limited to the records that were made available to the researchers. The scarcity of written documentation on cases involving IP children should be noted.



2 Profile of Two IP Settlements

The two IP settlements in this study show marked differences in terms of their level of integration to mainstream Philippine society although they are both considered as ancestral homelands of IPs. This variance in the degree of cultural assimilation is the main reason for choosing these two settlements for this study. Indeed, it is very interesting to determine how these two IP communities deal with the children members of the tribe amid occurring organisational and structural changes.

Situated in critical watersheds, both IP settlements are generally upland communities with elevations ranging from 500 to 1,000 metres above sea level (masl). In both areas, a Tribal Council also co-exists with the lowland barangay political structure.

Profile of Two IP Communities

The Tagabawa-Bagobo: Barangay Tungkalan, Toril District, Davao City

The ancestral homelands of the Tagabawa (People of the South) stretch from the southern portion of Davao City to the Municipality of Bansalan in Davao del Sur. The Tagabawa is considered a sub-tribe of the Bagobo and originally occupied most of the landmass at the foot of Mt. Apo, the highest mountain in the Philippines.

The Tagabawa in Barangay Tungkalan, Davao City have undergone complex changes in their socio-political structure and cultural matrix. The main reason for this is despite Tungkalan's formal establishment as a barangay in June 19, 1965 (under Republic Act No. 4354), the area has been a major gateway for the various socio-economic forces that influenced the Tagabawa-Bagobo in the highlands of the city since the turn of the 20th century.

Land Area and Classification

The landmass of the barangay spans 1,722.38 hectares, classified into hilly lands (445.54 hectares), low-elevation highlands (1,086.08 hectares), medium elevation highlands (192.64 hectares) and unclassified lands (0.04 hectares)

Though most of the barangay lands are also buffer zones of the Mt. Apo National Park, which is a protected area, a substantial part has been developed for agricultural use despite the prescribed and limited utilisation under this classification. There are, however, patches of forested and reforested lands, as the barangay sits within the Lipadas watershed.

Most of the families engaged in agriculture in the area grow corn. In between the seasonal cropping of coconut, cocoa, and other fruit bearing trees such as durian, mango, rambutan, and lanzones, many of the farmers grow vegetables as well.

Distance and Accessibility from the Urban Centre

Located 29.50 kilometres from the Davao City Hall, this small barangay can be reached by all means of public transportation. The road to this small village is partly concrete in between long stretches of rough road. Transportation to the site costs about Php30 (USD 0.54)⁹ with travel time taking as much as two-and-a-half hours depending on downtown traffic, the availability of vehicles and the time it would take for vehicles to be filled to full capacity.

Demographic Characteristics¹⁰

In 2003, the population of Barangay Tungkalan was 2,334. Of the total number, 51% or 1,190 were males and 49% or 1,144 were females. Those aged 18 and below reached 475, which is 33% of the total barangay population. This computation is based on the 2003 data generated by the Cultural Mapping Project Census and the Projected Barangay Population (with a registered historic growth rate of 4.7% in five years) conducted by the People Collaborating for Environment and Economic Management of Davao Foundation, Inc. (PCEEM Davao Foundation, Inc.), a local NGO devoted to the management of the Talomo-Lipadas watersheds.¹¹

The estimated IP population in Barangay Tungkalan is 954 or forty-one percent (41%) of the total barangay population. These people constitute the 167 households in the area with an average size of six members (mean average 5.7) per IP household.

⁹ 1 USD = 56.1000 PHP (<http://www.xe.com/ucc/convert.cgi>).

¹⁰ Data was generated during the cultural mapping project done by the People Collaborating for Environment and Economic Management of Davao Foundation, Inc. (PCEEM Davao Foundation, Inc.).

¹¹ PCEEM used to stand for Philippines Canada Environmental and Economic Management, a bilateral project between the government of the Philippines and Canada. However, this project eventually evolved into an the non-government organisation called People Collaborating for Environment and Economic Management of Davao Foundation, Inc. (PCEEM Davao Foundation, Inc), which is governed by a multi-sectoral board.

The same survey conducted by the PCEEM Davao Foundation, indicates that some 18% (175 persons) of the IP population have not had any formal education. The rest (82%) have accessed formal schooling of various grade levels as indicated in the following table.

Table 2. Educational Attainment of IPs in Barangay Tungkalan

Grade/Year Levels	No. of IPs	%
No formal schooling	175	18
Pre-School	28	3
Primary	217	23
Intermediate	259	27
Some High School	168	18
High School Graduate	54	6
Vocational	10	1
College Level	31	3
College Graduate	8	1
Post-Graduate	4	0.4

In year 2002, not all children of school age in the barangay were availing of formal education. It was estimated that only 60% of the 475 children of school age are actually enrolled in schools. According to the same 2003 survey, of the 105 IP children aged 3 to 6, only 21% were in school; of the 186 aged 7 to 12, only 84% were in school; of the 108 aged 13-16, only 68% were in school; and out of the 41 aged 17-18, only 29% were in school.

In terms of religion, most of the IPs in Barangay Tungkalan professed to be members of several religious groups, with the majority being Roman Catholic. Table 2 below shows the ranking of the religious groups according to numbers of IP members.

Table 3. Religious Affiliations of IP Households in Tungkalan

Religious Denomination¹²	No. of Households	%
1. Catholic	106	63.5
2. Church of Christ	17	10.2
3. Alliance	16	9.6
4. Baptist	14	8.4
5. Other Christian Groups	14	8.4

¹² Church of Christ is an evangelical church with churches in the United States and other countries. It is a different denomination from UCCP or United Church of Christ. Both the Alliance and Baptist churches are evangelical denominations that originated in the United States

Livelihood Patterns

Most of the IP households in the area said that farming (or farming-related activities) is their primary livelihood or principal source of income. However, the survey shows that a good number of the IP households only possess farmlands with sizes ranging from $\frac{1}{4}$ to $\frac{3}{4}$ of a hectare. Only a few are tilling lands larger than two hectares. Moreover, not all of the IP households even own farmlands. It is estimated that some 25% of the farmers are not owners of the land that they till. Thus, a number of IPs are engaged in farm labour or piece work, commonly referred to as *pakyaw*.

Many of the males in the community are wage workers and are dependent on the demand for seasonal labour to do various farm chores. These chores include: *magsaka lubi* (climbing the coconut trees to harvest coconuts), *magbakot lubi* (carrying coconuts from the tree to the area where they are to be de-husked or to the truck for loading). The workers are paid Php3 (USD0.05) for each coconut tree climbed. A male Bagobo can usually climb up to 60 coconut trees a day, earning about Php180 (USD3.21). For hauling coconuts, the workers earn Php80 (USD1.43) per 1,000 coconuts hauled. When they are able to work as harvesters of fruit bearing trees (eg., lanzones, durian, rambutan), they earn Php200 (USD3.57) a day.

Other sources of livelihood for Bagobo men include: *maglimpisa* (weeding), which pays Php70 (USD1.25) a day with free snacks; *mangbornal ug manghagbas* (clearing), which pays between Php100-120 (USD1.78-2.14) a day with free snacks.

Household income is also augmented by selling part of the produce gathered from backyard gardening. The women sell vegetables and flowering plants at the Toril Public Market and they also do laundry work for some households. Housework is now shared between wives and husbands (Focus Group Discussion with IP women, 8/30/03).

Contacts with Lowland Society

From as far back as 1900 up to 1945, Davao City has been known as a plantation area. Through the years, rows of coconut trees, fields of abaca and factories have sprouted and there has been a massive influx of migrants from as far as Luzon, the northern part of the country. Encouraged by the government, settlers moved to seek areas of “new opportunity,” and one of these was Tungkalan, which at that time had huge tracts of uncultivated lands and untouched natural resources.

Tungkalan and its neighbouring lands, once the hunting grounds of the Tagabawa-Bagobo, gradually became the migrants’ newfound home. “In the past, most Bagobo hunt just enough to get by. They were not

interested in material things and did not concern themselves with coping with a certain standard of living. Today, natives take any job they could get because they need money to buy food, pay tuition fees, and electric bills,” complained “Aloy” Lumanda, a 76 year old Tagabawa-Bagobo.

The large-scale migration of “newcomers” brought many new cultural patterns into the community. Some insidious foreign ideas then wormed their way into the “civilization” of the Bagobo tribe. More changes later occurred as the Bagobo culture opened itself to the influences of the newly-emerged culture.

As early as the 1930s, the Bagobo adults have slowly broken away from their old customs and traditions. Partly for survival and partly in the interest of progress, they also “forced” their children to learn the “Christian ways,” which the younger generation also imbibed through the public schools and through the preaching of missionaries (Interview with Antao Bansag and Aloy Lumanda, 09/17/03).

Children born in the 1950s adopted and learned new ways of doing and thinking through the school system and the non-IP community around them. Their influence was easily accepted by the young until eventually, the young knew more about the new culture than their parents did (FGD with IP women, 08/30/03).

Today, almost 100 percent of the Bagobo no longer speak their native dialect. Children are more conversant in Bisaya (the language spoken by majority of the lowlanders) than their own dialect. Inevitably, even the laws of the tribe changed as the area became more open to external influences.

The present day Bagobo tribe in Tungkalan constitutes a large part of the labour force for certain commercial plantations of high-value crops such as coconut and banana. The members of the tribe also work for the plantations of some big absentee landlords in Tungkalan (the Cosetengs, the Tuasons, and the Cunanans) where they usually get the lower-paid jobs.¹³

¹³ A former senator from the Coseteng family is reputed to own a large tract of land in Tungkalan although she is rarely, if ever, seen in the vicinity. The Tuason family is one of the pioneer banana plantation owners in the country and a branch of the Cunanan family still resides in the area.

¹⁴ A geographical sub-unit of the barangay usually having less than 500 inhabitants.

Existing Social Services

Barangay Tungkalan has been considered a model upland barangay for the last five to eight years. Compared to the adjacent barangays, Tungkalan has fared better because the local barangay leaders have been better able to access support for several basic infrastructure needs of the people in the area – roads, health centres, barangay halls, among others.

The residents at the centre of the barangay rely on an installed level one artesian well and a level two spring development water system as sources of potable water. However, those living in the interior sitios,¹⁴ most of whom are IPs, still get their drinking water from nearby springs.

The barangay also has a functional health centre run by a doctor and five interns who stay in the centre on weekdays. The *Botika sa Barangay*¹⁵ is also operational, put up with only Php6,500 (USD115.82) as start-up capital solicited from residents. Tungkalan's health centre is well established and "a good number of infants and young children are served and protected from acquiring communicable diseases" (Interview with Elvira Ala, Barangay Health Worker; 09/17/03).

The barangay also has complete basic education services including day-care centres operated by the barangay local government unit. Aside from public elementary schools, there are church-run formal education services for children of pre-school age.

Needs-Assessment of Women and Children

Despite being a model barangay, the IP population in the area still lack access to basic amenities to improve their quality of life. In the Participatory Rapid Appraisal (PRA) processes undertaken for this study, the participants expressed that some of the basic facilities and service infrastructures installed by the local government seldom benefit the IP households.

The PRA processes also led to the identification of issues and concerns by various sectors in the community. The following are the "felt needs" of IP women:

- Additional income-generating projects for women (for additional income to support the family, eg, to set up a sari-sari store¹⁶);
- Women's micro-finance/credit services;
- Family planning orientation seminar;
- Skills training and technology transfer on handicrafts making, food processing, making of tribal costumes, dressmaking, flower gardening (high value flowers – vanda, rose, anthurium); and
- Basic services: medicines, free clinic, water system, etc.

The children and young people who participated in the process also described their situation, and identified priority issues and concerns. The following are the concerns they identified:

- Children cannot go to school due to parents' insufficient income and the inaccessibility of the school;
- During rainy days, the children cannot go to school because the roads are flooded;
- There is a need for a school bus that would transport schoolchildren from their homes to the school;

¹⁵ A village-based drugstore established usually as part of the local government's health programme.

¹⁶ A sari-sari store is a small retail store selling various items commonly needed by people in communities. Such stores are commonly found along any street in the Philippines.

17 Ancestral Domains refer to all areas generally belonging to Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, 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 land, 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 their 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 (Indigenous Peoples Rights Act of 1997).

- Low educational attainment (most young people only reach high school);
- Lack of opportunities for scholarship grants/programme;
- Establishment of more day care centres;
- Child labour - most of the children/young people work (*bornal*) to help their parents augment the household's income instead of going to school while others idly hang around the community or are not employed (*istambay*);
- Some young women have gone to the city to work as domestic helps;
- Young people are trained to join the Army's 73rd Infantry Battalion;
- Some children/young people are substance abusers and have vices - smoking, drinking, gambling and gallivanting (*laag*) at a very young age;
- There should be a barangay ordinance on drug abuse;
- There are drunkard parents who cannot give full attention to their children;
- Parents should have continuing education on child rearing;
- A portion of the ancestral domain¹⁷ should be set aside for children (for their livelihood);
- Capability building for young people;
- Livelihood programs for young people (eg, nursery, fruit seedlings); and
- Leadership training focused on indigenous governance (for young people).

The Subanen in Barangay Bag-ong Matalang, Lakewood Municipality, Zamboanga del Sur

The Subanen (People by the River) are concentrated in the western regions of Mindanao, particularly in the provinces of Misamis Occidental, Zamboanga del Norte and Zamboanga del Sur. Studies reveal that the Subanen have at least four major sub-groups according to the variations of their languages – the western, the central, southern and eastern Subanen.

In the Municipality of Lakewood, majority of the Subanen are *Gatao-Danao* (People of the Lake) and *Gatao-Sebuguey* or those living along the banks of the mighty Sebuguey River. However, they are often called *Gatao de Baloy* or *Gataw Tasan* (People Living in the Mountains) as distinguished from the *Lapuyan Subanen* who inhabit the coastal areas.

Barangay Bag-ong Matalang nestles in the highlands of Lakewood and is inhabited by the *Gatao-Tasan*. Most of them are members of several Subanen clans who are either original occupants of the midlands of Lakewood (in the south and southwest portions) or settlers from the highlands of Midsalip, a neighbouring municipality located in the northern part of the barangay.

This barangay was established upon the creation of the Lakewood Municipality some 25 years ago. It is called Bag-ong Matalang to differentiate it from Barangay Matalang, which belongs to the neighbouring Municipality of Midsalip. Apparently, the law that created the Municipality of Lakewood failed to indicate the geographic co-ordinates that border the area of the entire municipality. Instead, the municipal charter merely enumerates the barangays that comprise it. Thus, when four of the originally mentioned barangays opted not to be part of Lakewood, the local officials then created new barangays (the names of which are prefixed with *Bag-ong* or new) such as Bag-ong Matalang, Bag-ong Baking, Bag-ong Dagum and Bag-ong Sebuguey. Each of these barangays has a population count of less than 2,000 people.¹⁸

Area and Land Use

The ground survey conducted by Kaliwat Theatre Collective in 2002 records the total land area of Bag-ong Matalang as 2,020.79 hectares. Within its rugged landscape lies the headwaters of the mighty Sebuguey River, which flows downstream into the seven other municipalities of Zamboanga del Sur and Zamboanga Sibugay. Indeed, Bag-ong Matalang is nestled in a critical watershed.

This landmass is classified according to slope: Flat Lands (<18% slope), 130.33 hectares; Rolling (18 to 25% slope), 408.62 hectares; Moderately Steep Areas (25 to 50% slope), 1,129.80 hectares; and Steep Lands (>50% slope), 352.04 hectares. Bag-ong Matalang is situated in an elevation that ranges from 600 to 1,800 masl, the highest portion of which is known as Mt. Kulabog, a mossy forest that is established as a Protected Area by virtue of a Provincial Ordinance declaring it as a Provincial Park.

Most of the lands in the barangay are marginal and suitable for or conditionally suitable only for agro-forestry, as indicated in the following statement:

“... marginally suitable for agriculture use and/or more suited for agro-forestry projects or at present are developed fishponds/salt beds. For agricultural use, these lands will require a high level of farm management for sustainability or production. The conversion to non-agricultural use (built-up area)

18 Republic Act (RA) 7160 or the Local Government Code specifies that independent barangays should have a population of at least 2,000

on the other hand, requires intensive analysis on environmental impact particularly on the stability of the uplands and its effects on the lands situated below....”¹⁹

The land in the barangay is being used now for shifting cultivation²⁰ as evidenced by the huge brushlands (46%), grasslands (9%) and forested areas (43%). Only a small portion of the flatlands is devoted to rain-fed agriculture.

Table 4. Land-use in Barangay Bag-ong Matalang

Land Use	Land Area	
	(in hectares)	%
Rice Field	13.8	0.7
Built-up Area	12.2	1
Open/Cultivated/Grassland	177.7	9
Forest	878.2	43
Brushland	938.89	46
TOTAL	2,020.79	100

Distance from the Urban Centre

The barangay is located some 24 kilometres from the centre of the municipality. Only about 10 kilometres of the road are passable by motorbike. The remaining 14 kilometres approaching the barangay proper can only be reached on foot or horseback. The 10-kilometer ride by motorbike costs Php50 (USD0.89) per person. If one hires a horse to go through the remaining 14 kilometres, one has to pay Php2 (USD0.04) per kilo of cargo.

From Pagadian City, the capital city of Zamboanga del Sur and the most urbanized area of the province, Barangay Bag-ong Matalang is 69 kilometres away. From the Municipality of Lakewood, one can either take a bus or a van to Pagadian for Php50 (USD0.89) per person.

While, there are a number of trails leading to the three sitios comprising the barangay, the inaccessibility of public transport, high transportation costs and poor road conditions limit the mobility of the residents of Barangay Bag-ong Matalang. Hence, one of the priority development concerns of the residents is the establishment of a good road network.

19 1997 Provincial Planning and Development Office Report

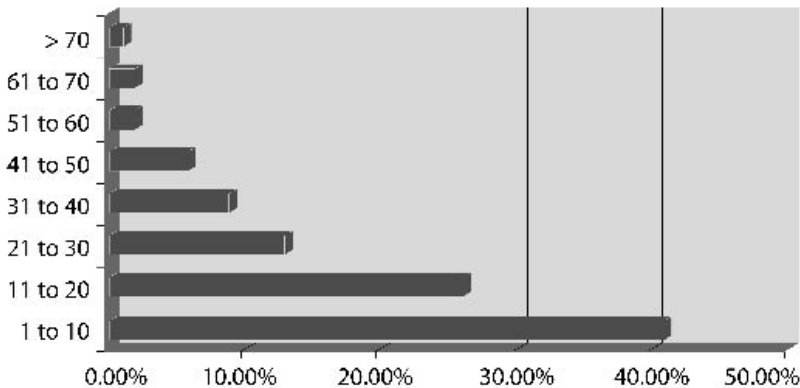
20 Shifting cultivation is the process by which people take an area of land to use for agriculture, only to abandon it a short time later. This often involves slash and burn clearing of a virgin plot, followed by two or three years of farming until the soil loses fertility. Once the land becomes inadequate for crop production, it is left to be reclaimed by natural vegetation. This is a form of subsistence farming, and it is usually seen in parts of the developing world where governments, large corporations, and/or wealthy individuals stake ownership on large tracts of land and push local farmers out of the area (http://en.wikipedia.org/wiki/Shifting_cultivation)

Demographic Characteristics

In 2002, the population of Barangay Bag-ong Matalang registered at 397 persons, 196 (49%) male and 201 (51%) female;²¹ all whom are Subanen. In the last five years, the barangay has had a negative growth rate, which prompted the local officials to wage an aggressive campaign for other residents of Lakewood to transfer to the area. Of the total Barangay population, 62% or 246 were aged 18 and below. Of this number, 162 were aged 1 to 10 years old.

There are 66 households comprising the barangay with an average household size of six members (mean average of 5.9), most of which are single-headed but extended family households. The chart below illustrates the percentage distribution of the barangay population according to the various age groups.

Figure 1. Age Structure of Barangay Matalang Population



Since all of the barangay residents are indigenous Subanen, all of them (except one person who expressed being a member of the Pentecostal religious group) claim to practice indigenous religious worship and believe in traditional spirituality. The results of the household survey conducted by Kaliwat Theatre Collective in 2002 also showed that 64% of the IP population have not gone through any formal education and only two persons have reached college.

Livelihood Opportunities

Most of the traditional Subanen have survived as forest dwellers engaged in shifting cultivation. This also holds true for most Subanen farmers in Matalang who rely mainly on their patches of upland farms. Traditional crops include upland rice, root crops and vegetables. The growing of fruit

²¹ Survey conducted by the Kaliwat Theater Collective in 2002 for the Department of Agriculture in preparation for Sustainable Area Development

trees is a recent practice since among the Subanen, the planting of trees was considered taboo in the past.²²

Likewise, the use of draft animals (carabao) and the plough are recent innovations in the Subanen farming system. The traditional upland farming (*benal or kaingin*) is done by hand. Rice and corn are intercropped with other root crops and vegetables. In addition to the crops grown in their swidden, these “settled” agriculturists gather minor forest products for food, medicines and household implements. These products include rattan, almaciga²³ resin, honey, wildlife and wild vegetables which are traded for cash either in Lakewood or in nearby small market centres in neighbouring municipalities. It is important to note that no sari-sari store (small retail store) exists in the barangay. The people have to go to the adjacent barangay or to the poblacion (town centre) to purchase their household needs.

The population of young people in the area would have been higher if not for the out-migration of the Subanen young people to areas where they can seek employment or continue schooling. Since there are very limited opportunities to earn in the barangay, there is an increasing trend among the Subanen young women of Matalang to work as household helps in other areas such as Marawi City, which is ten hours away by bus.

Historical Changes/Contacts with Lowland Societies

Contact between the Subanen in Bag-ong Matalang with lowland settlers started as far back as 40 years ago with the incursion of logging companies. Several logging companies have operated in Bag-ong Matalang, the last of which left the area only in the mid-1990s. Some of the indigenous Subanen were hired in the logging operations. Despite the entry of logging companies, the forested areas from 1987 up to 2002 still measured at almost one third of the total land area of Matalang. This is because nearly half of the area in the barangay is a mossy forest with less commercial hardwood. Notwithstanding this, the Subanen have lost their hunting grounds. Other sacred places of worship were also devastated because of the logging companies. When these companies ceased to operate, the pilot roads were no longer maintained and the movement of people into the barangay also decreased. According to one of the *Timuays*²⁴ in the village, before the entry of the loggers in the area, poverty was a stranger to the Subanen homes.

The formal school in the area was only built in 1995, through the initiatives of the religious congregation of the Sisters of the Guardian Angels. After two years of being privately managed, the school was turned over to the Department of Education and to this day, it still operates as a primary school.

22 According to a traditional Subanen belief, trees are not to be planted because they are larger and stronger than people; and thus, they can overpower the person who planted them.

23 The almaciga (*Agathis philippensis*) is one of the few species of conifers that can grow in the humid tropics. It is a relative of the New Zealand kauri pine (*Agathis australis*) (http://www.fieldmuseum.org/vanishing_treasures/V_Almaciga.htm).

24 Title of respect accorded to elders and leaders. An equivalent title for other tribes would be Datu.

Status of Women and Welfare of Children

In Barangay Bag-ong Matalang, majority of the population are poor with one-half of the entire household population earning less than Php5,000 (USD89.11) a month. According to the Subanen, however, their poverty and misery are gauged not only by the household's not having enough money but also by the limited skills and capabilities they possess (based on the standards of lowlanders). Moreover, social exclusion and discrimination are very evident, leading to further suffering.

In this condition, the Subanen women and children suffer most as they are the most vulnerable to the effects of poverty and social neglect. Moreover, as previous studies show, when the subsistence Subanen farmer opts to change the mode of production into settled farming, the participation of women in decision-making consequently diminishes.

The infant mortality in the area is over 30 percent per 1,000 live births with pneumonia and diarrhoea as the two leading causes of infant death. Malnutrition is common and even more pronounced among children of school age. Undoubtedly, children and women doubly suffer as shown in the following gender and development indicators:

- Life expectancy for women in Region IX is 14.4 years lower than the national average, with life expectancy among Subanen women being among the lowest;
- Literacy rate and levels of skills are very low;
- There is very limited access to other sources of income for women;
- There is minimal access to information, health, sanitation and employment opportunities; and
- Women are often excluded in decision-making processes in the lowland barangay's political structure.

Service Institutions and Facilities

Because of its remoteness, it is expected that very minimal social services would be available in the barangay if at all made available. It was only recently that the rural health workers of the Municipality of Lakewood were able to conduct quarterly site visits to the barangay. There is no passable road now to the area. No other infrastructure was ever built in the area, not even by the logging companies that devastated half of its original forest covers.

Cultural Contacts and Influences

Both the IP settlements in Tungkalan and Bag-ong Matalang have a long history of established contacts with lowlanders although their pace of integration with the mainstream socio-political structures of Philippine society varies. Both Matalang and Tungkalan show that no IP community can now exist in isolation of the larger society or be free from the incursions of poor Christian settlers, rebel groups, state agencies, religious organisations, NGOs, speculators, traders and money lenders, and big businesses.

Barangay Tungkalan is a major artery to Dalia-on Plantation, some eight kilometres upwards, the area that local people used to call “*Klub*” because of the Japanese Abaca Plantation clubhouse in this area in the 1930s. In this area, the influx of organised religion even before World War II and the subsequent conversion of the Tagabawa to Christianity both served to accelerate the assimilation of the indigenous community into mainstream culture.

“The Davao area then had been completely built by migration - the province was called the ‘melting pot.’ Between 1948 to 1960, approximately 3,000 people a month arrived in Davao. Though not all of these were voluntary migrants.

Some were sent by the national government through the National Resettlement & Rehabilitation Administration (NARRA) – a political placation by the government to stem the tide of insurgency in Central Luzon arising from agrarian problems...

On the other hand, the expansion of plantations in Davao almost exclusively dependent on indigenous people, specifically the Bagobos...”

Recent times have seen the marked organisational and structural changes in the traditional communities of Tungkalan and Matalang. These changes indicate a gradual gravitation towards a cultural convergence with that of the majority. The following institutions have contributed to this convergence:

- The political system that radiates from the national, provincial, municipal and barangay have replaced the indigenous systems of leadership through the years;
- The economic system that introduced a market system;

- The educational system that levelled the modes of values and education throughout all the sectors of Philippine society;
- The religious systems of Christianity and Islam that subordinated and debilitated the indigenous belief systems;
- The emergence of a powerful multi-media system that invaded all forms of communication and information systems; and
- A gradually developing transportation system that is bringing remote areas closer to central places of dispersion.

While Bag-ong Matalang has remained relatively traditionally intact, one can expect major changes in the village in the next few years as the external factors mentioned above have imposed positive and negative influences that jointly cause changes in the culture of IPs in both IP settlements. Although these changes are uneven, both Tungkalan and Bag-ong Matalang face the danger of cultural extinction even before their distinctiveness is duly recognised by the state and the larger society and they are compensated for their marginalisation.

While respecting their basic rights to choose their own way of life, there is a need to provide an enabling environment for IPs to maintain their cultural integrity and pass this on to succeeding generations.

Overview of Indigenous Governance

At the turn of the 20th century, as far back as the elders of the tribe can remember, the traditional societies in Tungkalan and Bag-ong Matalang had a simple form of “government”. In both villages, the members of the tribe choose a chieftain who is aided by a Council of Elders. The former has the right to make decisions on certain matters and if the council upholds these decisions, these are strictly enforced. The tribe is governed by a headman who keeps this position for as long as he enjoys the respect and esteem of the community. In recent years, however, there have been marked changes imprinted in the system of governance and administration of indigenous justice in the IP settlements of both Tungkalan and Bag-ong Matalang.

Leadership and Administration

Subanen Leadership in Bag-ong Matalang

To this day, the *Subanen* leadership in Bag-ong Matalang lies with the *Timuay* (from the word “TIMU” meaning “to gather”) and his council of elders. A *Timuay* is one who is able to “gather” a mass of people and lead them. The *Timuay* is chosen on the basis of the following: lineage, wisdom, industry,

knowledge of customs and traditions, wealth (especially the capacity to feed people during famine), good public relations and leadership ability during times of trouble.

In Bag-ong Matalang and Lanayan, these are the local *Timuays* who are respected by the community members with their corresponding positions:

<i>Timuay Gawasen</i>	<i>Timuay Langkap (sitio Lanayan)</i>
<i>Timuay Lucasan</i>	<i>Timuay Mangora (Purok 1)</i>
<i>Timuay Dino</i>	<i>Purok 2</i>
<i>Timuay Mantalang</i>	<i>Purok 1</i>
<i>Timuay Larion</i>	<i>Purok 1</i>
<i>Timuay Bundasan</i>	<i>Purok 3</i>
<i>Timuay Mandoy</i>	<i>Purok 2</i>

These *Timuays* are the ones who administer justice and elevate cases to the highest ranking *Timuay Labi* if these are not resolved.

The administration of the village is shared both by the Local *Timuays* and the duly elected Barangay Council.²⁵ However, the latter's jurisdiction is limited to the political affairs of the community that are linked with the municipality. The functionality of the *Timuay* in the area is evident in both the socio-political and economic life of the territory through activities such as marriage, sharing of resources, and settling of disputes, among others.

System of Leadership and Administration in Barangay Tungkalan

The position of traditional headman among the Tagabawa in Tungkalan is no longer as popular as it used to be in the early 1900s. Community leadership is now in the hands of the local barangay unit, which is specifically headed by the Barangay Captain.

With the opening of the ancestral territory to people of varied cultural backgrounds and with the majority upholding the more established lowland political system, the settlement of disputes in Tungkalan and the tribe's concept of leadership have substantially changed. From the situation in the past when the headmen settled disputes, the community has moved to the complex lowland system of courts or more specifically, the adoption of local government policies.

The settlement of conflicts and disputes is now done through the mediation of the Barangay Captain and his duly elected council members with the participation of the duly constituted Lupong Tagapamayapa (Local Mediation Board).

However, the barangay still recognises the existence of a Tribal Chieftain who is chosen by the people (this time, through elections). They still listen to the advice of the members of the Tribal Council and the Elders although

²⁵ This voluntary sharing of leadership is an opportunity that allows the interface of barangay justice and traditional justice.

the former's influence has become very much limited to the affairs of the tribe. Hence, the council hardly has any impact on the affairs of the entire barangay. However, in cases of disputes involving parties who belong to the same Bagobo tribe, sometimes the Barangay Captain would ask the Tribal Council to intervene and function as the local Mediation Board.²⁶

Elements and Conditionalities of Governance in Bag-ong Matalang

Effective governance including the administration of justice among IPs, requires the existence and functioning of the following elements that should be duly recognised by the members of the tribe, both from within and outside of a particular settlement:

1. Territory (*Banwa Subanen/Dlupa Pusaka*)²⁷

There is an unwritten law as to who is the recognised leader of a particular area and almost all the local Subanen are conscious of the territorial jurisdiction of a particular *Timuay*. The traditional territory of Matalang and Lanayan spans from the foot of Mt. Pinukis to Duwilik (Midsalip) to Barangay Sigapud (Midsalip) and Leyson Valley of Pagadian City.

2. Tribal Leaders (*Timuay*)

“Sa una, gikan sa Guikwan, usa ra ang Timuay sa matag lugar ug mao kini ang balaud sa una. Apan karon, daghan na ang mga Timuay. (Before, from the Guiwan River up to this area, there was only one *Timuay*, but now there are many *Timuay*).

Kadtong tawag sa Timuay sa una, dili Timuay kun dili ‘Gukuman.’ Kung makasala ang mga Subano, ang Gokuman o ang Timuay mao ang mubusay sa tanan nga mga kaso. (The *Timuay* before was known as ‘Gukuman.’²⁸ If a Subanen commits a crime, it is the *Timuay* who shall render justice.)”

Ang musunod mao ang han-ay sa lumadnong pagpangulo (The following are the different positions occupied by a *Timuay*):

- *Timuay Labi* (Highest Chieftain)
- *Timuay Masala* (Assistant Chief Executive)
- *Timuay Langkap* (Chief Administrator)
- *Timuay Mansora* (Prayer-leader)
- *Timuay Libon* (Women Chieftain)
- *Pangulima* (Assistant to the *Timuay*)
- *Saliling* (Spokesperson)
- *Sulong* (Bursar)

²⁶ This is a purely voluntary act on the part of the barangay. No set procedures govern the endorsement to the tribal chieftain of cases or disputes among IPs

²⁷ Interview with Timuays in Purok 2 August 28, 2003.

²⁸ The original title that the Subanen tribe bestowed on their elders.

- *Tumanggam* (Leader with properties that could be used to bail out a member who has been enforced with a fine)

3. Constituency (*Ginsakupan*)

In Bag-ong Matalang and Lanayan, the members of the tribe never elect the *Timuay*; rather, the recognition accorded to a *Timuay* evolves through time. Moreover, the status of a *Timuay* depends on the number of followers or the constituency recognizing him as leader of the territory. This constituency cannot be gained through force or money but only through voluntary recognition.

A *Timuay* may also be stripped of this status if he has violated the laws of the tribe. This happened to *Timuay* Mando who failed to settle the fine imposed on him by a higher *Timuay*. After that, *Timuay* Mando could no longer mediate in dispute resolution processes.

On the other hand, any member of the tribe can withdraw his or her support and recognition of a *Timuay* if the latter is found inept or remiss in his duty as administrator of the tribe. This could be done by moving out of the area or by consciously not following the directions or decisions of the *Timuay*.

4. Customary Laws (*Batad Banwa Subanen*)

Imprinted in the collective memory of the Subanen are the customary laws of the tribe, the object of which is to achieve social maintenance.

“Aron mahapsay ang pagpuyo sa mga sakop sa tribo magsunod gyud sila sa lumadnong pamaagi ug pagdumala sa Timuay. Kung dunay makasala, sila paga-multahan sa mga Timuay subay sa balaud sa tribu. (To achieve harmony, the members of the tribe should follow the customary laws and abide by the decision of the Timuay. If one commits a crime, he/she will be punished according to the laws of the tribe.)”

The customary laws of the Subanen in Bag-ong Matalang and Lanayan encompass a range of disputes – land and property, marriage and extra-marital relationships and crimes against life, among others.

The local *Timuays* possess a good memory of laws in terms of conducting the mediation/resolution processes. They explain issues to the offended or aggrieved parties and determine the amount of fine to be imposed.

The customary laws of the tribe also prescribe the process of settling disputes:

“Ang hintungdan mahimo nga magdala og testigo ug mahimo usab nga musli sa nabubat nga sayop o dili. Pagkahuman, pangutan-on dayon sa Timuay Langkap ang testigo kung tinuod pa ang iyang gipamulong, apan kon dili tinuod ang iyang gipanulti, magamulta siya. (The parties involved can be accompanied by witnesses, who will be interrogated by the Timuay and by those who are attending the hearing. If the witness lies and this is proven by the community, the witness will also be punished and fined)...

Lain nga Timuay ang mo-imbistiga sa kaso, tungod kay ang ang hintungdan nga Timuay maoy manalipud sa iyang gi-imbistigahan nga sakop. Pananglitan og taas ang katarungan sa usa, ang usa mao ang mobayad, ug ang mga Timuay mao ang magsabot-sabot kon pila ang multa. (Another Timuay should administer the resolution process, someone who is neutral. A Timuay may defend his constituent in the resolution process. If someone is found reasonably innocent by the arguments presented and if the other party guilty, then all the Timuay present agree on the amount of the fine)...”

Most people agree that the customary laws of the Subanen are no longer strictly observed or implemented. The awareness on these has decreased with population growth. In many cases, the mainstream justice system has become more applicable partly because over time, the characters of tribe members have changed.

Current Status and Role of Tribal Chiefs and Elders in Tungkalan

There is no longer an indigenous tribal system of conflict settlement in Tungkalan. All conflicts and cases of violation against person and property are now being handled by the Barangay Captain with the help of the Barangay Council. Most of the nine members of the Barangay Council in Tungkalan, including the Barangay Captain himself, are Bisaya. The few who are Bagobo usually have mixed parentage or are married to a Bisaya. This integration has been one way of getting the necessary votes during election to attain an elected position.

Thanks to the efforts of the National Commission on Indigenous Peoples (NCIP) to revive indigenous culture, a tribal system of indigenous

leadership has been set up anew, composed of Chieftains (one for Upper Tungkalan and one for Lower Tungkalan) and Councils of Elders. However, this “indigenous structure” no longer holds as the Bagobo community in the barangay has, for a considerable amount of time, lived under the Western-based Philippine legal system.

Today, community people appear to be more informed of Philippine laws and current legislations than the traditional ways of dispute settlement. It can even be said that had it not been for the efforts of NCIP and Lumad advocates, the concept of “tribe” would have altogether disappeared from the vocabulary of the Bagobo in Tungkalan. That is how greatly they have been acculturated and assimilated into mainstream culture and politics.

The predominance of the Philippine legal system in the lives of the Bagobo is reflected even in their choice of current tribal chieftains. The present crop of indigenous leaders is chosen not so much on the basis of their knowledge of tribal laws and tradition but of their knowledge of Bisaya laws and culture. Thus, most of them are educated men in their thirties or forties. The few old men who have been included in the Council of Elders seem to be there more for symbolic purposes than for any effective function held.

In Upper Tungkalan, the recognised tribal chieftain, *Datu* Jonathan Awing, who is in his late thirties, was chosen on account of his having been educated in the ways of the dominant culture. During the interviews, *Datu* Jonathan Awing displayed good knowledge of Philippine laws and how the legal system works and little of their tribe’s past culture and traditions. He also tended to contradict his father in interpreting the past (Interviews, 08/27/03).

Elders are no longer regarded as effective leaders today on account of their lack of skills in dealing with contemporary realities and political practice. The elders themselves are also wont to turn over leadership to the young whom they perceive to be smarter and more knowledgeable of the way the present system works. They are aware that their knowledge about the tribe no longer has much use in the present (Interview with Antaw Bansag, 09/17/03). Hence, they accept the diminishing respect for them as elders. In the past, the disrespect of parents and elders was strictly taboo.

The Bagobo residents interviewed for this study only had the vaguest idea of what is an indigenous tribal system. They identified persons associated with the Tribal Council but they hardly understood these tribal leaders’ real functions in the tribe. While elders remember the time when tribal chiefs led the tribe, the younger generation’s memory of a tribal organisation does

not go beyond the NCIP or the more distant PANAMIN²⁹-led cultural revival campaign. Elders recall that as far back as the “American time,” a *Datu* Sindu headed the tribe and by the 1940s, a *Datu* Tungkalan, after whom the place was named, became the recognised leader of the tribe. At this time, there was little migration of settler families; thus, the tribal head, then called *Datu*, still had effective rule over what was then a cohesive Bagobo community. Even if the plantation economy was introduced by the Americans and later by the Japanese, and even if these plantations brought in migrant labour from the North as well as new concepts related to government and economic affairs, the predominance of the indigenous tribe’s population made indigenous laws and customs the dominant social practice.

The Bagobo community’s current interest and mobilisation around indigenous rights as defined under the Indigenous Peoples Rights Act of 1997 or IPRA³⁰ (and reintroduced to them by advocate groups) are more motivated by their desire to avail of new opportunities (eg, education for their children or land as may be secured under the Ancestral Domain Law, which is important for their economic survival) and less by genuine belief in the viability of an indigenous political system, which they had long filed away in their memory. Now a fully assimilated Christianised tribe, their concepts of law and justice as well as their practices are no different from those of their Bisayan neighbours.

Women in the two IP Communities

Gender roles in indigenous societies are very well defined. Both men and women, and in some cases young men and young women, have their own respective domains. In a “hostile” environment the men are traditionally engaged in clearing the fields and in defending household members from the magahat (Subanen) or pangayao (Bagobo), the terms used for tribal war or ambushes.

The Subanen woman’s primary consideration is productivity in the farm. Thus, she attends to farm work from planting to harvesting, in addition to doing some household chores. Men and women share most of the chores in the house including childcare and child rearing.

However, gender roles and relationships, as aspects of culture, change with time. When farming systems shifted from upland clearing to rice fields, and when the carabao and plough were adopted, women lost their economic power and their participation in decision-making with regards to agricultural production.

²⁹ PANAMIN stands for Presidential Assistant on National Minorities. Created in 1978, this office was formerly under the Office of the Philippine President. PANAMIN took over the government programs for the Non-Muslim or other tribal groups from the abolished Commission on National Integration. One of its main tasks was to integrate into the mainstream of society certain ethnic groups which seek full integration into the larger community and at the same time protect the rights of those who wish to preserve their original ways of life beside the larger community (<http://www.ncip.gov.ph/agency/history.htm>).

³⁰ A landmark legislation signed into law by former President Fidel V. Ramos on October 29, 1997. The IPRA generally seeks to recognise, promote and protect the rights of IPs including the Right to Ancestral Domain and Lands; Right to Self-Governance and Empowerment; Social Justice and Human Rights; and the Right to Cultural Integrity (<http://www.ncip.gov.ph/mandate/ipra.htm>).

Some Indigenous Women's Perception of Women

Generations of the Tagabawa-Bagobo have espoused that the activities and responsibilities of women are taught by the mothers to their daughters. Meanwhile, sons learn from their fathers to become hunters, farmers or whatever else is the prevailing work of men. Work roles in their community are informally learned (FGD with IP-Women, 08/30/03).

As the bearer of sons, a woman is respected and under a subsistence tribal economy, her labour is considered very important. After the clearing of the field (which is usually done by men), the rest of the farm work, from sowing to weeding and harvesting, are generally done by women. As it is also considered their duty to care for the children, they usually have to sling their babies on their backs or wrap them and hang them on a tree branch while doing farm work.

The Subanen in Bag-ong Matalang and Lanayan said that women have responsibilities and rights as women. There have also been several recognised *Timuay Libon* (Women Leaders) in their community. Women can also be spiritual leaders and healers and can officiate over the rituals of the tribe. They also actively participate in dispute resolution processes.

“Sila maoy magdesisyon kon asa gamiton ang kwarta. Ang babaye sad ang naay katungod sa pag-mintinar sa mga uma ug sa tanan nga butang nga kabahin sa pag-atiman sa mga tawo sa balay. Paminawon gyud sila sa panahon sa paghusay” (Women decide how the money is spent, they also maintain the farm and see to it that the household is in order in all aspects. They are also listened to during conflict-resolutions).”

However, when a woman marries a *Timuay*, she performs multiple tasks—from household chores and farm work to receiving guests in the house. A *Timuay* does not attend to the needs of guests. (“*Motrabaho sa balay ug sa umahan, apil na ang pag-atiman sa mga bisita. Ang Timuay, dili pa mo-atubang sa iyabang bisita, ang asawa pa nga babayi ang mo-atiman sa bisita sa Timuay*”).

Subanen women do participate in hunting. They also share the work in the farm and get part of the produce. Women who are menstruating are not supposed to go to the field. During travelling or hunting activities, women used to carry most of the load but this has changed because baggage is now loaded on a horse and husbands now help.

In both settlements, the biggest violation a woman may commit under traditional laws is to be with a man who is not her husband (adultery).

For this offence, she or her lover would have to pay the husband a horse or a carabao (water buffalo). The fine is called *sablag* (Tagabawa) or *sala-an* (Subanen). By paying the fine, a woman redeems her honour and the honour of her husband.

In some cases, even without a lover, a woman might just decide to separate from her husband. For this, she would have to pay twice (for the Tagabawa) the amount of her dowry – say, two carabaos or whatever is its equivalent in value (*pangayuan o kubrahan og doble*). In case the offender could not afford to pay the imposed fine, the *Datu* helps raise the money or pays the deficit from his own resources. This helps maintain the authority of the *Datu*.

The tribal laws governing the relations of men and women are very strict. These include penalties even for the accidental or intentional touching of body parts such as elbows, back and the head.

Concept of Children

In the context of traditional IP culture, children are generally young persons 10 years old and below and those who are more than 10 are considered young adults. Adults are those who are already of the marrying age, which is around 15 and for males, those who already know how to plough the field.

Children are trained by parents to help in the field. They are assigned a portion of land that they have to clear and eventually plant on. The produce from the children's plot is their contribution to the family. Such contribution is segregated from the harvest of the adult members of the family and is duly acknowledged.

In both communities, one is still considered a child as long as she/he is dependent on his/her parents, still unmarried, and still engages in child play like bathing in the river, climbing trees and gallivanting with other children. A boy graduates from being a child to becoming a young man when adults begin to consider him ready for marriage. The case is the same with female children. Young women are generally thought to be approaching maidenhood once they start menstruating. As it is the parents who decide when a child is marriageable or not, there are cases when a girl is given over for marriage even before her mind or body is ready for this.

Generally, as soon as a girl can start bearing children or starts to menstruate (even as young as 14 or 15), she may be married off to a man her parents chose for her. Young men get their training for manhood from their fathers while young women get their training from their mothers. Young men are

taught to do farm work and young women, how to keep themselves and the house clean. While a couple may live separately from their parents after marriage, the relationship of interdependence continues.

In indigenous culture, children are traditionally held as their parents' property, and as such, are not seen as rights-holders. Their first duty is to obey their parents and abide by the laws and customs of the tribe. In no way is a child to engage in acts that would dishonour her/his parents and tribe. As their parents' property and ward, children could not leave the house without their parents' consent. They could not engage in courtship or have boyfriends/girlfriends without the knowledge of their parents, much more choose whom to marry. Children could marry at age 15 and continue to rely on the support of their parents.

A male child in indigenous society is trained by his father to learn "manly" skills but only after marriage (and when he could support his family economically) could he independently decide on his own and "become a man." Even when this has happened, in no way could he conduct his life in a manner that violates the tribe's mores. As he supports his own family and lives separately, the relationship of mutual dependence and co-operation with his parents and other members of the tribe continue.

A female child, under indigenous laws and traditions, is a property of her parents. An ideal tribal woman has to mind her manners. She has to be respectful, good-hearted and mindful of her neighbours. She also has to stay home, learn household chores, and serve at the pleasure of her parents and family. Her parents and the tribe elders decide on who she could marry and when to marry her off. Upon marriage, she is given away in exchange of a dowry or bride price (*kasfala*), thus, graduating from being the property of her parents to becoming the property of her husband.

Although children's rights are not recognised in a tribal society, this does not mean that they are not valued. The birth of a child symbolizes the continuation of the race and as such is always greeted with celebration. Community members celebrate a child's birth by slaughtering livestock or fowl (such as ten chickens) and holding a feast. This gesture is traditionally matched by the parents by holding a feast and killing twice as many chickens when the child has grown up.

The IP children of old were less exposed to economic hardships than the young of today. Clothed, sheltered and fed by their parents and the community, IP children then do not have to leave their homes and survive on their own in a harsh world. Today, many of the Bagobo children are exposed to the risks of living in the city, working as house helps, labourers, tricycle drivers, and some even are engaging in prostitution.

In general, IP children are considered as children based only on their “physical” attributes. After puberty or when they are deemed ready for marriage, they are usually no longer regarded as children. It is also common among parents in these communities to want their children to be married off at an early age. One loses his/her “child status” when he/she reaches the marrying age (starting 12 years old).

Needs and Rights of Children

In the FGDs conducted among children in August 2003, the participants expressed the following desired states as part of their entitlements/rights:

1. To be able to live under sanitary conditions/be provided with toiletry to keep themselves clean;
2. To be allowed to go to other places;
3. To have a place for shelter;
4. To have access to health services;
5. To have clothes;
6. To be protected from harm;
7. To be able to engage in religious activities/worship;
8. To be cared for;
9. To stay healthy;
10. To be well-nourished;
11. To have access to education/higher learning;
12. To be able to engage in recreation/leisure activities;
13. To make friends;
14. To speak up and be listened to; and
15. To rest and be able to sleep on time.

In the old days, some of these demands would have been inconceivable. In addition, the children of Lanayan identified the following as the desired qualities of a good child:

- Obedient to parents and helps in the household chores;
- Helps other children and plays with them ;
- Follows the advise of the *Timuay* and learns to be a good member of the community; and
- Respectful of elders and other members of the community (especially the elders, the teachers and guests).



3

The Indigenous Justice System

Restorative justice is “a value-based approach to criminal justice, with a balanced focus on the offender, victim and community. The foundation of restorative justice is to determine the harm resulting from a crime, what needs to be done to repair the harm, and who is responsible for repairing the harm... Restorative justice’s emphasis on healing the harm of the crime, with a balanced focus on the offender, victim, and community, creates the foundation for a set of practices the current retributive system cannot achieve, because it is based on law and punishment... (Cavanaugh, 2000).”

According to Cavanaugh (2000), “the essential elements of restorative justice include: (1) Respect for the basic dignity (personhood) of every person; (2) Commitment to the well-being and development of all people, particularly through providing the basics of human life: food, clothing, health care, work, education, culture, information and the right to have a family; and (3) Living in peace in an environment where the common good is synonymous with community.”

This shared vision of the common good leads to the core of restorative justice, which is a balanced focus on the offender, the victim and the community. Thus, the object of restorative justice is to promote the common good (Cavanaugh, 2000). Proceeding from this, restorative justice should clearly have the following goals:

- The accountability of the offender (and ideally, the acceptance of responsibility) for what has been done and building restitution to the extent that this is possible;
- Addressing the victim’s pain and injury as fully as possible and in the case of a homicide, the focus would be on the relatives and friends of the person who was killed;

- The restoration of the community's sense of safety that was violated by the crime;
- The official reiteration and reinforcement of the society's moral values as reflected in criminal law; and
- The reduction of the offender's chances of repeating the crime, and of others committing the same crime in the future.

Viewed from this standpoint, substantial similarities may in fact be present in the IP system of justice, which basically seeks to restore order and harmony to the community, adequately address grievances and bring forth reconciliation rather than retribution.

This view of justice and the directions it would take are in stark contrast to today's situation of CICL in the country where children are incarcerated as punishment for the crimes they committed. This situation persists despite a set alternative procedure for dealing with children.

Contemporary Practices in the IP Administration of Justice

Most of the local *Timuays* in Bag-ong Matalang agree with what outsiders see as the Subanen character: peace-loving, honest, and hospitable. They are known to keep an air of calmness and control regardless of the situation confronting them.

The *Timuay* said that the Subanen are not afraid of conflict but would, if possible, refrain from trouble because they believe that a good person is one who has no enemies. They also believe that calmness indicates humility and humility is strength. Furthermore, they added that the Subanen always do what their leader tells them to do. For them, a good leader cannot err if he/she discourages the use of force. As proof of this contempt of violence, it is the customary duty of a *Timuay* to correct the misdeeds of his/her constituents and to help in making restitution for damages. During the process of resolving conflicts, through the intercession of the *Timuay*, the one who is at fault offers the aggrieved party a *daga*³¹ and pays the necessary penalty to soothe bad feelings and restore good relations.

As a rule, committing crime is frowned upon by the Subanen who believe that every crime unfailingly begets a corresponding punishment. While it may be possible to escape institutionalised punishment, the Subanen hold that the *dimata*³² will exact their own punishment through a curse such as causing a person to suffer from disease. Because of this fear of reprisal from the spirit world, honesty was common in the old days, so much so that in the past, a criminal would rather admit to a misdeed than court the anger

31 A ceremony where both parties offer animal sacrifices as a symbol of their willingness to be reconciled. The Balyan prepares the animals – half of the meat is eaten by the parties involved and the blood is smeared on their palms. The other half of the meat is offered to the spirits and eaten by the *Timuay* and the Balyan.

32 Spirits

of the spirits. Today, however, the Subanen have learned to imitate the “shrewdness” of lowlanders or the Bisaya in escaping punishment.

What Constitutes a Crime?

In Lakewood, crimes are judged not only according to gravity but also according to intent. Those committed in bad faith are considered grave offences and would fall under the exclusive jurisdiction of the highest court, constituted by the *Timuay Labi* (highest chief executive). For the indigenous communities in Lakewood, the following are grave negative acts:

- Murder (*Pagpatay og tawo*)
- Wife-snatching (*Pagtaban og babaye*)
- Rape and impregnating women (*Kamang ug makaburoso*)
- Adultery (*Pagpanapaw ug pagkuha sa asawa sa uban*)

Cases such as kidnapping, rape, murder and stealing large amounts are considered “intentional crimes” or transgressions that are committed wilfully; and thus, handled by the highest court. “Intentional crimes” will embroil the culprit’s kin and a series of killings is likely to ensue when the family of the aggrieved retaliates. Only the quick intervention of the tribal leaders can prevent this bloodshed. A trial would be held following the procedural order of the tribal courts until a fine is established.

Reconciliation of feuding parties is celebrated with the butchering of a carabao and the drinking of *pangasi*³³. On the other hand, “non-intentional crimes” can be handled by the lower court with the local *Timuay* presiding.

Rape is considered a grave offence. Once found guilty, the perpetrator is ordered to offer as a fine an amount that is almost impossible for him to produce such as a carabao. For theft, if the accused denies the allegation, he would be asked to get a needle placed at the bottom of a pot of boiling water. If he succeeds in getting the needle, this would prove his innocence and the accuser would be punished.

If a man refuses to acknowledge responsibility for the pregnancy of a woman, he would be subjected to a test by challenging him to hack the mid-section of the pregnant woman’s body. If the woman is lying, she would be too scared to go through the procedure. This approach is only employed when the *Timuays* are not able to settle the argument after having exhausted all efforts through mediation. In cases of crimes committed against property, fines are based on the value of the property stolen or destroyed.

In the settlement of all cases, the court is divided into two: the prosecution and the defence. If the transgressor appeals to lower the fine, a tie vote from the two sides will retain the fine. A two-thirds vote will lower the fine.

³³ Pangasi is a traditional drink made from fermented rice and cassava.

Errors committed by the *Timuays* are subject to penalty as well, the highest penalty being removal from position. This punishment can only be imposed by the *Timuay Labi*, the *Timuay Masala* and the *Timuay Langhap*.³⁴ However, when a high ranking *Timuay* commits the same error, he automatically loses his position.

Failure to pay fines would result in enslavement under the *Timuay Labi* and the *Timuay Masala*. Freedom can only be regained in this instance after the fine is paid. To prevent slavery, a wealthy personage can intervene, the *Tumanggong*.³⁵

The IP justice system does not make use of jails or custodial facilities. A person who has acquired a reputation for being a hardened law-breaker, and continues with his/her wayward behaviour despite efforts to reform him/her would be branded as *pilyo* (someone who has no credibility or is untrustworthy). Anyone who does harm to a *pilyo*, even killing him/her, is free from any liability – an exception to the general principle of “an eye for an eye, a tooth for a tooth,” which applies in penalizing one who is guilty of killing a person.

Present day Subanen in Lakewood would prefer tribal justice over the mainstream judicial system. In the former, the procedure is simple, producing immediate results via a system of fines. This means the speedy redress of grievances. The process also provides closure since the parties must come to a point of agreement and reconciliation. An added advantage also with the tribal system is the community’s familiarity with traditional laws. In comparison, the mainstream judicial system involves long, costly, court appearances within the unknown, complex context of Constitutional provisions, a Penal Code and copious laws.

The Functions of the Tribal Leaders

In the old days, all conflicts were brought to the hands of the tribal chieftain or *Datu*. The *Datu* was generally the oldest member of the community and the wisest. He possessed virtues cherished by the community and had a deep understanding of the laws of the tribe. He was well respected by every member of the community. As children obeyed their parents, every member of the tribe obeyed the *Datu* or the *Timuay*.

The payments that the *Datu* then collected in the course of settling a conflict did not really go the way of “accumulated property” because when constituents did not have the means to pay their obligations to the tribe, the *Datu* disposed of such collected property so that tribal justice might be served.

It can be said that this system of fine payment kept property in circulation, and thus, helped maintain a relatively egalitarian society. Mutual help

34 Labi - Chief Executive; Masala - Assistant Chief Executive; Langkap - Chief Administrator

35 A wealthy *Timuay* who agrees to pay for the fines.

also kept tribal society cohesive since favours received always had to be reciprocated. There was a belief that if one did not return the help given him, he would be punished by the gods (*gaba*). This system of reciprocity resulted in keeping everyone at the same economic level.

Nowadays, however, it has become a rare treat for the *Timuays* to have many disputes to settle and to collect numerous fines. Some members of the tribe no longer bring their disputes to be settled because they want to avoid the payment of fines. An example is the case of a couple who often had disagreements with one or the other having to pay a fine. Fast losing several properties because of this, they decided to just settle things between the two of them.

When parties in conflict come from two different tribal communities, the *Timuays* of both areas would sit down together to discuss and settle the matter. The settlement of disputes is open for everyone to witness. Community folk, especially the young, are even encouraged to attend so they can also learn how resolutions are arrived at.

The party who is not satisfied with the outcome of the settlement process sometimes seeks revenge. This happens rarely but when it does, the *Timuays'* approach is to make the offender realize the gravity of the offence committed. Humanitarian considerations are of utmost significance to the Subanen.

The *Timuays* are not exempt from punishment if they commit crimes:

“Kon ang mga Timuay ang nagkabangi, laing Timuay ang mubusay sa ilaba ug doble ang multa sa Timuay tungod kay nasubito siya sa balaud apan iya pud nga gilapas. Kung dili pa siya makabayad sa maong multa, mawad-an siya sa katungod isip Timuay. Mamahimong maubos ang iyang pagka-Timuay ug dili siya mahimong mokasal sa iyang mga sakop. (If two Timuay are in conflict with each other, another Timuay shall be called upon to administer the resolution, and they shall be fined double because they know the law but they went against it. If the Timuay cannot pay the fine, he/she shall be stripped of the status as Timuay and can not administer any function.)”

The Role of the Spiritual Leader/Healer (*Balyan*)

Customarily, a *Balyan* is excluded in the settlement (*bussy*) of disputes in the tribal court as this is not part of her duty. However, in the rare occasions that she joins in the process, a *sangat* is offered to the *Divatas* or *abyans*³⁶

36 *Abyan* is a spirit guardian.

beforehand to ask their permission for her to do so. The ritual (offering of eggs and other things to the spirits) after the *busay* is performed by a *Balyan*.

As a sentinel of the spiritual well being of the tribe members, a *Balyan* performs a special ritual, calling on the *Divatas* to guide the children and her constituents towards the right path and give them good health.

The Role of the Community

“So that the life of the tribe would be orderly and peaceful, community members should observe indigenous practices and respect the traditional governance of the *Timuays*. The *Timuay* settles all disagreements to avoid conflict. When a member of the tribe has committed a crime against another individual from another group or sitio, the *Timuays* of both groups meet and talk to arrive at a solution.”- (*Timuay* Balibis)³⁷

Generally, community members work together to avoid discord and dysfunction. This is evident in the first two case studies in the next chapter with the families playing an active role to enable the settlement process to take place.

Members advise children in the community as they would their own offspring. Parents in traditional Subanen communities would not hesitate to correct children from other families if they are perceived to be doing wrong. They are in fact obliged to exercise this supervision.

The community also encourages offenders to claim responsibility for their acts and face the consequences. In the second case study discussed, the relatives made conciliatory overtures, which paved the way for the diminishing of hostilities.

The community also participates in the mediation processes. In Lakewood, trials are held openly and all are welcome to observe. Generally, the opinions of everyone and of those whose involvement is incidental or peripheral are solicited.

The responsibility of producing resources to pay fines is one that is shared by the community. This willingness to raise money to mitigate any harm done is illustrated also by the second case study. This comes about through the intricate network of favours that holds the community together.

The ritual of reconciliation involves all community members who celebrate and witness the return of harmonious relationships with the drinking of the traditional wine, *pangasi*, which is drunk not from individual glasses but straight from the jars with straws made from grass stems. This ceremony strengthens the accountability of the parties directly involved in the conflict.

³⁷ Timuay Balibis is a highly respected leader of the Subanen in Lakewood.

Children and the Justice Process

Tribal/Customary Laws on or Related to Children

Within the traditional context of a tightly-knit little community where the shared desire is harmony and social maintenance, crimes committed by children seldom happen. This is so because most of the members of the family and of the entire clan perform their roles as guardians of the children. Moreover, obedience to elders and leaders is not only a rule but also an internalised virtue among IP children.

The greatest violation a child could commit in the past was to disobey her/his parents' wishes. When the child has committed an offence (eg, theft), he/she is usually forgiven. It was the adults who made amends among themselves in behalf of the child. It can be said that erring children in those days had more protection rights than they do now, under a harsher and economically depressed society where children have to fend for themselves.

Generally, the concept of children in conflict with the law did not exist in the past. The cohesion of the tribe and the system of mutual co-operation protected every member of the tribe so that the collective tribal life was maintained. Thus, children were afraid to make mistakes.

Stealing is an offence commonly committed by children and the parents would be fined as they are considered accountable for the acts of their children. The importance of abiding by the *batad* (customary laws) and obeying the will of the parents was always impressed upon the children. Sometimes parents would cover up their children's misconduct.

Still, in contemporary Subanen and Tagabawa society, when a child (usually below 15) commits a "sin" or a crime, the offenders are reprimanded and sometimes punished. In most cases, the following takes place: (1) The child is given advice on the first offence (*pabimangno-an sa unang higayon*); (2) The child is punished by the parents and/or close relatives on a second offence (*silotan sa ika-duha*); and (3) The child who repeatedly commits "criminal" acts could be "cursed" by the community members (*gukedon ang kalag*) or even imposed with death penalty.

Table 5: Customary Laws Applicable to Children

Values/Principles	Laws/Norms	Offences/ Violations	Sanctions
Sharing with others and respecting the individual property rights of the members of the tribe	Respect communal and individual property rights	<ul style="list-style-type: none"> ■ Refusal to share ■ Petty thievery ■ Robbery 	<ul style="list-style-type: none"> ■ Fine ■ Ostracised by community ■ Return of stolen property or equivalent value ■ Fine exceeding value of property in question
Sanctity of creation, harmony with nature and maintenance of positive relations	Respect the right to life, security and safety	<ul style="list-style-type: none"> ■ Physical injury ■ Murder 	<ul style="list-style-type: none"> ■ Fine ■ Fine
Social maintenance, harmony and survival	Children obey and respect their Parents and the <i>Timuay</i>	<ul style="list-style-type: none"> ■ Disobedience ■ Defiance of <i>Timuay's</i> decision 	<ul style="list-style-type: none"> ■ Punishment & counselling ■ Fine ■ Loss of trust
Survival of progeny	Marriages are arranged by parents	<ul style="list-style-type: none"> ■ Refusal to marry partner chosen by parents 	<ul style="list-style-type: none"> ■ Fine and loss of face
Chastity	Courtship and sex before marriage are taboo	<ul style="list-style-type: none"> ■ “Premarital sex” 	<ul style="list-style-type: none"> ■ Fine; offenders must be wed immediately
Honour and chastity of women	Sexual relations must occur only within marriage	<ul style="list-style-type: none"> ■ Rape³⁸ 	<ul style="list-style-type: none"> ■ Fine
Ensuring positive relationships with others	Respect others' relationships	<ul style="list-style-type: none"> ■ Adultery 	<ul style="list-style-type: none"> ■ Fine
Maintaining linkages through a tight kinship system	Maintaining relationships, settle conflicts	<ul style="list-style-type: none"> ■ Abandoning marriages 	<ul style="list-style-type: none"> ■ Fine equal to amount spent by aggrieved party

³⁸ Lack of consent becomes irrelevant when a man marries the woman he has raped because he is then absolved of the wrongdoing.

Children as “Offenders” in the Context of the IP Justice System

In general, IP children below 12 who can still run around half-dressed without malice (*ug naghubo pa*) are regarded as not capable of committing crimes. Moreover, children are fearful of a *busaw* (evil spirit) who would take over their soul. This fear is inculcated in their minds. As warning, children are sometimes told stories about cutting off the finger of individuals who keep on committing serious offences. The story goes that there was an incident before when a 10-year old boy’s finger was severed by his own father.

Naughtiness (*kapilyohan/pusong*) within the context of the tribal law among young adults (below 16 years old) is considered harmless, a skill to be admired rather than a transgression to be punished. Such is the case of Lorio as narrated below:

“Aside from hunting animals, searching for beehives as a source of honey is among the leisure pursuits of tribal members, especially the children. In one of his hunting expeditions, Lorio, who was then around 12 years old, saw a wooden arrow on the ground pointing to a tree. He followed the direction of the arrow because he had a hunch that the arrow pointed to a beehive and this turned out to be true. He examined the tree and found no markings to indicate that it had been found by someone else so he made his own markings and asked his friends the following day to get the bees out of the hive (*puskag*).

Lorio’s friends were later confronted by an older boy who presented himself as the “rightful owner” of the beehive. They explained that they only acted upon the instructions of Lorio thinking that the beehive was his. The older boy found Lorio in a *taboan* (barter trade) and a heated argument between the two ensued so they were brought before the *Timuays*.

The *Timuays* got down to the facts surrounding the issue. Lorio admitted to removing the arrow supposedly set up by the older boy to indicate prior rights over the beehive. However, the *Timuays* cleared Lorio from any liability. They accepted Lorio’s explanation that though there was an arrow installed, there were no markings found on the beehive itself which, as practiced widely, are supposed to be made to let others know that somebody has laid claim to it.

Recognising his lapse, the older boy gladly accepted the decision of the *Timuays*...”

Children in Conflict with the Law within the Lowland Justice System

In Barangay Tungkalan

Unlike in Bag-ong Matalang, Barangay Tungkalan has a Barangay Council for the Protection of Children (BCPC) to look after children's rights. The Tribal Council, which do not have an idea of “children's rights” in the first place, is non-functional and leaves conflict settlement to the Office of the Barangay Captain or the authorities (eg., the police or the courts) in the city proper. The Council of Elders, which was revived by the NCIP, is only “employed” as the need arises; that is, to respond to specific NCIP-related activities and requirements.

The BCPC, however, is not really actively engaged in protecting children. To date, the BCPC has no documented cases involving Bagobo children in Tungkalan (FGD with Barangay Captain, *purok* leaders and elders, 8/28/03).

Children usually commit their offences in Davao City proper and not in Tungkalan; so, they are usually brought to the police precinct in Toril and handled by city authorities. The most common offence committed by children is public disturbance or engaging in brawls and fistfights. In difficult cases where a child repeatedly commits an offence, he may be brought to the *purok* leader, and then to the Barangay Captain. So far, no IP child has been handled by the Tribal Council.

Serious crimes, which according to community leaders require the intervention of higher authorities, are those related to drug pushing and drug dealing. Lighter crimes like petty brawls and petty thievery that do not result in serious damage to property and persons are as much as possible settled in the community in the presence of the child offender, his/her parents, a witness, and a mediating barangay official, who is usually the Barangay Captain along with another official in the Barangay Council or in the Lupong Tagapamayapa (peace-keeping council).

This usually includes bringing together all parties involved in the crime/offence, finding the motive behind the offence, determining the damage done, and making the offender apologise to the offended party as well as pay for damages.

However, community residents interviewed could not recall any incident that happened so far or that was settled amicably in the barangay. Crimes that happen outside the barangay involving strangers are hard to settle amicably as offended/violated parties tend to immediately call the police.

A good case that happened in Tungkalan, which made use of a combination of the traditional system of conflict settlement and the present political structure (the office of the Barangay Captain rather than the Tribal Council), was a sexual harassment/malicious mischief case involving a T'boli³⁹ man who molested a married woman by touching her. The case was brought to the Barangay Captain and not to the Council of Elders (headed by the tribal chieftain). The offender was fined one carabao, which he paid before leaving the place on the advice of the Barangay Captain and other community leaders.

Partly because of the advocacy of the NCIP in Tungkalan, the Barangay Captain and the Barangay Council as much as possible settle cases happening in the community within the barangay level rather than bringing the case to the Toril precinct. However, one problem with settling conflict the traditional way is the growing scarcity of carabaos these days. Given the worsening economic situation in the barangay, paying for a crime with a carabao is becoming more and more impossible such that to most people jail is an easier recourse.

In Poblacion Lakewood

The situation of crimes, abuses and violence involving children is increasing in the town centre of the Municipality of Lakewood, a culturally mixed and urbanising community where more than half (55%) are indigenous Subanen.

Social worker Catalina Duran, with the assistance of the Department of Social Welfare and Development (DSWD), provided information on cases involving children in Lakewood and how these relate to the tribe. According to her, an average of one case of theft and other petty crimes and three cases of rape involving children are referred to DSWD every year. The police usually takes custody of the child and endorses the child to DSWD. DSWD facilitates the transfer of custody to itself or to the parents. It also assists in the amicable settlement of cases involving children. The agency rescues and brings victims to the Lingap Center (DSWD's temporary shelter) for safekeeping. If the children need to move to another centre, the DSWD also facilitates this transfer.

The DSWD also makes case studies, conducts interviews with parents and victims, and provides necessary financial assistance for food and transportation. The agency guides the victims or their parents in reporting cases to the police, in securing medical certificates, and in filing cases with the fiscal or seeking the assistance of the Public Attorney's Office for the accused. The DSWD also links with other agencies to take care of the other needs of the child. These may include referring the parents to the

39 A group of indigenous people found in the mountain ranges of the provinces of South Cotabato and Sultan Kudarat in Southern Philippines.

Department of Agriculture for livelihood, to the Department of Health for medical attention, and to other agencies. The local DSWD sometimes refers CICL cases to the Center for Youth Assistance (DSWD Dipolog). If the CICL is Subanen, the DSWD asks the *Timuay* to get in touch with the aggrieved party. Some *Timuays* co-ordinate with the DSWD for the custody of the child. Some cases that cannot be settled on the level of the *Timuays* are brought to the DSWD.

Although DSWD is mindful of children's rights, they also have to take into consideration the interests of the aggrieved party in the mediation process. Some of the problems in pursuing cases of abused children are the family's lack of financial resources to sustain the case and the fear of harassment by the suspects. Sometimes, parents themselves are not willing to file a case.

It is seen that in the Poblacion, when a Subanen child is involved in a case, seldom would the caregivers and law enforcers invoke the traditional Subanen system of justice. This is especially true if the case involves another party who is not Subanen. Even the local *Timuays* are unable to insist that customary laws be observed.

FRANCO'S STORY

At around 3:00 am on 11 November 2001, during an athletic meet at the Lakewood Central School, teachers and students who were sleeping in their quarters were roused by a commotion. One of the students had run amok, entered a room, slapped two female teachers, hit a male principal who was trying to restrain him, and ran about, seemingly crazed.

The boy who ran amok was Franco, a 17-year old senior from Bagong Kahayag National High School and a soccer player. Teacher Tito Bal-Lao, together with some students, caught up with Franco who calmed down when he recognised the teacher. The teacher and the students were able to bring him back to the quarters. When the police came, Franco was lying down with no memory of what happened. He had high fever, was delirious and had chills. He was brought to Lakewood Hospital for treatment.

It was later found from his team-mates that he's had fever for three days but still played in the games because there was no one to replace him. Since he was a minor, he was endorsed to the DSWD. He was also asked to undergo a drug test.

Two counts of direct assault were filed against him by one of the two female teachers he hit. Bail was set at Php12,000 (USD213.73) per

case (Php24,000 or USD427.46 in all) but he was discharged after a court order issued one month later released him to the custody of his parents.

Franco's parents begged the teacher to forgive their son but to no avail. The mayor, the DSWD personnel, and the chief of police also tried to convince the teacher to settle but she said there was nothing she could do because the case has already been filed. Besides, her honour as a teacher has been violated.

Various documents were produced to clear Franco of the charges. These included a birth certificate to prove that he was a minor, a medical certificate from the hospital stating that he had influenza and a certification from the Forensics Division of the NBI that he tested negative for shabu⁴⁰ and marijuana (cannabis). Five of his team-mates also executed a joint affidavit stating their knowledge of his health condition before the incident and during the time it happened.

A dismissal order was finally issued by the court on 17 July 2003 (18 months after). Ironically, this came about neither because of the weight of the evidence submitted in Franco's favour nor because of the case's lack of merit but because the teacher executed an affidavit of desistance after Franco's parents paid her husband Php5,000 (USD 89.11) to convince his wife to withdraw the complaint.

Franco has left school and is said to be working presently in Metro Manila. The school Principal refused to give him a certificate of good moral character until the case is dismissed. Hence, Franco was unable to go to college because this certificate is a prerequisite.

IP children caught in the harsher lowland system of justice often find insurmountable obstacles to the peaceful settlement of conflict. These children, their parents, and even their *Timuays* find themselves vulnerable because of their unfamiliarity with mainstream laws and procedures. In addition to this, their Customary Laws, the backbone of their socialisation, are no longer operational when dealing with non-Subanen – a matter of concern especially when records show that cases of CICL and child abuse are on the rise. The following is a list of offences committed by or against IP children from the records of the DSWD in Lakewood:

⁴⁰ Methamphetamine Hydrochloride, also known as "ice."

Table 6: Cases Involving Children Referred to DSWD in Lakewood, Zamboanga Del Sur

Nature of the Crime	Date/Location	Age/Sex of Child Involved	Remarks
1. Direct assault – child slapped two teachers while in delirium	2001, Bag-ong Kahayag	17, male	Dismissed. Complainant filed affidavit of desistance.
2. Rape of a girl by an adult	1999, Barangay Lukuan	16, female	The incident happened twice, with the accused being a 31 year old military man. An affidavit had to be made to correct the error in the record of the civil registrar stating that the victim was male.
3. Theft – the child stole from a cooperative store	2001, Barangay Bululawan	13, male	Boy claimed that an unidentified man, at gunpoint, ordered him to steal from the store.
4. Child destroyed a water pipe.	2002, Talites, Barangay Poblacion	15, male	
5. Insurgency	2002, Tubod	Age undetermined, female	Surrendered in Tubod, availed of the Program for Unification and Development (NPUD) and applied for amnesty.
6. Child hit in the face by stepfather	2002, Poblacion	15, female	Victim just wanted the incident to be recorded in the police blotter.
7. Maltreatment by father	1997, Tubod	Age undetermined, male	Father made a promissory note not to hurt his son again.
8. Incestuous rape by father	1999, Tubod	14, female	Victim was sent to Lingap Center

Nature of the Crime	Date/Location	Age/Sex of Child Involved	Remarks
9.Theft	2001, Kumarang	male	It was later determined that the boy was born on December 20, 1982 and was no longer a minor.
10. Rape by brother-in-law	1999, Bag-ong Kahayag	Female, 11 years old	Accused was a Bisaya tractor operator.
11. Rape by stepfather	1996, Tubod	15, female	The mother refused to believe the girl's complaints. When the girl got pregnant, the mother induced the abortion of the five-month old foetus.

Of the 11 documented cases involving children, only seven involved children as offenders and the rest of the cases involved children as victims.



4

Case Studies

It is not easy to locate and document cases of child offending in a traditional IP community for several reasons. First of all, respect for authority is still a strong value and “children are afraid to make mistakes.” The prevalent attitude is that children are too innocent to have culpability; therefore, “in most cases, offences committed by children are not really considered as crimes.” Another reason for the difficulty could be that for many IP communities, once a conflict is resolved, people make a conscious effort to put the incident behind them to restore harmony.

Originally, the time span of the documentation was limited to cases that happened in the last three years. However, since “child offenders,” as opined by the tribal elders, are rare in the indigenous settlements, cases that happened some five to eight years ago were also considered.

Below are the few cases unearthed involving children who committed “offences” against members of the tribe. These have been written according to how they were narrated by some of the members of the tribe and by the personal accounts of those who were directly involved in the conflict resolution processes. The names of those involved have been changed to protect their identities.

THE CASE STUDIES IN BARANGAY BAG-ONG MATALANG, LAKEWOOD MUNICIPALITY, ZAMBOANGA DEL SUR

CASE I

Nature of Offence:	Physical Injuries
Child “Offender/s”:	Brothers Alex (9 years old), Dante (12 years old) and Jason (16 years old), all unmarried residents of the barangay
Victim:	Antonio (18 years old), also residing in the barangay
Date:	Around six years ago

Although not close to each other, Antonio and the three brothers are distant cousins. All of them are also related, by blood and by affinity, to

the local *Timuay* in the area. The following facts were told by the *Timuay*/Barangay Captain, the three brothers and their parents as well as by a relative of Antonio.

The Fight

Six years ago, in the open field of *Purok 2* at around 2 pm, Antonio passed by a place where three brothers were playing. Antonio wanted to join the game but the three young men ignored him. At 18, Antonio was already considered an adult.

Jason, one of the three young men, refused and ignored Antonio. This angered Antonio, which led him to challenge Jason to a fight. At first, Jason refused to fight because Antonio was bigger than him. However, because of Antonio's heckling, Jason was goaded to strike the first blow, which hit Antonio in the face. Antonio fought back and almost mangled Jason. This prompted the two other brothers to join the intense fist-fight with Antonio, in an effort to defend their elder brother. When the fight ended, Antonio had bruises all over his body. Before he left, he threatened the three brothers by saying that he would avenge himself someday.

Actions of Community Members

In great pain, Antonio went home and told his parents what happened when they noticed the bruises on his face. Meanwhile, the three brothers did not tell their parents about the incident when they reached home. Later in the afternoon, however, a distant uncle of Antonio's who knew what happened, called the attention of the *Timuay* (who is also the Barangay Captain) about the case. The uncle also informed the parents of the three brothers and urged them to seek a settlement with Antonio's family.

Upon learning of the incident, the brothers were scolded by their parents but they insisted that they were not the ones who started the fight. The parents reprimanded the brothers just the same and warned them not to do the same thing again. However, they did not seek immediate reconciliation with Antonio's family, the aggrieved party.

At the same time, some close relatives of Antonio informed the *Timuay* that he should conduct a *busay* (resolution process) and determine what "fines" have to be imposed on the three brothers. Antonio's relatives insisted that as the aggrieved party, he was helpless in a fight with the three young men.

At first, the *Timuay* did not believe in the allegations of the complainant and insisted that a formal “settlement” was unnecessary as he needed only to talk to the parties involved and give them some of advice (*pahimangno*). Moreover, he did not immediately convene the other local *Timuays* for a community meeting or a formal resolution of the case because, according to him, the case only involved children and not the adult members of the community. Instead, the *Timuay* summoned Antonio and the three brothers to a dialogue with him. Hence, upon learning that the *Timuay* wanted to talk to them, both parties went to the *Timuay*’s house to seek a resolution for the case. However, the “offenders and the victims” were not accompanied by their respective parents and relatives to the dialogue.

The *Timuay* listened to the stories of both parties and afterwards gave them a sermon. He told Antonio never again to instigate a fight, since he could be punished. The *Timuay* reasoned that Antonio, being the older one (an adult) should not provoke children to a fight. Furthermore, the *Timuay* said that if this ever happened again, he would be forced to impose a fine on their respective families. The local *Timuay* then scolded the three young brothers for not respecting their older cousin. He emphasised that it was not good for children to fight their elder cousins without just cause.

The Resolution

Although Antonio suffered a lot of body pain and bruises because of the fight, the *Timuay* decided not to hold a “formal hearing” of the case. Instead, a *daga* or a traditional ritual for conflict-resolution was done. No fines were also imposed on both parties or on their families, but they produced the chicken for the ritual. The *Timuay*, however, admonished the victims and the offenders not to do the same thing again and then asked them to be reconciled.

Some Post-Conflict Scenarios

After two years, Jason was elected as a Barangay Kagawad (Councillor) and Antonio voted for him. Antonio had since moved to another barangay but most of his relatives are still living in the place and have close friendships with the families of the three brothers.

After the reconciliation, there were no instances when members of their respective clans ever mentioned the incident except during the interview. The case was never raised in any community forum or in any of the pre-marriage ceremonies of their clans.⁴¹

⁴¹ Subanen pre-marriage ceremonies in Lakewood include remembering all old conflicts among the members and relatives of the persons to be married. The resolution of these conflicts is a prerequisite to the wedding to ensure that the community’s unity is strengthened and the couple’s married life is harmonious.

CASE 2

Nature of Offence:	Frustrated Murder /Serious Physical Injuries
Child “Offender”:	Ramil, 18 years old, resident of Sitio Lanayan; his cousin Danilo (17 years old)
Victim:	Ramon, (23 years old), husband of Ramil’s sister, and a resident of another barangay in a neighbouring municipality
Date:	Sometime in 2001

The victim and the offenders are related by affinity. Ramil’s sister is married to Ramon. The couple live in another barangay and occasionally visit Ramil’s parents in sitio Lanayan. Dante is another cousin of Ramil. The former once had a disagreement with Ramil’s brother-in-law, who has been working as a CAFGU⁴² for the last two years.

The following account was narrated by the local *Timuay* of Sitio Lanayan and by Ramil himself. During the interview, Ramil’s parents were also present and they gave further verification of the facts surrounding the case.

The Circumstances

Ramil and his cousin attended the fiesta of a neighbouring barangay (in another municipality), which is a four-hour-hike away from their village. After an afternoon of merriment and drunkenness, the two decided to go home.

On the way back home, they met Ramil’s brother-in-law. The latter, who was also drunk, accosted Ramil’s cousin and tried to pick a fight with him. Ramil and his cousin told the brother-in-law that they didn’t want any trouble. They immediately ran away but the CAFGU chased them until they reached a secluded area where there were no other people. It was at this point when Ramil and his cousin assaulted the CAFGU and a knife-fight ensued. The CAFGU received several stab wounds while Ramil had bruises and his cousin, was slightly wounded.

Ramil and his cousin immediately left the area and the CAFGU himself was able to reach the house of his father. Then some relatives brought the CAFGU to a Public Hospital located in the neighbouring municipality (a four hour ride by motorbike). The CAFGU was admitted in the hospital for treatment of serious wounds, one of which was nearly fatal. Once he got home, Ramil was told by his father to immediately consult the local *Timuay*, who eventually took him under his custody.

The Response of Community Members

While in the hospital, the relatives of the CAFGU were not decided yet on whether to inform the local police of the incident or to ask for a traditional settlement with Ramil’s family. On the other hand, Ramil and his parents, who live in Sitio Lanayan did not approach the relatives of the victim

42 CAFGU - Citizen’s Armed Forces Geographical Units

but went instead to the local *Timuay*. The local *Timuay*, though, could not outrightly initiate a mediation process because the incident did not happen in their village; therefore, it would fall under the jurisdiction of another *Timuay*.

The *Timuay* of Lanayan discussed the matter with the Council of Elders and decided that if possible, they would not elevate the case to the “formal justice system” of the lowland society. Instead, they did the following:

- Since the case was not an ordinary incident (it involves two relatives belonging to different territories), the elders from Lanayan waited for an emissary from the neighbouring territory to summon Ramil;
- When Ramil is summoned, they agreed to accompany him and turn him over to the *Timuay* who had rightful jurisdiction over the case;
- They sought advice and support from their local partner NGO; and
- They also entertained the thought of reporting the incident to the local police office in the Municipality of Lakewood and not in the neighbouring municipality.

After several days had passed and the relatives of the victim did not file a formal complaint, the *Timuay* and Ramil decided to go to the Municipal Police Office and informed the Police Inspector of the incident. The latter did not detain Ramil and even told them, “If Ramil was really guilty, he would not surrender to the police. Since he voluntarily approached the Police, this showed he was not guilty.”

The *Timuay*, upon the prodding of some of Ramil’s relatives and other members of the Tribe, went to the hospital to meet the victim and his relatives with the objective of seeking a settlement within the tribal justice system. Ramil’s relatives and the *Timuay* raised some money beforehand to help in paying the cost of the CAFGU’s hospitalisation.

When the *Timuay* and Ramil’s relatives got to the hospital, they found that there was no decision about whether or not the victim’s relatives should elevate the case to the police. Neither has there been a decision to ask for a traditional settlement of the case. Seeing this, Ramil, his relatives and the *Timuay* did not make any move. Instead, they waited for any action from the aggrieved party. Fortunately, the victim fully recovered and was able to go back to his village after three weeks.

One month after the incident, Ramil and his parents heard that the other party was willing to settle the case. Ramil’s family then pursued the resolution upon the advice of the local *Timuay* and after having saved some money for the payment of the fines.

The “Trial”

Upon the advice of the local *Timuay* in Lanayan, Ramil brought two chickens and several eggs to the *Timuay* of the other village who administered the resolution process. In addition, he also brought a small amount of money as a “gift” for the *Timuay*’s service. From there he learned that the CAFGU also brought chickens, eggs and money. This was a signal that the victim and his family were now willing to settle the case.

The case was heard and settled by the local *Timuay* without any other mediating party. Both Ramil and his brother-in-law took turns in explaining and narrating their side of the incident. The case was settled very quickly with the *Timuay* deciding that both parties were at fault. The *Timuay* emphasised that from the discussion, both parties admitted their part in the conflict. Both sides have shown their responsibility – one side by sending him to the hospital and the other side by helping in the payment of the hospitalisation bill. Because of this, no other fines were imposed other than the chicken and eggs, which were used as ritual offerings. The *Timuay* also did not accept the money. After sharing some words of wisdom, the *Timuay* officiated the *daga*, a ritual of reconciliation, for both parties.

The “Conflict Resolution” Process

It should be noted that the local *Timuay* in Lanayan could not initiate the mediation process by himself, because he has to show his respect to the *Timuay* in the area where the incident happened. Moreover, he had to defend Ramil as one of his constituents.

During the interview, the local *Timuay* revealed that:

- Ramil could not be the sole offender in the case because he and his cousin were provoked by the CAFGU. The fact that Ramil and his cousin ran was a clear indication that they did not have any intention of killing the CAFGU;
- On the other hand, Ramil, his family, clan members and even the *Timuay* showed concern for the victim and exhibited their good faith by contributing money for the hospitalisation expenses of the victim;
- The penalty was fair since the families of Ramil and already spent much money for the hospitalisation; and
- If Ramil killed the victim, then he would be forced to pay a huge fine (between Php8,000 - Php10,000 or USD142.48 – USD178.09), which the family would surely not be able to raise. Because of the CAFGU’s share of the blame, Ramil’s family would be made to pay only half of the imposed amount. If Ramil’s family and the local *Timuay* refused to pay the fine, then the relationships of the clan and of the tribe would be threatened.

Resolution as Restoration

Upon settlement, the once “disturbed” relationships between Ramil and his brother-in-law, and between the two families were restored to normal. Since then, the families have never shown any ill feelings toward each other.

Prior to the interview, Ramil was seen with his CAFGU brother-in-law and they seemed to be very close friends. They were also seen by other members of the community attending several community affairs together and no traces of the past conflict were evident in their camaraderie.

CASE 3

Nature of Offence:	“Pre-marital sex;” sleeping with a girl
Child “Offender/s”:	Richard, 16 years old
Victim:	Marivic, 15 years old
Date:	Sometime in 2002

There is a strong though unwritten law among the Subanen prohibiting pre-marital sex and this applies to both males and females of all ages in the tribe.

Two Subanen teenagers – Richard (16 years old) and Marivic (15 years old) were accused of engaging in pre-marital sex, which they promptly denied. Because of their sense of propriety, the community decided that the two should get married. This meant the end of childhood and of school and the beginning of family life and of working hard to meet their family’s needs. This story was told by Richard and Marivic themselves, their teachers, the local *Timuay*, and their parents.

Once Teased and Paired off by Friends...

Both Richard and Marivic were in the fifth grade in the Lanayan Village School when their classmates started pairing them off and teasing them. Richard, a trusted pupil, was asked by the school to live in the staff house so that the teachers assigned to the area would have a companion at night. One weekend, the teachers left the staff house and told Richard to go home and sleep in his parents’ house. Apparently, Richard did not do as told and instead, invited his friends, including Marivic, to a sleep over.

Other members of the community allegedly discovered that Richard slept in the staff house with Marivic when the teachers were away. Upon their arrival in the staff house the following day, the teachers immediately informed the local *Timuay* of the incident out of fear that they would be blamed since Richard was their ward and the teachers too would surely be fined.

The *Timuay* summoned the parents of both Richard and Marivic and convinced them to have their children wed. Richard and Marivic tried to

explain that it would not be good for them to marry in haste but their pleas were disregarded.

An Unexpected Marriage

Because the teachers filed a complaint based on the allegations of other community members, the *Timuay* immediately demanded a marriage ceremony. Otherwise, a heavy penalty would be imposed.

At first, Richard's parents were not keen on pursuing the marriage but they eventually succumbed to social pressures. Besides, they did not have the money for the huge fines since they were told that if Marivic turned out to be pregnant, they would be asked to pay Php6,000 (USD106.86). In the end, Richard's parents were still obliged to pay a fine of Php300 (USD5.34) and Marivic's parents likewise paid Php150 (USD2.67) as fine. The teachers were not fined at all. It was during the negotiations that all parties agreed to an initial arrangement that the formal wedding be deferred to a later date but Richard would have to stay in the house of Marivic's parents.

Early Maturity

While in the house of Marivic's parents, Richard shared a bed with her in the hope that the wedding would not push through. After three weeks, Richard left the house of Marivic's parents and as custom demanded, Marivic then stayed in the house of his parents. After several weeks, Richard and Marivic both had to quit school and Richard had to begin tilling his newly-acquired farm to support his own family. The "formal" wedding was held and the young couple had to start their own family. Today, Richard and Marivic have been married for more than a year and are still childless although they have already built their own house and tend their own small farm.

CASE 4

Nature of Offence:	Defying tradition, resisting arranged marriages, Running away from their husbands
Child "Offender/s":	Three young women: Janet (15 years old), Ana (13 years old) and Carmen (14 years old)
Victims:	The young women, their "husbands" and their parents and relatives
Date:	3 to 6 years ago

Three Subanen young women – Janet, Carmen and Ana – share a common story. Each of them was forced to marry a man not of their choice. They thought they could not do anything but submit to the marriage arrangements done by their respective parents and elders. Hence, they were married on separate occasions and in varying contexts but they had one thing in common – they later on defied the traditions of the tribe.

A few days after their respective weddings:

- Janet ran away and sought freedom in another area but went back to the barangay when her “supposed” husband was arranging another marriage. She was found not totally guilty.
- Carmen moved back to her parents’ house and refused to live with her husband. Thus, her mother was forced to pay a fine and to immediately leave the village because of rejection and ridicule.
- Ana left her husband and briefly sought refuge in another area. She then presented her case to a *Timuay*, asking for separation, to which the *Timuay* agreed but imposed on her a huge fine.

Although the three young women were able to convince the local *Timuay* to annul their marriages, their complaints were resolved differently. All of them, however, paid the price of defying traditions.

Janet’s Story: Entangled and then Freed from Traditions

Janet had to quit school in year 2000 because of poverty. She was then 15 years old and in grade four. Marriage was furthest from her mind. Janet was arranged to be the bride of 22 year old Benjie who was at that time a Barangay Kagawad (Councillor).

Benjie never thought of getting married to Janet. It was his father, Mariano, who wanted him to marry a “worthy” girl - someone known to them and close to the family. Mariano liked Janet and wanted her to be his son’s wife. One day, Mariano approached his cousin, Virgilio, and told the latter of his plan. Immediately, Virgilio requested the local *Timuay* for a meeting with Janet’s relatives to arrange the marriage. The parents of both parties agreed and decided that on 7 November 2000, Benjie and Janet would be married. In fact, several relatives consented to attend to the preparations necessary for the ceremony.

On the same day, the *Timuay* summoned Benjie in their house and told him about his parents’ decision and the consent of Janet’s relatives. Benjie could not refuse at that time as he did not want to hurt and bring shame to his parents by refusing to marry Janet. He agreed to the plan even if this was against his will.

The *Timuay* also called Janet to the house of a local *Babayan*. When asked if she would agree to the decision of her parents, Janet immediately signified her refusal to be married to Benjie. She reasoned that she was still very young and did not know anything about family life. Moreover, Janet said that she thought of Benjie, a close cousin, as an elder brother.

Bent on pushing the marriage, the *Timuay* asked Janet whose decision should prevail – the child’s or the elders’ (“*Kinsa man ang imong to-oban ang*

usa ka bata nga mag estorya o ang usa ka tigulang?”)? As a child, she immediately responded, “*Ang tigulang ang iyang tu-oban kay mga hamtong man sila ug kabibalo modesider* (The elders because they are capable of making mature decisions).”

What Janet did not know was that this answer was taken as a statement of consent. After that, she noticed that the people around her became very busy. Some of her relatives were gathering firewood; others, fetching water; and a few were butchering a pig. She did not know that it was the day of her marriage until she met Benjie, her groom. She said she could not explain how she felt at that time. She was too shocked to even cry. At that very moment, she thought of running away but could not do anything other than obey her parents. The time of the wedding rite lasted through the whole night.

As part of the tradition, Janet went to the house of Benjie’s parents the following morning while Benjie went to the house of Janet’s parents. When night came, Benjie went home to his parent’s house. On the second night, the two went to the house of her parents.

Three days after the wedding, they went to Poblacion Lakewood to witness the town fiesta. It was at that time that Janet thought she could run away from Benjie. Janet asked Benjie if it would be alright for her not to go back with them to Bag-ong Matalang because she had to meet an uncle who would be arriving from another barangay. Benjie gave her permission to stay another day in the *poblacion* (town centre). Relieved to have been permitted, Janet staged her escape.

When Benjie and his relatives left the *poblacion*, Janet told herself that she would not be committing a sin or a crime because from the very beginning she did not want to marry Benjie. She even justified her actions by saying that the chance to escape was granted by *Magbabaya* or the Supreme Being, in the sense that it was indeed very hard to get out of her situation.

Together with the mother-in-law of Benjie’s sister, she went to Diplo, a barrio in the adjacent Municipality of Kumalarang. Upon learning that Janet is married, the *Timuay* in the barrio tried to persuade her to go back to Benjie. The leaders explained that they had the obligation to stop her and send her back to her husband. Otherwise, once the members of the clan find out that the *Timuays* in that particular barrio did not do anything to stop Janet, they could also be fined for consenting to Janet’s plan to break away from her marriage. However, the *Timuay* could not do anything since Janet was really determined to break away from the forced marriage with Benjie; thus, she proceeded to go to the town centre.

Janet ended up working as a helper in the household of the town’s Vice Mayor – *Datu Dakula*. She revealed her story to her employer and was

gratified when her new employers said they would help her. The Vice Mayor even assured Janet that they would help her file a case in court against her family for forcing a minor to be married. Furthermore, Janet was told by the Vice Mayor that what she did was right and that her parents could not force her.

After two months, Benjie, together with another relative and an official of the barangay, visited Janet in Kumalarang to tell her that it was alright if she did not go back to him because he also would not like to keep her in a marriage she did not desire. He said if Janet wanted separation, he would respect her decision as long as she repaid the amount that he spent for the marriage. Benjie wanted Janet to pay him Php3,000 (USD53.43).

Because Janet was determined to be separated from Benjie, she agreed to pay the money back but only after she has saved the amount. Benjie agreed and told Janet that he would wait for her in Bag-ong Matalang. After one week, Janet's father visited her and questioned her decision to pay Benjie back but she would not be dissuaded.

Six months had passed when Janet found that Benjie was about to be married to another girl from a neighbouring barangay. She then decided to go back to Bag-ong Matalang, knowing that there would be no reason for her fear that the family would force her to reconcile with Benjie. Janet also wanted to know if the "*Bitiala*" or the settlement of their separation had been concluded.

When Janet arrived in the village, her father, together with Benjie's mother approached the local *Timuay* who officiated the wedding rites to settle the separation. Even if Benjie was not around at that time, the negotiations proceeded because the family members thought that the most important thing was that Janet was present and it was her who has to be heard.

During the negotiations, Janet was not asked to pay back the expenses for the wedding ceremony as a fine. Instead, she was only required to pay Php150 – the same amount of money given to her as the bride. This amount was given to Benjie's mother and was considered *ghuli bandi* – a present.

The basis for this decision was their belief that Benjie erred in deciding to re-marry. In their analysis, although Janet ran away, it was Benjie who broke the ties because she did not marry anyone else but instead went back to settle the case.

Delighted with her new-found freedom, Janet witnessed the marriage of Benjie and Angela on 5 May 2001. During the interview, Janet said that she's very happy for Benjie and his wife. She also said that on the day he re-married, her relationship with Benjie as a cousin was restored.

Carmen's Story: Once Condemned then Accepted by the Tribe

Carmen was only 10 years old when her family moved from Barangay Sigacad to Barangay Bag-ong Matalang after losing all their land to the Bisayan settlers in Sigacad. In the four years that they stayed in Bag-ong Matalang, Carmen's family was unable to rise above their poverty. They tilled a little piece of land but their produce was very minimal due to infestation. Carmen, being the third child, had witnessed the early marriage of her siblings.

On 7 January 1998, four days after her 14th birthday, the local *Timuay* came to their house to seek her consent for marriage to Reynaldo, a 30 year old Subanen bachelor. Carmen did not agree at first but she was afraid that her father would disown her if she dissented.

Nevertheless, she sought ways for the planned marriage to be cancelled. She asked for a huge sum for her *dumayan* or the compensation for her separation from her parents. All in all, she demanded Php1,000 (USD17.81) in addition to the expenses for the wedding, which included four pigs, one big antique wine jar and five sacks of rice. Regardless of her demands, however, the groom's family was ready to produce everything she asked for. Hence, she had no other choice but to marry Reynaldo.

Two months after their wedding, the marriage has not been consummated. Despite the gifts she received from her husband, Carmen remained unhappy. She quarrelled with Reynaldo even if the latter did not at first do her any harm. When Reynaldo attempted to rape her, she ran away from their house in the middle of the night and went to her parents' house. She sought the help of the *Timuay* the following day to dissolve their marriage.

A negotiation was then convened. Carmen fabricated stories that she was not treated well by her husband. She also told the elders that she was deprived of food. The *Timuay* listened to her story and agreed to dissolve the marriage when she is ready to return the Php1,000 (USD17.81) given by Reynaldo and his family as her bride price.

Right after the negotiations, Carmen's family left the barangay and went to Sigacad. Many of their relatives and friends were not happy with what happened and were very disgusted with Carmen's actions and false accusations.

After three years in Sigacad, Carmen and her family returned to Bag-ong Matalang. This time, Carmen was already married to Arturo, a relative of her first husband. Today, their relatives and friends in Bag-ong Matalang have accepted her back into the community. She now has two children with Arturo.

Ana's Story: Experiencing Misery and Suffering

Ana is not a stranger to poverty and suffering even during her younger years. The youngest child in the family, she and her five other siblings were born in Bubu-an, Bayog Zamboanga del Sur - the birthplace of their father.

She was only five years old when their parents separated. Her mother complained that aside from being very poor, her husband had so many negative qualities as a father – *“Palahubog, naay kabit ug strikto pa kaayo sa iyang mga anak. (He was a drunkard, a philanderer, very harsh with the children).”*

“Kung masayop mi og gamay kulatabon dayon, dili man lang paminawon and mga rason. Kun molaban si nanay, apilon pud ug kulata kay nganong kosintidor sa iyang mga anak. (When we commit minor mistakes, we are immediately punished physically. Our father does not know how to listen to our reasons. If our mother defends us, she would also get a blow from our father.)”

Ana's mother wanted to free her children from suffering so she immediately arranged the marriages of two of her daughters even if they were still very young.⁴³ Then in 1985, Ana's mother brought all of her children to her birthplace – Barangay Bag-ong Matalang, Lakewood, Zamboanga del Sur – so they would be away from their father. After three years, Ana's sisters and her brother were married in the barangay.

Ana and her mother stayed in the house of her brother, Elmer. After two more years, their mother wanted Ana to settle down. Eventually, her mother met a Subanen named Lito who was living in his uncle's house within the neighbourhood. Ana's mother and Lito's uncle initially discussed marriage arrangements for the two children - *“Bisan pa wala silay relasyon (Even if they don't have a relationship).”* From then on, Ana's mother keenly observed Lito to know him better since his family lived in another municipality.

On 7 January 1992, Lito's uncle together with the local *Timuay* and Ana's grandfather formally signified the marriage proposal to Ana's mother. This is called *Gumbay Bina* (in Subanen) or betrothal. Ana, only 13 years old at that time, initially refused the proposal but she could not do anything except obey her parents because she did not want to hurt her grandfather.

Lito and Ana were eventually married. After seven months of married life, Ana wanted to leave Lito. She could not understand what was happening in her life. A friend advised her that it would be better if she ran away so that her husband would have a reason to seek separation. Hearing this, she finally decided to leave Lito by moving to another barangay and working there as a household help.

⁴³ The Subanen believe that they are securing the future of their children by arranging marriages for them, even if this is done when the children are very young. The common belief is that this is something parents must do as soon as they can because they may not live long enough to wait for their children to reach full maturity.

Lito followed her after a month but instead of seeking separation, Lito wanted to bring her to his family's place in Midsalip. This prompted Ana to go to the local *Timuay* to annul their marriage. The *Timuay* agreed but she was told to pay the *salaan* (fine) of Php250 (USD4.45). In addition, Ana was asked to return the value of the *sunggod*⁴⁴ worth Php900 (USD16.02) and the *ghuli bandi* worth Php150 (USD2.67).

After the dissolution of her marriage, Ana left Bag-ong Matalang and stayed in her sister's house in another municipality to escape from the rumours and intrigues spread by Lito's relatives. A month after her separation, she got married to a man from another municipality and there she stayed with her four children. To this day, Ana has not yet returned to Barangay Bag-ong Matalang. During the interview, Ana expressed her regrets (*pagmahay*) in life.

Ana recounted that after separating from Lito, she wanted to leave the area, hoping that her close friends would offer to help her finish her elementary education; but this did not happen. Instead, she was again forced to settle down to avoid the community's scorn.

44 Payment or gift to compensate and appease a person who has been aggrieved

THE CASE STUDIES IN BARANGAY TUNGKALAN, TORIL DISTRICT, DAVAO CITY

CASE 1

Nature of Offence:	Damage to property
Child "Offender/s":	Henry (17 years old)
Victims:	Manuel
Date:	Sometime in 2001

In 2001, a Bagobo named Manuel filed a case of Damage to Property against Henry, a 17 year old Bagobo, for throwing stones at and kicking the front door of his house. This happened when Henry was having a drinking spree with his friends near Manuel's house in *Purok* 2 of Barangay Tungkalan.

The following day, Manuel, a relative of Henry, reported the incident to the Barangay Captain of Tungkalan. The Barangay Captain promptly called the attention of Henry's father to the damage done by his son. Knowing that both parties were Bagobo, the Barangay Captain tried to arrive at an amicable settlement for both parties.

Henry was found guilty of the offence. Nonetheless, the victim decided to just ask for a replacement of the damaged front door, which Henry's family readily did. After paying all the expenses incurred, the case was closed and both parties were relieved that the damage was dealt with.

CASE 2

Nature of Offence:	Theft
Child "Offender/s":	Junior (15 years old)
Victims:	Solitaria Farm
Date:	-

Junior, a 15 year old Tagabawa-Bagobo, was caught in the act of stealing a durian fruit by a certain Dodong, a Bisaya caretaker at the Solitaria Farm in Lower Tungkalan. The caretaker caught the boy while he was climbing a durian tree; so, he fired his gun in the air six times to get the boy to go down. He then immediately brought Junior to the outpost of the 73rd Military Detachment in Barangay Tungkalan, right next to the caretaker's house. Afterwards, Junior was brought to the Toril Police Station for further investigation instead of turning him over to the Barangay Captain (cases like this are commonly reported to the office of the Barangay Captain).

According to the *purok* leader who narrated the incident, Junior was just being given a dose of his own medicine for trying to steal another person's produce and for behaving in a manner that would shame his family. No case was filed against him. Junior was released later that day but not without his

parents' written statement saying that they would take full responsibility if he should do it again. Junior has since left Barangay Tungkalan and is now in Bukidnon working on the farm lot of an absentee landlord.

CASE 3

Nature of Offence:	Theft
Child "Offender/s":	Boboy (17 years old), Domeng (15 years old), Toto (16 years old), Dong (17 years old), Jojo, Peter, and Bong (18 years old)
Victims:	Solitaria Farm
Date:	Sometime in March 2002

In March of 2002, a group of seven young people – Boboy (*mestizo Bisaya*); Domeng (*Bagobo*); Toto (*Bagobo*); Dong (*Bisaya*); Jojo (*Bisaya*); Peter (*Bisaya*); and Bong (*mestizo Bisaya*) – were accused by the Solitaria Farms caretaker of stealing seven pieces of hybrid chicken. For fear that they would be arrested and put to jail, the seven accused left Barangay Tungkalan for several days.

However, Dodong, the caretaker, saw to it that the suspects would be held accountable for stealing the seven chickens. Unless he did this, he would be held responsible by his landlord for the missing chickens. Thus, he reported the incident to the office of the Barangay Captain. Again, the latter mediated in the settlement of the issue. The parents of all the seven young people involved were called to discuss the settlement surrounding the incident.

The caretaker, however, demanded that the seven accused also be presented to the Barangay Captain. He even threatened that if these young people would not show up at the Barangay Hall to face the consequences of their actions, he would be forced to bring the case to the Toril District Hall (Toril Police Station).

According to one elder in Lower Tungkalan, a police record for a young offender would mean an end to any future employment (for any Bagobo children) since applications for employment usually require a police clearance.

Because of this, the seven suspected young people showed up in no time with their parents at the Barangay Hall. Finally, after listening to both parties' reasons, the Barangay Captain found the seven young people guilty of the act charged against them and their parents were advised to pay Php520 (USD9.25) each for the damages. This price was based on the market price of the total weight of the seven hybrid chicken.



5 Discussion of Findings

The diversity of cases presented in this study helps us in understanding how IP communities deal with children in conflict with the law. Because of the varying nature of the cases, the parties have also shown different ways of coping with the situation.

All of the cases in Bag-ong Matalang were resolved through the traditional administration of justice involving the local *Timuays* and the elders of the tribe. On the other hand, the cases in Tungkalan were resolved using community mediation processes under the auspices of the Barangay Justice System.

Profile of the Children Involved

Most of the cases involved children from 14 to 17 years of age who, in the eyes of the tribe, are already young adults. In IP society, even when teenagers live under the protection and supervision of their parents, they are no longer thought of as children.

The male children in both areas were involved in crimes either against persons or property. On the other hand, the “crime” committed by female children when they ran away from their arranged marriages was defiance of tradition and authority.

Most of the children involved in the cases had elementary education under the formal school system but all of them belong to poor IP households with average incomes of less than a dollar a day. The three young women cited in the case study all belong to families with a subsistence standard of living. For various reasons, their parents have separated and the young

women were living in single parent homes. The poverty situation could be a factor why the mothers tried to arrange early marriages for their daughters.

The matrix below show the similarities and variations in the background of the children involved in the offences discussed in previous chapters.

Table 7: Summary Profile of the Children Involved in Anti-Social Acts in Both Communities

Data	Bag-ong Matalang	Tungkalan
Age and Sex of Children	Three young males (14 to 18 years old) Two young males (8-11) Three females (14-16)	All males (15-17)
Ethnicity	All Subanen	All Bagobo
Residency	Bag-ong Matalang	Tungkalan
Formal Education	Some years in elementary	Some years in elementary
Family Background	Born to upland subsistence families	Born to poor IP/peasant families
Socialisation	All raised in intact IP families	Children

The children in Bag-ong Matalang were all raised in an intact IP community where all the residents are Subanen. On the other hand, the children in Tungkalan have undergone socialisation where the majority of residents are non-IP.

A significant difference between the two communities is that the aggrieved parties in Bag-ong Matalang are all IP and those in Tungkalan are all Bisayan settlers. Furthermore, in Bag-ong Matalang, the young men who committed minor offences were not really regarded as “children in conflict with the law” (CICL). This is why the local *Timuay* did not invoke his authority to convene a formal resolution process or a traditional trial. Instead, he merely gave advice to both the offenders and the victim, thereby acting mainly as a guardian of the community and its young rather than as a judge. Officially, as *Timuay*, he officiated the ritual of restoration or the *daga* and both parties were made to produce the chicken and eggs to be used as offering.

Nature of Offences

Only two of the six cases in Bag-ong Matalang involved physical injuries. The other cases involved arranged marriages. In Tungkalan, however, the transgressions involved properties. The next matrix shows the differences between the two areas in terms of the nature of offences.

Table 8: Comparative View of the Offences and their Context in the Two Study Areas

Data	BAG-ONG MATALANG	TUNGKALAN
Nature of offences	Fist fight Serious physical injury Defiance against arranged marriages	Petty theft Robbery Damage to property
Site	Upland areas	Peasant communities near village centre
	Crime against person happened in another barangay where majority are non-IP	Transgression on property rights happened in areas where IPs are a minority
Context/ Circumstances	Did serious physical injury under the influence of liquor All the offenders are Subanen	Committed acts against right to property while under the influence of liquor The stealing of chickens was done by a mixed group. The destruction of the door was done with instigation from a mixed group.
Immediate Reaction	All those involved voluntarily submitted themselves to the Timuay for custody, advice and protection	The offending young men, out of fear, fled for several days. The one who stole the durian left the barrio.
View of Conflicts Based on Tradition	Tensions about the arranged marriages happened only in the intact IP communities. In this case, there was a fine imposed because the traditional values of obedience and harmonious relations had been violated.	The acts were looked upon as reasons for “loss of face”

In terms of crime and punishment, the influence of lowland mainstream society has forced the IP young population to grapple with a more complex and difficult situation.

In Tungkalan, the theft of chickens and durian was motivated by a desire for money. Because of the fully installed cash economy, the young are constantly bombarded by the lure of consumer goods, liquor and various forms of entertainment. In contrast, the need for cash is not as evident

in Bag-ong Matalang where people still practice the sharing of natural resources. Instances when community members imbibe liquor are far removed from the drinking sprees in Tungkalan. In Bag-ong Matalang, the community members drink as a part of socialisation but whenever they do, the occasions also function as times when information and knowledge are shared.

In the context of urbanisation and poverty where once strong social ties have eroded and the network of community support has weakened, children and young IPs are subjected to multifarious influences which now make them prone to committing acts that violate the rights of others. In Tungkalan, the offenders knew that crimes will receive punishment different from the reconciliatory traditional treatment of transgressions. Thus, the young men fled out of fear and guilt. In Bag-ong Matalang, however, the offenders had a different reaction – they did not deny their responsibility in the conflict and they were able to submit themselves to the local *Timuay* for advice, protection and sanctions.

Based on the cases presented, children's right to protection is in a way more disregarded in Tungkalan where there is no longer a traditional support system for the care of children beyond their immediate families. Beyond assuring that children are safe, kinship and extended family ties also help in moulding the moral fibre of children and provide sanctions when necessary. These two institutions have been replaced by formal law enforcement, a system designed to “penalise” and purportedly reform bad elements in society, including children.

However, the practice of arranged marriages for children in Bag-ong Matalang, albeit a norm for survival, has clearly limited the options of IP children for their personal and social development. Viewed from today's standards of children's rights, the practice is a violation of children's rights. Though unaware of their rights under the United Nations Convention on the Rights of the Child (UNCRC), the three young women cited in the case study had a consciousness of what they wanted in their lives; and their marriages were dissolved as they requested. In itself, this stands for a qualitative shift in the administration of IP justice in Bag-ong Matalang and may be the forerunner of further radical changes.

The Administration of Justice Process

In the two study areas, there are marked differences in the administration of justice in relation to children. In Bag-ong Matalang, the members of the tribe still expressed a strong regard for their Tribal Chieftains and Elders who are obliged to immediately act on the resolution of cases involving their *sakop* or constituencies.

In the cases cited, Ramil, his parents and the *Timuay* worked out strategies for the traditional settlement of the case. Richard and Marivic with their respective parents submitted to the judgment of the *Timuay*. Janet and Benjie agreed on a traditional resolution to their “incompatibility” in marriage and their mothers took immediate steps for the *Timuay* to hear the case upon Janet’s return. Carmen and her mother also submitted themselves to the *Timuay* and the community for the resolution process. Ana explained her predicament to the local *Timuay* and was able to acquire dissolution of her marriage to Elmer in accordance with their customary laws.

It is important to note that in the tightly knit community of Bag-ong Matalang, while admission of a transgression by the offender is a vital ingredient of the justice process, both the offenders and the aggrieved parties, and their families mutually share the responsibility for reconciliation. Their actions are dictated by their regard for the welfare of both the offender and the offended. Moreover, the concept of total and exclusive guilt is alien to their discourse.

In the cited cases, acting as guardians who would be responsible for his misdeed, Ramil’s parents conscientiously brought him to the local *Timuay*; Richard and Marivic’s parents paid the fines imposed by the *Timuay*; and the mothers of Carmen and Ana were obliged to secure money to pay back the expenses incurred for the annulled marriages.

In the Bag-ong Matalang cases, it was evident that the parties (both offended and offender) involved in the anti-social acts were all considered “aggrieved” and were equally obliged to address the resulting “social discord.” Fines were imposed on both parties. In the cases of Rosita and Philania, while there were no traditionally “acceptable” reasons for seeking annulment, the *Timuay* acceded and imposed a fine. The fines were actually equivalent only to the actual expenses incurred during the wedding ceremony. No premiums were added as moral damages to “restore” the honour of the husbands. In their cases, which again illustrate the concept of collective responsibility, the husbands also accepted their roles in the “discord” and agreed to the dissolution of their respective marriages.

As mentioned earlier, the dominance of mainstream lowland culture and political system in Tungkalan has led to the breakdown of the traditional process of administering justice. Most of the cases in the barangay were mediated within the folds of the Barangay Justice System.

In the case of Henry, the aggrieved Bagobo owner of the house did not immediately agree that the case be heard by the Tribal Council. In the next two cases, the participation of the military and the police was evident just as the participation of the community has decreased. In some cases, an

“alternate” or “negotiated” identity (refusal to identify oneself as a member of the tribe) was resorted to in order to cope with the pressures of survival in a system vastly different from that of the tribe. While members of the tribe expressed respect for the law, there remains a strong fear of the law and of law-enforcers. This is not the same as the attitude that the tribe had towards the traditional justice system where negotiation was an even field.

A strong social pressure is evident in all the cases but in Tungkalan, the direction of this pressure has veered towards condemnation of the guilty and indemnification for damages incurred. In Bag-ong Matalang, the pressure is directed towards reconciliation and the restoration of positive social relations. Thus, it can be said that there are several points of contrast in the administration of justice in the two study areas. These differences may be crucial in identifying which practices can still be replicated and how replication could be made possible since these practices point out certain fundamental aspects in the justice process.

Table 9: Comparison of the Process of Administering Justice in Bag-ong Matalang and Tungkalan

ASPECTS	BAG-ONG MATALANG	TUNGKALAN
Where was the case brought for resolution?	<i>Timuay</i>	Police and Barangay Captain
Who mediated?	<i>Timuay</i> and kin (including men and women)	Barangay Captain
Roles of formal leaders/ barangay officials	Mediators and conveners	Mediation and judgment
Roles of elders and informal leaders	Active advisors, mediators, negotiators	Not represented
Roles of other adults	Participants and negotiators	Either part of plaintiff or part of defendant, witness
Who represented the children?	The children themselves, their parents, the <i>Timuay</i>	The children themselves when questioned
How was the decision arrived at?	The <i>Timuay</i> facilitates, the parties and their kin participate	The Barangay Captain conducts the investigation and renders the decision
Who participated in the decision-making?	The community	Only the parties involved
Did the children participate in the process?	Actively. They could contribute to the “investigation” and proposed resolution	As offenders they were asked to answer questions and present their sides

ASPECTS	BAG-ONG MATALANG	TUNGKALAN
What sanctions were imposed?	Fines, ceremonies to restore relations	Fines
Who carried out the sanctions?	The family and the community	Immediate family
How was the agreement sealed?	<i>Daga</i> - the ritual of reconciliation and restoration	Signing of documents

With their proximity to the centres of the lowland political system, neither Bag-ong Matalang nor Tungkalan are spared from external influences. In fact, the IPs in Tungkalan have shifted completely to the mainstream judicial system. Although customary laws still prevail in Bag-ong Matalang, the members of the tribe already feel the need to “be prepared” in the event that cases involving them are tried under the lowland justice system. For example, in the case of Ramil, the parties involved preferred to invoke the traditional justice system. Their awareness of another system existing outside of their domain, however, was evident when the *Timuay* accompanied Ramil to the police.

With the integration of the IPs into mainstream society, a new configuration emerges as to how the IPs themselves view anti-social acts. In Tungkalan, this meant that the offender is viewed as solely responsible for the act and the punishment is viewed as necessary. This is substantiated by the aggressive behaviour of the offended parties in Tungkalan where they demanded immediate punishment of the accused young men.

Furthermore, in Tungkalan, there is an acceptance now of the idea that the individual is guilty and must, therefore, make reparation for his/her crime. This often stigmatises the offender who is branded as no good. In addition, because of the punitive direction of the process, the fines imposed are often excessive and the use of intimidation has become merely a way to discourage the recurrence of “bad behaviour.” For example, the young men who stole the chickens were brought to the military and the police to impress on them the seriousness of their crime.

What is perhaps distressing is that while the traditional system is no longer followed in Tungkalan, the adoption of mainstream procedures has left much to be desired with the young men treated as criminals and humiliated. The protocol regarding CICL has clearly been violated because the children were not brought to the custody of the City Social Services and Welfare (CSSW). In Bag-ong Matalang, on the other hand, the practice of arranging marriages is definitely a violation of the children’s rights.

Effects of the Settlement/Decision

For the Subanen in Bag-ong Matalang, when a conflict situation is finally settled, the good relationships among the community members and even between the victim and offenders are restored immediately in most cases. Although the fines would at times seem paltry to an outsider, there were no complaints that these were inadequate. Members of the tribe accepted the negotiated judgment without question probably because the dialogue before satisfied many of the attendant issues.

There is also a prevalent apprehension among the tribe that the lowland justice system would be a burden to them. This is manifested in the fear of Ramil's father and of the *Timuay* that the case would be brought to the police. In this event, not only would the process be out of their hands but there would also be no assurance that this would not lead to even more trouble. In addition, this would hasten the weakening of the traditional administration of justice.

While they have been absorbed into the mainstream administration of justice, the Bagobos of Tungkalan still demonstrate mixed opinions about their experiences of the lowland justice system. They perceive the system to be prejudiced against them, often leading to convictions before any fair hearing has been conducted. They feel that IPs are not protected, that cultural discrimination is real, and that complaints against IPs prosper more easily than those levelled against the Bisaya. In other words, when the offender is Bagobo and the complainant is Bisaya, the Bagobo is discerned as disadvantaged with the Bisaya complainant in determining the choice of site, agents and the process of conflict resolution. Often, when the police or military are chosen as the site for discussing the crime, this becomes part of the retaliatory acts against the offender. To sum up, the matrix below shows the results of the conflict resolution process in the two areas of study.

Table 10: Effects of the Outcomes of the Conflict Resolution Process in Bag-ong Matalang and Tungkalan

Effects	BAG-ONG MATALANG	TUNGKALAN
Who benefited from the decision	All those who were involved and the entire community	The aggrieved party
How the stakeholders felt about the decision	In general, all parties involved were content with the decision	The parents of the offender were burdened with the fine

Effects	BAG-ONG MATALANG	TUNGKALAN
Effects on the victims	No ill feelings towards the offender	Content with compensation
Effects on the offenders	Free from guilt once restitution has been made	Guilt and stigma
Effects on the community	Harmonious relations restored include both the offender and the victim	Stability and social order rather than harmony is restored

Restorative Justice and the Indigenous Justice System

In the worldview of the IP, the maintenance of a positive relationship with others (among persons, the physical world, and the spirit world) is considered the centre of one’s humanity and identity. This particular value is manifested in the day-to-day behaviour of the members of the tribe as they consult with spirits, work with nature, and share resources with others.

However, the indigenous justice system, directed towards the maintenance of a positive social order, is dependent on the strength of traditions and structures and the shared cultural identity or self-ascription of the tribe. The survival of the justice system therefore relies greatly on the survival of certain elements that provide the bases for traditions and identity.

I. Cultural Identity and Social Cohesion

The elements of cultural identity include language, shared ways of life, norms, behaviour, values, and the degree of social integration shown by members of the community. Beyond forging a sense of belongingness, these elements also underscore a sense of unity among members of the tribe.

A strong sense of identity is also shown by a shared recognition of trusted local leaders. This is vital in achieving or maintaining social cohesion. In Bag-ong Matalang, this cohesion is apparent in the involvement of the community in the traditional resolution of conflicts, notwithstanding the fact that the barangay system has been in place for more than twenty years.

On the other hand, in Tungkalan, the tribe’s sense of identity has been impaired and there is a lack of strong local leaders who can command cohesion among the Tagabawa-Bagobo. These are among the many underlying factors why the Bagobo indigenous political system has weakened and consequently, its own system of justice.

The Tungkalan situation shows that cultures inevitably change and much like ecosystems that must undergo transitions, cultures also have a “carrying capacity”, a limit to the ability to adapt to change without breaking. Mindful of this, the Tungkalan situation should serve as a reminder that because “new ways” inevitably creep into the community, there is a need to evolve new counterpart forces to undertake the function of building a socially cohesive IP community. This is especially important in safeguarding the welfare of IP children who are doubly disadvantaged when coming into conflict with the law.

2. Administration/Governance that Promotes Social Inclusion

Ideal Subanen governance is one that promotes social inclusion. The *Timuay* who mobilises people and resources to restore social order has a very important function – that of dealing with the threats accompanying the anti-social acts of some members. The documented cases show that the principle of social inclusion was put into practice. All the kin, elders of the tribe, and the parties involved participated in the process. Moreover, the process was conducted when the parties expressed a readiness to confront issues and no time limitation was set on resolving the conflict. This allowed for an unhampered flow of the process and an exchange of information, which would contribute to consensus building. The process ended when both parties expressed unqualified consent to the decisions reached. The restorative processes are sealed with a covenant invoking the guidance of the spirits in a ritual called *daga*.

The cases in Bag-ong Matalang substantiate the community’s distinct sense and appreciation of what is just and fair to all parties concerned. All the parties (whether victim or offender) accept responsibility and submit to the decision of the elders. In most cases, the fine, imposed on both parties, was perceived as appropriate because it was important that the amount not cause further misery.

This manner of conflict resolution would be difficult to replicate today in its form and substance within the structure of the Barangay Justice System. This difficulty is evident in Tungkalan where the victim is viewed as partly distinct from and opposed to the offender. This is a departure from the indigenous view of unity – where the welfare of **all** parties in a conflict is important and the process will ultimately end in restoration. Social exclusion has become operative and the elders, the sources of traditional knowledge, are excluded from the legal processes because they cannot appreciate the context of the discourse on crime and punishment.

3. Community and Individual Goals

There must be a strong link between the community and individual goals if the traditional system of justice is to be practiced. This element means that the community and individual goals must work towards the “social good.” It implies that there is no place for exclusion and discrimination. In no instance should offenders feel ostracized because this would contradict the principle of cohesion.

In the case of the IPs in Bag-ong Matalang, the dedication of individuals to the common good is one strengthened by their spirituality – the deep-seated belief that one must work in harmony with other persons, the world and the spirits. This dimension makes it easier to come to terms with forgiveness and restoration. The preference of IPs to use their own justice system is premised on the active involvement of the community in preventing transgressions, in restoring harmony and in looking out justly for the welfare of everyone involved. These elements are not present in the punitive lowland justice system.

4. Value for the “Commons”

The communal character of the institutions of the IP Justice System implies that there is also a sharing of resources and a strong network of support among community members towards achieving harmony and social maintenance. The material base for all this is the existence of an ancestral domain.

The lands and domains of IPs provide the territory and the jurisdiction for their justice system. Without the territory, IP communities lose their way of life and their unique way of viewing the world along with the distinct applications of their concept of justice.

Both the study areas show that even the administration of justice in the two communities is undergoing a transition, just as their lands are undergoing change. The transition may be happening at a slower pace in Bag-ong Matalang than in Tungkalan but the impact is felt by the resources and the way these are shared, the way families survive and how they govern themselves, and the way justice is served. Thus, it is urgent that communities be equipped to cope with change in a way that will help them retain their distinctive approach to conflict resolution especially in its application to children.

Table 11: TYPOLOGY OF JUSTICE SYSTEMS

Concepts/Constructs	MAINSTREAM SOCIETY	INDIGENOUS PRACTICE
View of children	Below 18 years old	According to capacity to function as a productive member of the community, capacity to undertake responsibility, and readiness for procreation
View of justice	<ul style="list-style-type: none"> ■ Appropriate punishment for criminal acts ■ Individual culpability 	<ul style="list-style-type: none"> ■ Restoration of harmony ■ Disruption/ disturbance of harmony ■ Societal or collective responsibility
Where judgment emanates	Judges and agencies	Entire community including offender, victim and kin
End goal of process	<ul style="list-style-type: none"> ■ Process seeks to proclaim either guilt or innocence then impose punishment or set penalty ■ Incarceration and payment of actual damages plus moral and exemplary damages 	<ul style="list-style-type: none"> ■ Considerations include restoration of positive relationships with kin, clan, with the community and the spiritual realm ■ Fines based on symbolic value, emphasising “satisfaction” of honour
Guidelines for resolution	Written and codified laws that define the crime and prescribe punishment;	<ul style="list-style-type: none"> ■ Customary laws, which is contextualised when applied ■ Negotiations are conducted as part of process

Concepts/Constructs	MAINSTREAM SOCIETY	INDIGENOUS PRACTICE
Actors	<ul style="list-style-type: none"> ■ Judge whose authority is vested by the state and whose decisions are based on written laws; who is positioned as an objective decision-maker, detached from the persons involved ■ Lawyers (professionals; may or may not be personally known to parties) represent their clients ■ “Standing” is a prerequisite for appearing in court 	<ul style="list-style-type: none"> ■ <i>Timuay</i> whose authority stems from recognition and respect of constituency; decisions are based on the collective perception of the community; he is organic to the community and may simultaneously function as guardian and judge. ■ <i>Timuays</i> or kin who know the persons intimately ■ “Inclusive,” allowing everyone to speak –even those who are only at the periphery of the incident
Responsibility for the accused	Enforcement agencies	Collective concern
Agency	Institutional	Communal
Criminal Justice System	Five Pillars (Enforcement, Prosecution, Judiciary, Corrections, Community) with each having highly differentiated functions; each responsible only for its own functions and jurisdiction.	The <i>Timuay</i> and the community undertakes all functions at different times except for corrections
Function	Barangay justice is a duty, part of a mandate and it has a set process	The entire process is part of preserving social order and is everyone’s moral and social responsibility.

Concepts/Constructs	MAINSTREAM SOCIETY	INDIGENOUS PRACTICE
Enforcement	Police	Entire community; sometimes this function can extend to neighbouring barangays
Processes and Procedures	<ul style="list-style-type: none"> ■ Plea of guilty or not guilty is entered, the purpose of the whole exercise is to prove or disprove guilt ■ Process is guided step by step by procedures from arraignment to promulgation of judgment. Steps are often compartmentalized as they move from one agency to another, the assumption being that each is autonomous from the other. ■ The judicial process is considered a secular process 	<ul style="list-style-type: none"> ■ The point is for parties to come to a voluntary recognition of whatever it is that has disturbed social order and aggrieved either or both of the parties ■ Process is holistic, information flows freely as parties air their side. ■ Conflict resolution is an integrative, social and spiritual process.



6

Summary, Conclusions and Recommendations

Children and the IP Justice System

The conditions in IP communities vis-à-vis the rights of children are far from ideal. This is partly because many practices in intact traditional societies are incompatible with existing standards on child development, child protection, and child participation. These incompatible practices include arranged marriages and the total obedience expected of the young. These are all part of customary laws and, therefore, fall under the jurisdiction of the traditional justice system.

For a non-indigenous person, pre-arranged marriages are unacceptable because these may mean the loss of childhood and the denial of basic rights. Based on the UN Convention on the Rights of the Child, the rights of the children presented in the case studies were undeniably violated. They were forced: (1) Into family life when they were not yet physically, emotionally or psychologically mature; (2) To quit school – a denial of their right to development; (3) To undergo early pregnancy; and (4) To work or to engage in farm labour to support a family, which often leads to the violation of their right to study, to rest and to have leisure.

However, as IP societies are integrated fully into the mainstream social system (as in the case of Tungkalan), the traditional role of the community as responsible protectors of children is lost. IP children then become highly vulnerable to abuse especially when they commit anti-social crimes, which they are inclined to do. When this happens, they are brought into a situation where they can be labelled “criminal,” resulting in a further loss of self-esteem.

The traditional practice of early arranged marriages not only has impact on the rights of children; it also has a bearing on the tribe’s values and way of life. Interwoven with this practice are the following:

- Engaging in sex outside of marriage is strictly taboo. When young people engage in sex, they are considered ready to take on the challenge of working for the survival of their own families;
- When resources are scarce, arranging early marriages is a coping mechanism. The act is tantamount to giving over a child to a trusted party or to another family, given the extended kinship of the tribe.
- Initially, young couples may have to stay in their parents' house for support but they have to prepare for eventually living independently;
- While mainstream society puts a great premium on formal education and views early marriage as the end of this undertaking, the tribe looks at education as a life-long process of learning from others as they go about their daily lives. They learn from the elders as they speak with authority and wisdom, and from their own life experiences.

IP children, therefore, have to contend with the constraints of their culture and their traditions in addition to the serious neglect of the government in assuring the economic and social survival of the tribe.

As a general rule in truly traditional communities, when children commit undesirable acts, the parents are the ones who should make restitution because children are viewed as unable to recognize the gravity of their actions. The indigenous process in this case would move towards reconciliation and restoration and certainly not retribution. When parents are unable to pay the fine, an elder, which is usually the *Timuay*, takes on this responsibility. Thus, the respect given to *Timuays* is well-earned because the assumption of this role entails responsibilities that are sometimes undertaken at great personal cost.

This “protected” or sheltered state of children, however, does not last long in IP society. Whereas for international standards, “children” are defined as persons below the age of 18; for the IP community, this threshold is not relevant. In traditional cultures, a child is someone who can still run around naked without offending the sense of propriety of others. Clearly, this places the definition of children to the pre-pubescent years, which would be around 10 years old for females. The onset of menarche is also considered a hallmark for girl children, a signal that marriage can be arranged.

As a whole, other than the norms in the conduct of behaviour in the home or in the community, there are no definite laws that deal specifically with children as offenders. Basically, these general norms regulate behaviour

and encourage children to obey their elders, and to keep out of trouble by respecting other persons and their properties.

Norms applying to children are not necessarily rigidly enshrined, the way codified laws appear to be. In this sense, as far as children are concerned, IP societies are “open societies” where participation is the norm and even children are asked to give reasons for the things they do. This is evident in Bag-ong Matalang where conflict resolution processes were quite extensive in terms of respecting the voice of its members, including young women.

Child labour, for example, is not viewed by the community as a legal issue. The survival of families in the settlements often necessitates that everyone work, even children. In some ways (or in different ways), IP provisions for the protection of children can be quite profound, especially when they commit “anti-social” acts. The safety of children is a priority for the community with all adults taking on the responsibility of correcting and protecting them. Children are valued by all perhaps partly because of the high mortality rate of infants and children, and the high exodus rate of young adults. The children’s offences are, thus, the burden of all. Everyone must actively play a part in ensuring that the crimes of children do not result in lasting damage to both the offender and the offended. Unfortunately, even before safety nets can be installed in IP communities, all of these values have changed.

Highlights of the Study

Definition of Children

IP communities, especially those that are intact, do not view children as persons below 18 years old. Children for them are generally pre-pubescent, unable to seriously undertake hard labour or the building of a family (physiologically, economically and socially). In assimilated communities, the definition of the word “children” becomes more dichotomous. On one hand, it is strictly applied when legal technicalities become an issue. On the other hand, there is the loss of the traditional community’s view of collective responsibility for the culpability of children. In other words, persons are children until they are over eighteen and yet, they can be treated as “punishable” before this takes place.

Treatment of Children in Conflict with the Law

An elder who was interviewed about this said that there is no such thing as children in conflict with the law. He said, “They are too young to know the law, to distinguish right from wrong. That is why they are children. How can they go against something they don’t know? That does not apply to them?”

They behave as children and commit acts that damage property or hurt others but this is not done knowingly. Therefore, it is parents who must account for this because they must teach their children to behave.”

The Object of the Exercise

In intact IP communities, the treatment of “erring” children moves towards teaching them life lessons of what is good for all, what preserves the harmony of the community and what makes up for any hurt or damage caused. In the traditional justice system, they are allowed to freely explain their motives, their actions and their feelings without the constraints of set court procedures. The children who find themselves in the midst of the actual resolution process find that the process is not designed to intimidate, harass, punish or label them as “criminals”. This is evident in all the case studies of children in Bag-ong Matalang.

Children in assimilated IP communities, where the majority and dominant population is non-IP, are treated differently. They are dealt with according to the mainstream criminal justice system where they are often seen as casualties of a failure in process. As the case studies show, young people who commit offences in Tungkalan are either brought to the barangay, the police or the military, and not to the CSSDO (City Social Services and Development Office) as provided in the law. They are harassed and branded as criminals, and their standing in the community is sullied by their anti-social act. The process is therefore, punitive, and skips over special protection processes.

Community Roles

In traditional IP communities, the community plays a nurturing role in dealing with CICL. The resolution process is done in the presence of family and kin who are there not only for moral support or to act as witnesses. Their presence likewise provides a guarantee that there will be help in reparation and restoration. Kin and elders voluntarily initiate to create a reconciliatory environment. This is expected of them when children are involved and it is a community value that still bears pressure.

Ramil’s kin initiated in endorsing him to the *Timuay*, a signal that he was both under the custody and protection of recognised authority. They also took it upon themselves to begin the process of reparation by raising money for the aggrieved party.

In assimilated IP communities, the role of the community becomes less active because the law identifies the people who have the authority to conduct set processes. The police or the Barangay Tanods apprehend the CICL, and then endorse him to the precinct or to whatever authority has the mandate.

Persons of Authority

In Bag-ong Matalang, the *Timuay* is the authority but his jurisdiction is comprehensive. His task is not only to determine who did what wrong but also to facilitate the discourse on motivation, the circumstances leading to the incident, the feelings of the people, and all that the parties consider is relevant. Then, he has to lead all this to the discussion of how the grievance can be addressed and how the people concerned can voluntarily admit their part in the disharmony. The person in authority must use this context as the foundation of the judgment rendered.

In assimilated communities, there are various persons with prescribed authority whose jurisdiction is limited but whose application of the law is supposedly uniform. As previously mentioned, in Brgy. Tungkalan, these persons of authority include the Barangay Tanod, the police, and the Barangay Captain. Conspicuously and ironically absent is the DSWD, which is supposed to act as the custodian of children.

Penalties

In Bag-ong Matalang, fines are established more for the way they represent contrition and a desire to restore social harmony. These are meant to soothe the hurt of those who had suffered. Usually, the amount simply reimburses an identified expense (eg, the bride price). The fine is also commonly imposed on both parties, an acknowledgement that both parties suffer. This is an embodiment of the tenet that: “Some are guilty but all are responsible.”

In Tungkalan, fines are based on damages brought about by an offender and on the value of items lost. Aside from being imposed in an atmosphere of fear, such penalties are also deemed as an alternative to other, more stringent forms of punishment.

The Participation of Children in the Justice Process

In Bag-ong Matalang, the participation of children in the justice process is seen mainly in the way they are allowed to explain themselves. However, they are not able to provide input in deciding the amount of the fine because this is done by the adults. The payment of the fine and the performance of acts of reparation are also done by adults. The parents define the ways for the children to contribute to this reparation in as far as they are able and without harming or taxing them unnecessarily. The fine has to be paid and there is simply no other option. If the kin cannot pay, the *Timuay* has to do it. If he is unable to do so, the rich leader, the *Timuay Tumanggam* is called upon to pay the fine.

In Tungkalan, the children’s participation in the process is even more constrained. Their opportunity to explain themselves is limited to the line

of questioning employed by authorities. The children involved in the cited offences had parents who were able to pay the fine. If not, the children would have gone to jail unless the CSSDO steps in.

Elements that Sustain the IP Justice System

The indigenous justice system can only survive if the following elements are still present:

- **A clear sense of entitlement to uphold traditional justice practices.** This implies that there is an identified domain where the practices will be respected and conversely points to the importance of the ancestral domain.
- **Cultural identity and social cohesion.** This is marked by strong bonds of kinship among community members and even among neighbouring communities so that these are under a social contract to support and actively contribute to the maintenance of harmony. When these are present, reconciliation and restoration is a meaningful and highly desirable end to the conflict. The highly evident cultural identity in Lakewood and the social cohesion of the community are key to the survival of the tribe's justice system. In Tungkalan, the traditional justice system barely survives. It is to be noted that community mediation would not have taken place if the Barangay Captain has not voluntarily endorsed the case to the elders.
- **Socially inclusive administration.** Decision-making under this element is based on the input of others. Decisions are therefore largely an articulation of a collective view and process. When decision-making is delegated to a few people on whom full authority is vested, there is less collective ownership over important decisions on justice. When this happens, it no longer becomes incumbent on the entire community to see to it that harmony is maintained.
- **Interface between community and individual goals.** When the common good is embraced as identical to individual good, the indigenous justice system can prosper. Much of the traditional process demands the giving up of self interest in the interest of harmony for the entire community.
- **Resources are shared through a strong network of support.** While there is respect for personal property and ownership in Bag-ong Matalang, there is also premium value on the sharing of resources. Therefore, while relatives are conscious that their property is solely theirs, there is a strong impetus to voluntarily

share this in order to pay a fine. Thus, decisions on justice can be carried out.

- **Sustained respect for the wisdom and worthiness of the tribal elders and leaders to carry out the administration of justice.** The indigenous justice system cannot survive without the recognition and active use of the community. When members of the community no longer look to the elders (*the Datus and Timuays*) as the source of the delivery of justice and when the traditional process is viewed as extraneous, ineffective or impotent, the system dies a natural death. In Tungkalan, the acknowledged “dispenser” of justice is the Barangay Captain and acknowledging or making space for traditional processes is a purely voluntary act on his part.
- **Collective responsibility for the welfare of children.** The mechanisms for the support of CICL in traditional IP culture rest on the community’s belief that the welfare of children in the tribe is everyone’s responsibility. The adults not only feel free to correct erring children even when these are not their own but they are also obliged to do so. When children transgress, the community’s adults are brought in to solve the problem of paying the necessary fines that will restore harmony.
- **External Support for upholding traditional practices.** Because a good number of IP communities are in advanced transition or are almost fully assimilated into “lowland” culture, the mainstream local government must provide support so that the system or at least its relevant and positive aspects can be sustained.

Replication

Elements of IP Justice Regarding CICL that can be Replicated

- **Mediation.** The establishment of mediation or conflict resolution would be a major step in replicating some of the more favourable aspects of traditional justice for children. Litigation should not be an option when dealing with CICL. This does not mean that grievances will not be addressed but the mediation or the conflict resolution process should be an opportunity for both parties to get better and sustainable satisfaction.
- **Support for children in the process.** In the absence of close family members, it may be possible to replicate traditional support for CICL through the identification of responsible parents and family or even persons from agencies to act as support for CICL at the barangay level. This may be likened to the CASAGAL (Court

Appointed Guardians Ad Litem) who support children in the regular courts. However, the orientation of these support people would be to take on an enabling role for children to enter into the mediation or conflict resolution process.

- **Appropriate penalties.** A different method of figuring out penalty can be arrived at. For the Subanen, the discussion on penalty is not dictated by a penal code. It is designed to allow persons to restore good relations. The fine is not a punitive measure but a restorative one. This can be replicated for CICL if the misdeeds of children are openly discussed in terms of what harm was caused and what reparation must be made for the aggrieved to be able to move on. The cost of this can be met by the child's family but it may also be possible to determine other ways of raising the sum. At any rate, the child can also be given tasks to contribute to the fine, a way for him or her to accept responsibility for his or her action.

Preconditions, Prerequisites and Support Systems for Replication

Replication can take place only if the following are present:

- Specifically for IP children in areas with IP populations, a protocol should be drafted by all relevant agencies to define the process of dealing with IP CICL. This protocol would provide guidelines for the endorsement of children to the IP community for the resolution process to take place.
- Again, specifically for IP CICL, the tribe's territory should be identified so that the jurisdiction of customary laws over IP children is defined where traditional practices will hold sway. When it is no longer possible to identify an exclusive physical territory, it might be worthwhile to establish the boundaries of a "virtual domain". Within this area, law enforcers must comply with certain protocols in dealing with IP CICL.
- The community should be oriented on the rights of children and the long-term benefits of drawing up and implementing a community-based restorative justice process for CICL. This should include transformative modules to progressively reduce the stigma attached to CICL.
- Hand in hand with this, intensive capacity building should be carried at the barangay level to espouse and implement innovative processes for dealing with CICL; processes that should clearly have

resolution and restoration rather than punishment or retribution as ends. The participants of this capacity building should include teachers, non-political and political leaders, members of the Barangay Council for the Protection of Children (BCPC), the Barangay Tanod and barangay justice implementers.

- Efforts should be made to consciously and systematically inculcate and strengthen collective responsibility over children first within a *purok*, then within a barangay, and lastly, across different barangays.
- Across local governments, there should be a system of indemnification of aggrieved parties that would include a guided and principled assumption of responsibility by CICL.
- All these will require a clear allocation of resources on the part of the local government for the support of programmes for CICL.

Interfacing the Tribal and the Barangay Justice System

Although it would not be a simple undertaking, the interface of the indigenous justice system with the barangay justice system can be done.

This would begin with establishing the areas where such an interface is relevant — places with IPs and places near or within the ancestral domains. Once the areas are identified, the officials of the concerned barangays would have to undergo capacity building on how to deal with IP CICL. A system of endorsement would have to be mapped out; and the support systems for such a process and for the children themselves would have to be identified.

As previously mentioned, the establishment of a protocol would be of great value. Presently, the endorsement of children to the tribal elders is a fully voluntary act on the part of the Barangay Captain. This should be mandatory.

A better understanding of tribal laws would also contribute to the interface of the two systems. This could be achieved through the orientation of barangay leaders on customary laws and the provisions of relevant laws such as the IPRA (Indigenous Peoples' Rights Act).

Where there is an IP population, the barangay should ensure the presence of tribal leaders in the *Lupong Tagapamayapa* (peace-keeping body). Often, traditional leaders may, of their own accord, be reluctant to participate in a body especially if it is predominantly Bisaya but this may be addressed by capacity building.

Issues Concerning Children in the Administration of Traditional Justice

In the case studies presented, there are at least two major issues concerning children in the administration of traditional justice; and these are the age of criminal responsibility, and the customary laws and mainstream standards of children's rights.

The Age of Criminal Responsibility

IP communities generally define pubescent children as adults. This, in itself, poses profound questions for advocates of children's rights because it implies that teenagers may be treated fully as adults; thus, have to bear the responsibility for their acts. However, though the "offenders" in Bagong Matalang were not thought of as children, the case studies show that they were treated kindly because the traditional system was restorative. Furthermore, the research shows that the concept of "criminality" is not organic to the tribe. For them, the transgressions committed by the children were disturbances of the harmony of the community and the emphasis was not on pinning down a person to take the blame. Rather, these were viewed as situations that had to be resolved in a manner that would be beneficial to all. These findings would, of course, not hold true in other IP communities where the view of criminal liability may be different.

Customary Laws and Mainstream Standards of Children's Rights

The existence of customary laws and practices incompatible with children's rights is another matter of concern for advocates of children's rights. These practices include early arranged marriages and child labour.

Early arranged marriages definitely have negative implications on children's right to development, their right to leisure, and the protection of their health. Especially for girl children, early marriages may mean child bearing at an age when their bodies are not yet fully ready.

The practice, though, is not a caprice but a coping mechanism for vulnerable families in marginalised communities where resources are becoming progressively scarce. The practice provides a form of insurance that the children will have an expanded support system for survival and when this need diminishes, the practice will die out. Education can change the tribe's perspectives so that options other than early marriage can be considered for the benefit and development of children. It is hoped that when and if this process is undertaken, it will be done with care and sensitivity. This is important so that even as children's rights are better promoted, what remains of the tribe's identity is not destroyed since in

many ways this culture is protective of children in ways that have yet to be equalled in mainstream society.

Learning from Traditional Justice

If mainstream communities are to learn from IP practice, then the present judicial process must begin to look at restorative justice as a primary option in dealing with erring children. In the main, restorative justice is alien to mainstream society where even progressive reformists of the legal system look at justice as the imposition and enforcement of appropriate punishment. Current views of access to justice often remain at the level of retribution, which does allow for restoration of good relations but does not allow children to participate in restitution and healing, nor the victims to move on with the least possible trauma.

In this aspect, there is much to learn from Bag-ong Matalang where despite the community's poverty and marginalisation, aggrieved parties actually do not demand prohibitively high fines because they do not want to cause hardship on the part of the people paying the fine. In other words, the main point behind the fine is certainly not vengeance but a mere symbol that the offender is repentant and the relationship is valued.

Above all, if mainstream communities are to learn from IP practice, they must first enhance their sense of kinship and sense of shared responsibility over children. This in itself is a great challenge, which people and families in urban and semi-urban settings would relate to other people's children with enough sense of collective responsibility to feel an obligation to protect and intervene in their behalf. Without this, however, it would be impossible to replicate or adopt the substance of justice administration in dealing with CICL.

In conclusion, it is necessary to point out that the IP customary treatment of CICL is based on a strong belief that the elders, the family and the tribe are responsible for what children do until such a time when they are adults. The cohesiveness and the kinship provide the social infrastructure that makes it possible to deal with the misdeeds of children without institutionalisation and stigma. In some IP communities such as Bag-ong Matalang, the administration of justice can become a process of restoration because society is willing to support it. The first step to take in ensuring better treatment of CICL is possibly to begin to move away from looking at the administration of justice as solely the responsibility of the state. Mainstream communities must begin to believe that allocating personal resources for the common good (especially when this involves CICL) is ultimately for the good of their own families. When this happens, the institutionalisation of children may slowly become a thing of the past.

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Indigenous Administration
of Justice and its Impact on the
Protection of Children:
The Tagabawa-Bagobo and Subanen Experience

This case study shows how two IP communities in Northern and Southern Mindanao handle offences committed by IP children and young adults. Conducted in two communities that have experienced varying degrees of assimilation to and integration with lowland political structures, the study offers information on indigenous justice systems that can contribute to the development of a more systematic approach in diverting children in conflict with the law based on the principles of restorative justice and the United Nations Convention on the Rights of the Child. The study looks closely at how the interrelated elements of the IP justice system operate in the context of changing indigenous cultures, specifically in terms of handling cases of children in conflict with the law.

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