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Political Implications of Banwaon Indigenous Law

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"The state is the coldest of all cold monsters.
Coldly it lies, too; and this lie steals from its mouth: 'I, the state, am the people'.
"Where a people still exist, there the people do not understand
the state and hate it as the evil eye and as a sin against custom and law."

Friedrich Nietzsche
Thus Spoke Zarathustra

Introduction

In December 2000,[1] the Supreme Court of the Philippines upheld the constitutionality of the Indigenous Peoples Rights Act (IPRA) by the narrowest possible legal margin; i.e., a deadlocked vote of seven Justices who in effect ruled for, and seven against, the constitutionality of the law. Since the Court's rules require the vote of a majority to declare any statute unconstitutional, a deadlock meant that there was no majority, and the IPRA just barely survived this (initial) assault on its validity.

Despite a pending motion for reconsideration filed by the defeated petitioners, the Philippine government is now—four years after the promulgation of the statute—preparing for the full implementation of the IPRA.

What is notable about the attitude of most indigenous rights advocates, non-government organizations and indigenous peoples' organizations is their excitement over, and unprecedented level and intensity of cooperation with the government in the implementation of this long-awaited, yet paradoxically fiercely debated, statute (Royandoyan and Atillo 2000). Recent discussions of indigenous peoples' issues are almost always focused on the IPRA and its implementation. Perhaps, after decades of struggle and advocacy, culminating in a dramatic legal battle fought in no less than the ultimate arena for legal issues in the Philippines,

the IPRA has been cast in the role of an instrument of hope in a monumental contest between the forces of good and of darkness.

In all the excitement, criticism of the IPRA has been marginalized. True, many such critiques do not rise above the level of nitpicking about access and procedure, or stem from ideological stances that refuse to offer substantive discussions about the law and its political and sociological consequences. But this in itself does not negate the value or importance of a critical or alternative viewpoint. It is unfortunate that in the seeming rush to emplace and implement the IPRA, the law has come to be taken as an unqualified good, and it is now unfashionable, perhaps even politically incorrect, to view the IPRA critically.

I think it is necessary to present a critique of the IPRA, doubly so in a context where it is *assumed* that the law is necessary and beneficial. This paper thus hopes to offer an insurgent interpretation of the IPRA, calling attention to certain of its characteristics that have remained largely unconsidered.

The insurgent character of this paper is underscored by my use of the *Kiyala ha Batasan*[2] (or *KhB*), the indigenous ethico-legal system of the Banwaon people of Agusan del Sur to foreground my points. I will thus be employing the perspectives offered by one indigenous legal system to expose the largely ignored, integrationist dimensions of a statute that is supposed to respect and uphold indigenous culture.

Problem and Outline

This paper represents the union of two intentions.

The first of these was a realization that I had while preparing a draft of this same paper, which focuses on the Kiyala ha Batasan, the indigenous ethicoreligious system of the Banwaon people of Agusan del Sur. Much of this body of laws consists of rules—not unlike the biblical books of Leviticus and Deuteronomy—designed to maintain a sense of righteous purity in one's relations with fellow human beings, and with the spirits. The details about the proper time and conduct of such rituals as the *hakladan*, *sundo*, *daging* or *kaliga*, while interesting enough in their own way, have little direct bearing on the discussion of the IPRA, arguably the most important development affecting indigenous peoples, taken as an academic field and as field of development and legal practice.

I think the mere description of an indigenous legal system is not enough. We need to transcend sterile, intrinsically distanced ethnographic description, and ponder the connection between the practice of indigenous

law and the state. Indigenous law and by implication social science has more to offer than documentation, and I use it here as a starting point for a critique of the IPRA.

This brings us to the paper's second intention. Having argued for the use of indigenous law as a critique of the IPRA, we also need to be conscious of the limits of this approach. Others have attempted to present a critique of the IPRA, but most of them have not considered the statute in the larger political context of the state and its capitalist imperatives. We thus need to assess as well the forces behind the IPRA.

This second idea is all the more timely, given that almost four years after its promulgation, the Philippine government is (only) now considering full implementation of the statute. Indeed, most people involved in the field seem to take a positive attitude towards the IPRA, and there are alarmingly few who have offered a substantive critique of the statute.

Ultimately, I think, this would lead us to confront the larger question of self-determination, of what it means to be an autonomous indigenous people within the context of a nationstate.

In sum, therefore, this paper will discuss the Kiyala ha Batasan (KhB) of the Banwaons. I will not go into the details of the various rules, options, modes, and methods that form the bulk of this living, dynamic and complex ethico-legal system. Rather I will focus on what I consider to be the underlying elements of this system. Then I will consider how these key elements interact with the IPRA. I have opted not to include a background discussion of the IPRA itself, since that others have already presented such material (Leonen 1998, Pavia, ed. 1998), and have thus assumed that the reader is already familiar with the statute and its substantive content. Finally, I attempt to consider some of the political implications of the interaction between the Kiyala ha Batasan and the IPRA.

Theory and Practice

In discussing Banwaon indigenous law, I do not imply that mine is an authoritative, definitive account of their ethico-legal system. I am aware that indigenous law, like other cultural constructs, are not static survivals from some imagined ageless, timeless past, but are contingent and contentious, dynamic and complex; a point I have tried to make elsewhere (Gatmaytan 2000, 38-39).

What I present here therefore is only one possible interpretation or construction of Banwaon indigenous law, provided by a number of elders

and datus. I am conscious that there are alternative interpretations, some of which would cite the need for the Banwaons to 'become civilized/ Christianized', to abandon 'unscientific' or non-materialist perspectives, or to otherwise emulate or join the cultural and political mainstream. Conversely, other interpretations would valorize specific, nativistic interpretations, perhaps to further personal interests.

In the same way, my material should not be read as re-presenting the Banwaons as a homogenous people. Indeed, my data will show that they are divided by political and cultural differences. My references therefore to "the Banwaon" as a group refer only to the cluster of fourteen Banwaon communities that I work with in the highlands of San Luis, Agusan del Sur province, and should not be interpreted as referring to all Banwaons. At the same time, I should like to point out that this cluster of communities represent the majority of the Banwaon population, and indeed they include those which are widely considered their political and cultural 'centers'.

I will be using a largely first-person approach in this text, to emphasize the essentially interpretative character of ethnographic description and analysis (Watson 1991, 74-75), and to avoid all pretense of being a detached, objective and therefore authoritative observer. Such issues as ethnicity and identity, taken in their relation to land and resource rights (Resurreccion 1998 and 2000) are a contentious, contested terrain, and the data I received will have been structured to advance given viewpoints in ongoing negotiations regarding these issues.

I should also make clear that my data should be read with some qualification as to gender, and to a lesser extent, age. It was and still is difficult to discuss issues with women in community contexts shot through with gender and power relations. In particular, discourses on Banwaon law are largely monopolized by the *panod*—those learned in the law—all of whom, to my knowledge, are elderly men.

In my analysis and discussion of the IPRA, I will be appropriating Giddens' theoreticization of the modern nation-state (1985), and its constituent notions of the frontier, state building, the imperative of the expanding the state's administrative power, and the dialectic of control. Perspectives offered by other writers or scholars will be used to supplement Giddens' approach.

At the same time, I am conscious of the criticisms that have been directed towards Giddens' social theory (Craib 1992, Thorn 1996 and Layder 1994). His approach will thus be adapted to the Philippine political and cultural context (Gatmaytan 1999, 208-209; 243-245).

This is merely to make explicit my awareness of how contentious the issues raised in this paper are, and that I have consequently been duly critical in weighting the significance of the data I received while working among the Banwaons.

The Banwaon People

The Banwaons are one of the four or five indigenous peoples of Agusan del Sur province. There is speculation (Garvan 1929, 5) that they are a branch of the Bukidnon or Higa-onon people of Bukidnon province to the west, who crossed over the Pantadun range into what is now Agusan del Sur. This seems to be borne out by the linguistic affinities between the Banwaon and Higa-onon languages.

The Banwaon people are very poorly reflected in the existing literature. About the only clear reference to them is in Garvan's 1929 study of the Manobos of the Agusan region, which devotes a whole paragraph to them (1929, 5). The studies that thus far have focused on them are in scattered writings of somewhat limited circulation (SILDAP-SIDLAKAN 1996, 1993; Anonymous 1998).

Their communities are located in the watershed areas of the Maasam and the upper Adgawan river systems, usually on the bank of these rivers or their tributaries. This area is associated at the local level with the political jurisdiction of the Municipality of San Luis, Agusan del Sur. A few communities have been set up along the local roads laid down by logging and tree-plantation companies, and are often referred to by their kilometer distance from the *poblacion*; e.g., "*tres*", "*onse*" and "*K. M. Nineteen*".

Economically, they relied on a combination of agriculture, hunting, trapping and fishing, and trade for their needs and wants. Agriculture is still conducted using swidden methods,[3] with dry or upland rice, sweet potatoes, cassava and yams, corn and sugar cane, and a few vegetables as the principal crops. Slowly, swidden farming is being supplemented by dry-field plowing (*daro*). Hunting and trapping particularly of wild pigs, monkeys, birds and deer are gradually decreasing in importance, but are still practiced.[4] Fishing and fish-trapping appear to have been much more important in the past, given the techniques described even now, but this have been adversely affected by logging.

By the 1960s, the Maasam river area was penetrated by small-scale and corporate loggers, who left behind them logging and pilot roads still used today[5] and a landscape stripped of its marketable hardwoods. There

did not seem to be any resistance to logging as such, though tensions did arise from operators' occasional failure to pay access fees or resource rents to Banwaon landowners when logging in their area.

During the logging boom of the 1970s and 1980s, many Banwaons worked for loggers—and later, tree-plantation companies[6]—as laborers, security guards and negotiators. Many of the Banwaons now earn money for their needs or wants by providing farm and tree-plantation labor, small-scale logging and tree farming, and rattan cutting.

Most Banwaon communities are relatively small,[7] politically autonomous from its neighbors, and closely linked to one or more clans. They are governed by one or more male datu or female *ba-e*.[8] These local leaders are chosen by community members (*sakop*) on the basis of traditional standards; i.e., their concern for others, knowledge and understanding, and ability to negotiate and settle disputes. People who are selected as traditional community leaders are expected to comply with the local rituals of leadership, which involves a formal designation as a datu or ba-e called *pagtuboy*, followed by a second, confirmatory ritual or *pamaliskad* at least one year later, and attendance in all the *domalongdong* or meeting of datus/ba-es that may be called.

Community organizing began in the 1980s, so that many communities now have peoples' organizations, established through the efforts of community-based and NGO organizers.[9] The various organizations are now themselves ordered into a municipality-wide coalition called Tagdumahan. Today, there is considerable experience or familiarity with the organizing process in the area, leading sometimes to leadership being shared between traditional leaders, and a set of younger, literate and more non-traditional leaders. Efforts are being undertaken to bridge any gap between these two sets; principally by exposing the younger leaders to traditional leadership rules and practices.

At the same time, there is also respect for local government officials, particularly at the barangay and municipal levels. However, there is considerable and remarkable reluctance to accept certain aspects of government, particularly those that imply its sovereignty or power, such as civil registration, taxation or real property and even the national census.

Beginning in the 1980s, government troops have conducted counter-insurgency operations in Banwaon territory so regularly that many consider it an annual event. The many abuses that have accompanied these operations and the tensions they inspire have added to the wariness of many Banwaons towards the government.

With the entry of logging firms, some men managed to maneuver themselves into positions of power as negotiators for these companies, which called them "datus" as well. This practice gave rise to datus who were installed on the basis of traditional values and practices; datus who were 'baptized' (*bunyagan*, also known dismissively as *datu-de-papeles*) as such by the companies; and still others who were both.

Kin relations remain strong, and relevant in social and economic terms. As in neighboring indigenous groups, the male head of a family occupies a strong social position, dominating in particular his children and sons-in-law.[10] Polygynous marriages (*duway*) are described as traditional, and are still practiced, though rarely so. The social structure is thus basically patriarchal in character. *Binoya* or arranged marriages are still common, but are probably on the wane in the face of the increasing incidence of 'love' marriages (*uyab-uyab*). Inheritance is reckoned bilaterally and in the direct line, generally with all male and female heirs inheriting equally.[11]

Land is considered as property that may be transmitted through succession. Landownership can be traced backward in time through the generations to the men who first cleared the land for farming purposes, who by that act are considered as having secured ownership of that area (Dove 1988, 14). Today, landownership is premised principally and ultimately upon indigenous rules of inheritance.

While the existing literature suggests that land tenure among the Banwaons is communal (SILDAP-SIDLAKAN 1996, 57-58; 1993, 22), with the community or other corporate group owning the land, my own experience indicates that it is highly individualized in actual practice (Gatmaytan 1999, 179). Land use—as opposed to ownership—is sometimes described as *tinibo* or *komunal*; i.e., accessible to anyone, and does not in itself negate the prior fact of individual landownership. The landowners are referred to as "*tag-iya sa sektor*" (owner of a sector [of land]) or simply "(*mga*) *sektoral*" (sectoral/s).

Much of the traditional culture is still practiced, perhaps as a counter-assertion of ethnic identity in the face of intensifying external cultural and political pressure. There is still, for example, respect for traditional values, such as strong kin ties, sharing and mutual support, and in particular, a deep reverence for the old ways and beliefs.

Indigenous religious and associated beliefs remain strong, with indigenous rituals[12] continuing to be practiced at the community and household levels on a regular basis. Hereditary ritual obligations (*tulumanon*) are kept to the extent possible; taboos or prohibitions (*pamalihi*) are

observed. In particular, practices relating to agricultural work are widely practiced, such that crop failures are often blamed on transgressions of indigenous beliefs and practices. Omens, visions or dreams are given serious consideration; and the will or actions of the spirits generally accepted as explanations of events or circumstances.

Traditional art forms such as oratory (*dasang*) and chanting (*limbay*), the narration of the local epic (*Ulahingan*) and other folklore, and different dances and music are still appreciated, especially among the upper Maasam communities. A number of local performers I know are 'artists' in the fullest, deepest sense of the term. The existing community and municipal-level organizations encourage interest in these local art forms.

On the other hand, the globalizing mainstream culture *has* made inroads into Banwaon culture. Rather than the remote 'primitives' untouched by 'civilization', these are people who straddle the space between chants and chainsaws, spirits and satellite technology. There are places where the balance however has swung undeniably towards the mainstream culture. Some children have learned to be ashamed of practicing traditional dance forms, and evangelization by culturally narrow-minded Protestant cults has had some success in a section of the upper Adgawan river area.

Still, local beliefs and values remain comparatively strong, compared with so many other *Lumad*[13] areas in Mindanao, or even in the Philippines.

Indigenous Law and Cosmic Order[14]

One indication of the remarkable vitality of Banwaon culture is the continuing relevance of their *batasan* or ethico-legal system, referred to as the Kiyala ha Batasan.[15]

Like government laws or regulations, the KhB contains prescriptive and prohibitive injunctions called *gutlo*. One datu described the gutlo as branches growing out of the trunk of a tree, which is the KhB; they draw their life from it, and expand its size and scope.

The staggeringly large number of contextual, substantive and procedural rules and counter-rules,[16] and the related rituals, form the bulk of the KhB. There are gutlo for negotiating and conducting marriages, datuship, hunting and trapping, *pangayaw* or going to war, felling trees and cutting rattan, childbirth and care, the cultivation of different crops, settling disputes, visiting and receiving visitors, and other aspects of traditional Banwaon life. Some of these gutlo are so institutionalized that they are

referred to by specific names. The *pangibabasok*, for example, refers to the many gutlo on farming, its methods, rituals, *pamalihi*[17] and related practices.

In general, the gutlo are considered *mali-it*, or mandatory or compulsory in character. These are provisions that cannot be violated or ignored without serious consequences for one's self, or fellow-humans, or even for the spirits.

On the other hand, there are a number of other provisions or practices that are described as *hulong-hulong*, or non-compulsory or discretionary. These are so by their nature, or because over time, the importance of a given practice or belief has declined. An example of the latter would be the ritual demands of the *talabusaw* spirits who feed on human blood, whose gory appetites have been gradually channeled towards sacrificial animals. A datu thus described the ritual obligation for the *talabusaw* as "*nahulog sa* hulong-hulong" ('fallen to [the level or status of] hulong-hulong').

In other contexts, the term gutlo may be used in a collective sense to refer to the totality of these injunctions, both mali-it and hulong-hulong. In this collective sense, the gutlo may be used synonymously with the KhB, or with laws or legal systems in general, or with the particular, indigenous batasan or ethico-legal systems of other indigenous groups.[18]

Unlike government laws and regulations, the Kiyala ha Batasan also asserts a system of cosmic, religious and ethical beliefs and values that underlie what are considered proper relations between people, and between people and spirits. The KhB includes the various means of mediating the unavoidable tensions between or among people, and between people and spirits;[19] i.e., the various rituals and ceremonial procedures of traditional Banwaon life.

For example, a case where one man kills another results in a clear transgression of right, and the guilty party would properly be punished through the imposition of a *mang-gad* or fine in tort, payable to the bereaved relatives of the victim. Up to this point, the KhB has functioned much like government law, in that it provides a means by which the aggrieved may derive satisfaction for the injustice they suffered.

The KhB goes beyond this point however, and includes measures that prohibit the guilty from returning to the scene of the crime at the risk of supernatural punishment (*makasow-sow sa* pamalihi) from the offended *tagbanwa* or local spirits; and that prescribes a ritual to cleanse the scene of the crime (*pamulisong*), among others. Here, the KhB no longer addresses the rights of the individuals involved, but the maintenance

of harmony within the larger cosmic order, specifically the sense of violation or pollution the offense may have caused to the local spirits.

The substantive content and practice of KhB is clearly interwoven with Banwaon religious, ethical and cultural ideas. Indeed, many datu consider it problematic for a non-Banwaon to fully understand and live by the KhB. It is in this sense that one elder described the KhB as a body of prayers: "*Ang kamatuoran niini usa ka alampoanan ang kahulogan sa Ipoan ko Pinaglaw, alampoanan ang kinatibuk-an sa akong kasinatian unsa ang palisiya sa Ipoan ko Pinaglaw*" (The truth of this is that the meaning of the *Ipoan ko Pinaglaw* is [that it is] a place of prayer, a place of prayer is the entirety of my experience of the edicts of the *Ipoan ko Pinaglaw*).[20]

The scope of KhB is thus so all encompassing that it is often used as a metaphor—and sometimes even a synonym—for Banwaon culture and identity.

The Geography of Law

The KhB explicitly recognizes differences between peoples, not only between indigenous and non-indigenous or migrant peoples, but also between different indigenous groups. One elder, speaking of the differences among the indigenous batasan or gutlo said: *"Kay sukad pa kaniadto wala magparehas ang* gutlo *o palisiya. Lain ang Libang, lain ang Adgawan, lain ang Umayam, busa dunay dagpon*[21] *aron dili makagduol o makag-ipon ang wala magkaparehas."* ("Even in the past, the laws or policies differed. The [ways of the people of] Ubang river are different, those of the Adgawan river are different, those of the Umayam river are different; which is why there are boundary guards, so that there will be no meeting or integration between those who are not the same.")

The Banwaons reiterate this theme of difference in a story they use to frame their experience and analysis of their world.[22] The tale tells of two brothers who used to live on the coasts of Mindanao. When the Spaniards arrived, one of them decided to adopt the foreigners' ways. He was baptized and educated, and he thereafter used what he could read or write to guide him through life. He became known as Palagsulat—"The One Who Writes"—and he is considered the ancestor of all the *Bisaya*[23] or *dumagat* peoples who populate the coasts of Mindanao. The other, elder brother refused to convert and learn to read and write. He moved towards the interior of Mindanao, where he continued practicing his indigenous culture, guided by his dreams and visions. He came to be known

as Palamgowan,[24] The One Who Dreams". He is said to be the ancestor of the Banwaons, Manobos and other indigenous peoples of Mindanao.

The differences between the children of Palamgowan and Palagsulat have been elaborated so that today, references to the *dumagat* or *Bisaya* also include the government, its agencies, laws and political system, as well as the industries and corporations that operate by virtue of these laws and political system. The Banwaons have thus drawn a line between themselves and the 'othered' constellation of lowland/migrant populations and culture, government and laws, projects and corporations, as well as other indigenous groups.

The KhB goes on to posit the ethical necessity or obligation of *maintaining* the differences between groups. The ways of the children of Palagsulat are theirs to follow, just as the ways of the children of Palamgowan are their own. In the same way, the ways of the Manobos or Higaonons are for themselves, just as those of the Banwaons are their own. Thus each is duty-bound to follow in the footsteps of one's ancestors: *"Ang gitawag nga (*Kiyala ha Batasan*) buot ipasabot ang kagikan o imong kasaysayan maoy atong masunod."* ("What we call the Kiyala ha Batasan means that we must follow in our own lineage or history.")

This imparts to the KhB a remarkably conservative outlook. For some Banwaons, anything their ancestors did not have, do or practice is automatically pamalihi or forbidden, and must not be adopted. Thus, such 'new' or 'alien' things as schools, chainsaws, modern medicines, the government census, GPS survey equipment and carabaos among other things, have been said to provoke adverse reactions from the local spirits, manifested as visitations or even illnesses or other misfortune. The practice therefore is to formally introduce such things into each area through a ritual, to preclude any reaction from the spirits.

In any case, the KhB calls for mutual respect between the practitioners of different gutlo. A given batasan must not be imposed on the practitioners of another. The notion of respect for the batasan of others is summed up in the complex notion of *pandilin*.[25]

Closely linked to the ethical principle of mutual respect between the different batasan or gutlo is that of the *talugan*. This term may be roughly translated as the 'territory' or 'area of jurisdiction' of each ethnic group, indigenous or otherwise, although my translation lacks the additional connotation that such areas are each group's 'proper place'. Very often, the term is conflated with a river system, so that for example, the Banwaon

talugan is generally referred to or associated with the Maasam River basin, although in fact it extends to the upper Adgawan River.[26]

The people of each talugan are thought of as having their own batasan or gutlo. This means that the prescription of mutual respect can be translated into spatial or geographic terms. In other words, the batasan of one talugan cannot be imposed upon the people of another. A visitor to one talugan is expected to respect or comply with the gutlo of that talugan; s/he may not 'import' his/her own batasan into that area.

One or more dagpon[27] have been set to watch over the boundaries of the Banwaon talugan, who are expected to control or regulate the entry of outsiders into the area. Unfortunately, they seem to have failed in their tasks, particularly along the Agusan River.

An "ideal" marriage would then be between two people from the same talugan, as it involves the least adjustment. Still, and particularly today when demographic mobility is intensifying, marriages across talugan boundaries do occur. In such cases, a man from say, the Umayam who marries into a Maasam community is expected to observe the KhB, and cease following his original batasan while in the Maasam area. He is then counted as a member of the Maasam talugan, and by extension, the Banwaon people. The only clear instance where a batasan can apply outside its talugan is in cases of disputes between two of its members occurring outside their talugan. Otherwise, the general rule is that a batasan like KhB can be applied only within its particular talugan.

This effectively defines the jurisdictional extent of each batasan or gutlo, limiting it to the territorial bounds of its 'home' talugan. The notion of the talugan is thus a translation of cultural differences into spatial terms, in that the different peoples are supposed to remain within their respective territories: "*Mao nay ... giapilan sa giingon nga himuon ang boundary sa matag suba. Buot pasabot sa boundary nga ang matag tao sa suba dili makalapas sa usa ka suba, nga giingon nga mga Bisaya o langyaw, kay basin mawala o mahanaw ang kanhing kinaiyahan, diin kini ang atong namat-an pinaagi sa kultura.*" (That is where ... the discussion of making each river a boundary comes in. By boundary is meant that people of one river, just like the Bisayans or strangers, cannot go beyond another river [boundary], because otherwise the ancient ways might vanish or be lost, the ways to which we were awakened by our culture.")

The KhB thus describes a universe where each people—indigenous or migrant—have their own history and identity, summed up in their name; their own ways, laws or batasan; and their own proper place, territory or talugan.

Towards a Banwaon Critique of the IPRA

The Legal Invasion of the Talugan

The Banwaon experience is that outsiders are continuously trespassing upon the cultural and geographic boundary of their talugan, trying to impose their laws, beliefs and practices on the Lumads. In concrete terms, more and more migrant settlers or their descendants, missionaries and government bureaucrats and troops are encroaching on the territory and culture of the Banwaons. One datu mourns the resulting loss of resources, and the hardships of his people: "*(N)atumba ang hulagdok, dinhi na mi mokuha ug pagkaon sa ubos kay nalapas ang palisiya busa gutom kaayo ug dili na makakuha ug baboy ihalas*" ("The altar has fallen; now we get our food here in the lowlands, for the law has been broken and so we are hungry and can no longer catch wild pigs").

The sense of trespass or violation is not only physical or material, but cultural and even spiritual as well: "*Atong panghinauton nga dili kita mabiktima sa mga relihiyon nga moabot sa atong lugar.*" ("Let us hope that we do not fall victim to the religions that come into our land.")

The consequences, for the Banwaons, are not only felt in the loss of possession or control of land and resources. For failing to maintain the difference—the cultural and spatial boundaries—the Banwaons believe that the displeased or disappointed spirits may punish them. According to one elder: "*Sa karon ang mga tawo lisod sa panginabuhi kay nalapas ang mga ginadili sa ibabasok*[28] *ug panumanod*[29] *kay nakasulod naman ang langyaw o* Bisaya." ("Today people have difficulties in earning a livelihood because the prohibitions of the *ibabasok* and *panumanod* have been violated, the foreigners or Bisaya having intruded [into our land].")

Given this cultural and historical context, it is not surprising that many of the Banwaons feel a degree of animosity towards the intensifying and increasing intrusions of government policies, laws and regulations within their talugan.[30] It also helps explain the strong reactions of some elders against missionaries and their work. In both cases, the Banwaons could argue that these are violations of the *pandilin*, and by extension, the KhB.

The promulgation of the IPRA is thus interpreted by many Banwaons as the latest of such intrusions into their talugan. It is an act of cultural and symbolic violence; a categorical trespass upon the KhB's ethical prescription of mutual respect between different gutlo and to avoid imposing one's laws or ways upon the people of another talugan.

It is in this critical mode that one leader stated: "*Busa karon nga dunay balaod-gobyerno duna nay kalahian kay lahi ang balaod sa gobyerno ug lahi usab ang balaod sa* Lumad *busa dili gyud magtakdo ang paglantaw sa* Lumad *ug gobyerno.*" ("Now that there are laws from the government, things have changed, for the laws of the government differ from those of the Lumad, such that the Lumad and the government just cannot see things the same way.")

Thus, even as the IPRA is described by the state as its comprehensive response to the demands of Philippine indigenous peoples, Banwaon leaders and elders have noted the law's origins outside the talugan; its foreign, written form and language; its lack of sanction in the form of their ancestors' practices; and the utterly alien character of its substantive provisions on land tenure, titling and registration. The very approach taken by the government—legislation from Manila, to be made applicable to the Banwaons and all other indigenous peoples or communities in the country—testifies to its ignorance or incomprehension of the framework and substance of Banwaons and other indigenous ethico-legal systems.

It is thus not surprising that, without much debate, several respected Banwaon datu and elders have formally declared that the IPRA is contrary to the KhB. It is ironic that a statute intended for indigenous peoples and their culture is thus condemned by an indigenous people as violative of their indigenous culture and ethico-legal system. Parenthetically, this belies the state's assumption that all indigenous peoples would welcome a statute like the IPRA, and suggests that it is probably unable to imagine a situation where such a law would be rejected on the basis of an indigenous law or culture it is supposed to uphold. The Banwaons' position is in stark contrast to the position of many other indigenous groups or organizations and support groups who have hailed the statute as a positive development in the history of the indigenous peoples' struggle.

This stance is a telling commentary on the lack of consultation with, or participation by, the Banwaons in the process by which the IPRA was formulated. As both its substance and very form mark it as something from outside the talugan, the Banwaons feel no ownership of the law; they do not feel bound by it, and demand that it should not be imposed upon them. Rather they invoke their right to self-determination and demand that they must be respected in their continued practice of the ways prescribed by their ancestors through the KhB.

In sum, the IPRA is thus understood as an invasive assimilation of the KhB by the national legal and political system; competing with it by setting up an alternative framework for political, social and cultural

relations; and representing perhaps the latest attempt at conquest by the children of Palagsulat.

The interface between indigenous law and that of the state or government is therefore a critical cultural issue facing the Banwaons today. Other dimensions of this interface are in the Banwaon suspicion of government programs like the national census, civil registration of marriages and births, taxation and land titling. Interestingly, all these arenas of contention are historically associated with the expansion of the state's bureaucratic surveillance of its people and territory, and therefore, the expansion of the state's power as well (Alonso 1994, 382; Giddens 1985, 181).

The Banwaons and State Law

This is not to say that the Banwaons' problem with the IPRA is purely theoretical or hypothetical. Recent events provide us with a concrete illustration of the clash between the KhB and the IPRA, or at least, its legal antecedent.

On 21 July 2001, all seventeen families of the Banwaon village of Kimambukagyang evacuated to neighboring communities.

After talking to some of these evacuees 10 days later, I learned that the reason for their flight was a conflict between the community and one BenHur Mansulonhay. This latter is a Banwaon who has parlayed his recruitment and organization of paramilitary Civilian Armed Forces Geographical Unit (CAFGU) for the government military into the status of a local warlord. He also has links with the logging and tree plantation firms in the area, which reportedly had him 'baptized' as a "datu" of the Banwaon people. On the other hand, he has also converted to the particular brand of Christianity brought by Protestant missionaries in the upper Adgawan river area, and has since purportedly turned his back on his hereditary ritual obligations.

On 4 June 1998, Mansulonhay secured in his own name a Certificate of Ancestral Domain Claims (CADC), numbered R-13-CADC-158, using the procedures provided by the Department of Environment and Natural Resources (DENR) Administrative Order no. 2 (1993) (DENR 1998;4). This gave him legal control of the land and resources within a 6,095 sq. ha. area in San Luis, Agusan del Sur. Unfortunately, this CADC area overlapped that of the community of Kimambukagyang, as well as a few other Banwaon communities.

Mansulonhay's legal actions were viewed as a violation (*pagsupak*) of the KhB. Not only did he apply laws from outside the talugan unknown

to the Banwaons' ancestors, but his claim to land contested those of Banwaon communities, clans and individuals who premised their own tenure rights on the KhB. Instead of the traditional inheritance patterns, Mansulonhay predicated his claim on his possession of a CADC document. True, the latter should be based on actual local cultural and tenure practices, but the lack of consultation that characterized the application prevented any effective opposition or commentary.

In any case, Mansulonhay was considered a dangerous figure, and people tended to avoid rather than confront him. These communities, unable to match Mansulonhay's resources, simply ignored the latter's dubious—by the terms of the KhB—claims of ownership over the land. Thus at the level of the local communities, life continued to be guided by the KhB rather than the government's CADC system. Clan and individual ownership of land and major resources based on inheritance continued to be respected, while allowing 'communal'[31] use of land and lesser resources.

Recently, however, acting DENR Sec. Heherson Alvarez approved five pending applications for new Industrial Forest Management Agreement (IFMA)[32] contracts submitted by a group of Singaporean and New Zealander investors (PDI, 18 June 2001). It is believed that one or more of these contract-holders are interested in establishing tree plantation operations in the upper Adgawan River area controlled by Mansulonhay. With a potential windfall in the works, Mansulonhay has been negotiating with these IFMA contractors, and now wants to evict 'squatters' residing within 'his' CADC area who might spoil his plans.

The result was a series of maneuvers—charges of supporting the outlawed New People's Army (NPA), staged ambuscades, threatening messages and letters—that forced the people of Kimambukagyang out of their territory.

While the case does not directly involve the IPRA, the latter clearly reiterates the land and resource tenure provisions set down in DENR Administrative Order no. 2 (1993), under which Mansulonhay secured his CADC. Indeed, the IPRA has a provision for converting CADCs like Mansulonhay's into actual documents of title,[33] effectively making him a feudal landlord. For the Banwaons, there is no substantive and operational difference between the administrative regulation and the later statute.

This case underscores the differences between the government's handling of land and resource issues, and that of the Banwaons. For the government, it is a matter of determining which person or group has

ownership to particular, surveyed territories; a technocratic response to a very subjective, and therefore complex, subtle and dynamic problem.

It overlooks the fact that land and resources do not exist in an economic and ethical vacuum; that there are people interested in securing as much of these as they can in their names, to the prejudice of the actual owners. It forgets that people have differential access to—and attitudes towards—available political, military, legal and cultural resources. It ignores the reality that the Banwaons—and even groups within the Banwaons—may have their own, alternative visions of how lands and resources are to be allocated among their people. In sum, the IPRA and its legal antecedents reflect a simplistic grasp of upland reality, and its prescriptions are correspondingly discordant with the local practices set down by the KhB that many of the Banwaons seek to uphold.

The result is that a usurper with access to the resources of government now has a legal claim backed by the state's machinery over a large area of land, from which a community holding true to its culture is evicted.[34] The irony of such a result in the face of the stated objectives of both the DENR Administrative Order no. 2 (1993) and the IPRA is cruel indeed. Such experiences can only deepen the sense of political and cultural intrusion and violation that the implementation of the IPRA and its blindness to cultural diversity will cause.

Learning From the Kiyala ha Batasan

The Bureaucratization of Ancestral Domains

The IPRA can be seen as an attempt by the state to come to terms with indigenous peoples' rights within the framework of the nation-state (Gatmaytan *forthcoming*, 25). It is a definition of its power in relation to the indigenous peoples.

Power in turn involves the production of effective instruments for the formation and accumulation of knowledge, such as methods of observation, techniques of registration, procedures of investigation and research, and apparatuses of control (Foucault 1980, 102). This quite accurately describes the contents of the IPRA, which sets a procedure for the investigation and documentation of an ancestral land or domain claim, the registration and taxation thereof, its status vis-à-vis other forms of tenure right, the definition of the rights and responsibilities of the holders of CADC or CADT, and the procedures for negotiating with these same holders.

The process of ancestral land and domains delineation set down in DENR Admin. Order no. 2 (1993) and replicated in the IPRA 'bureaucratizes' the notion of ancestral lands and domains (Gatmaytan 1999); it is the enclosure of a cultural frontier. By bureaucratization here is meant the homogenization, rationalization and partitioning of space (Alonso 1994, 382), as part of larger political process of state-making or -building in relation to indigenous peoples.

Thus, where the definition of ancestral rights had hitherto been defined by the various indigenous histories, cultural ideas and community praxis, now it is defined by standards set by the state (Foucault 1980, 131).

This process of 'bureaucratization' has three dimensions. First, it gives the state a means of surveillance (Alonso 1994, 382), of gathering information on local resources, communities and their leaders (Giddens 1985, 117); and through taxation and property registration, of monitoring economic activities and land transactions.

Second, the state's inherent "dread of difference" (Claestres 1974, cited in Nagengast 1994, 110) will compel it to homogenize, standardize or genericize the notion of ancestral lands and domains, and rights thereto. The state will seek to impose a single set of rights and obligations, standards and procedures for all indigenous peoples and communities, regardless of their various histories and cultural and political ideas. This homogenization of space facilitates the state's assertion of control over land and resources, as it is easier to manage uniform 'ancestral domains' subject to uniform rules than a mosaic of complex, dynamic and internally-differentiated tenure systems (Alonso 1994, 382).

Third, the process of documentation of land and domain claims within the framework of the state's capitalist imperatives (Giddens 1985, 181) intensifies the commodification of lands and domains. By imposing a single set of rights and obligations for all ancestral domain owners, it also sets the stage for contractual transactions over these lands and resources. This means a further growth of the state's role in maintaining a legal order where such rights and transactions may be exercised and protected (Merry 1992, 364). Indeed, the IPRA outlines the procedure by which outsiders may secure access to indigenous territories, thereby systematizing their integration into both state and market. This can only encourage capitalist exploration and investment of these new property regimes and the rights attached thereto.

Thus, even as the ongoing advocacy for indigenous peoples rights has compelled the state to respond to the demand for legal recognition

of indigenous land and resource rights, the state has added its own inflection on the definition of these rights (Giddens 1985, 10-11), drawn from its own cultural ideas and legal history. The IPRA should be seen not just as the extension by the state to indigenous peoples of a means of titling their ancestral lands or domains, but also as a mechanism for establishing its political power and hegemony.

In sum, the IPRA's provisions on ancestral lands and domains and indigenous tenure are designed to 'bureaucratize' indigenous territories, to homogenize and commodify them, and so integrate them into the state and the world capitalist system.

Implications of Indigenous Law

The Banwaon view of the IPRA as a symbolic invasion of their talugan—with all the cultural, political and economic violence this implies—underscores the colonizing character of the state. Their cultural viewpoint allows us to see that the state has as yet a fragile presence in areas like their talugan, and is consequently still in the process of establishing its control over those spaces to be delineated and labeled as 'ancestral lands' and 'domains' through the IPRA.

For the state, the ancestral lands and resources of the indigenous peoples are a frontier, not merely in a narrow demographic sense (Giddens 1985, 49), but more importantly in the political, cultural and economic sense (Gatmaytan 1999, 209; Foucault 1980). The state as a continuing political project, has yet to regularize the exercise of its power in these areas, through the processes of homogenization, commodification and surveillance (Rueschemeyer and Evans 1989, 50) established through the IPRA. Indeed, I find it striking that none of the advocates, non-government organizations or peoples' organizations calling for the implementation of the IPRA and its ancestral land and domain titling procedures seem to be aware that titling as a process has historically been associated with the extension and consolidation of state power (Anderson 1994, 172-174; Kain and Baigent 1992, 8; Harley 1996, 382-384), and not its diminution.

The logical end of these processes is the integration of indigenous territories—now reduced to discrete tracts of land to which are attached uniform rights and obligations—into the state's administrative control, and into the world capitalist order. The marked interest shown recently by local and international capitalist investors in these areas should not therefore be surprising.

In the process of colonizing the frontier represented by indigenous territories using the IPRA, the state or the bureaucrats within it can also use the state's control of the delineation procedures to form alliances with local leaders willing to collaborate with its state-building programs and policies (Breuilly 1993, 158; Foucault 1980, 122).

This partly explains the award of a large tract of land to BenHur Mansulonhay, in recognition of his support to the military and their inherently state building agenda, along with a few other influential Lumad power-holders.[35] In this way, state agencies like the military or the DENR, which are only supposed to implement laws or policies, actually shape them (Rueschemeyer and Evans 1989, 52; Arce, Villareal and de Vries 1994, 154), particularly at the local levels which are the front-line arenas for state interaction with indigenous communities. The fact that Mansulonhay is so closely associated with the military and their abuses, and by extension the government, heightens the Banwaons' sense of being challenged by the state and its various Lumad allies.

The Banwaons' cultural viewpoint and experience also shows that land or resource disputes such as that posed by Mansulonhay's CADC/CADT claim represent an over-arching clash of laws or cultural ideas. For them, such tensions are the social and political expressions of a clash between alternative interpretations of law (Li 1996), or as in this case, between alternative systems of law. This insight is imbedded in the deceptively simple story of Palagsulat and Palamgowan.

In this specific situation, the dispute reflects a larger political and cultural confrontation between the Banwaon KhB and the state, acting through the DENR's Admin. Order no. 2 (1993) and its successor, the IPRA.

This in turn emphasizes the underlying Banwaon consciousness of the reality of cultural and political plurality or heterogeneity. Indeed, the very framework of the KhB reflects as much.

What is problematic however is not the mere sociological fact of heterogeneity. Rather, it is the political terms at which the relationships between the different cultures and politico-legal systems that constitute Philippine society are set. This shows the Banwaon awareness of the contentious, negotiated character of the relations between the state and indigenous peoples.

This awareness is manifest at three nested levels: The first is at the local or pragmatic level where allies of the state like Mansulonhay invoke state law in confrontation with the KhB. This should again be taken in

the context of an invasive, colonialist process of state building in indigenous peoples' areas. The Banwaons are compelled to find a means of dealing with Mansulonhay and others like him, who take advantage of the legal options offered by the state and its laws, to the detriment of individuals or groups whose rights are premised on culture and praxis.

Actual social and political tensions like that caused by Mansulonhay's CADC reflect an over-arching tension as well between different legal systems. This brings us to the second, or systems level, at which negotiations are conducted. The IPRA's provisions on tenure operate to impose a fixed regime of land and resource tenure rules upon the Banwaons, their KhB and their talugan (Gatmaytan 1999, 217-218), with the end in view of emplacing the state's political and administrative control over their lands and resources (Alonso 1994). This is a simplification that can be pursued only at the risk of social tension or conflict (Li 1996). The Banwaons are thus confronted with a state-backed system of tenure rules that in effect compete with the KhB, setting up a field of tensions that individuals and groups must navigate.

Tensions between legal systems reflect in turn tensions at the third, larger political level of the relations between the state and the Banwaons, and by extension, all other indigenous peoples. Whereas the Banwaons call for respect for their political and cultural autonomy, the state is trying to subsume their people and culture under its administrative control through the IPRA. Clearly there is no meeting of the minds here, in terms of state-indigenous peoples relations.

The Banwaon position highlights the inadequacy of the IPRA as a response to the political demands of the indigenous peoples. The statute's focus on tenure rights, flawed as it is, draws attention away from the fact that the more fundamental issue that indigenous peoples pose by their very history and existence—political and cultural self-determination—is *not* addressed by the state or its laws.

The opposition of the Banwaons to the IPRA is thus an act of resistance at each of these three levels to the state and its invasive, colonialist agenda. They are confronting individuals or groups who would use the law against them in local, community contexts; a system of laws that competes with their own ethico-legal system; and a political regime where the state seeks to impose its political control over a people invoking their right to self-determination.

Their resistance is at this level not based on Marxist or any other ideology, but on their own indigenous notions of law and order. To fail to

resist is to refuse to uphold one's identity, culture and history, as required by the KhB. This would mean their annihilation as a people, their conquest by the state, its laws and its Lumad collaborators.

They correctly point out that to even invoke or apply the IPRA is to collaborate in the consolidation of the power of the state in such issues as land and resource tenure, among others. The different indigenous laws and cultures had hitherto controlled such issues. With the IPRA however, the state—through the various administrative levels within the National Commission for Indigenous Peoples, the Office of the President and the Supreme Court—arrogates unto itself the role as ultimate arbiter of issues regarding tenure and tenure rights. To collaborate then is to accept the state's over-arching power over the Banwaons, even within the bounds of their own talugan, and this implies the cultural and political necessity of resistance.

The Banwaons would not have this. Their actions and discourses invoke their right to self-determination, calling as they do for their territory to be governed by their laws and not the state and its laws.

Indigenous Peoples and the State

As I have already mentioned, the political stance taken by the Banwaons brings to the fore the larger question of reconciling indigenous rights to culture and identity with the structure, indeed the very idea, of the Philippine state. In a sense, the character of the issues raised by indigenous peoples is inherently subversive, in that they challenge long-held, largely unquestioned notions of the state, and its constituent elements of government, sovereignty, people and territory.

The Banwaons and their KhB challenge us to ever more carefully define and refine our notion of the indigenous peoples' right to self-determination. They dispute the state's response to the indigenous peoples' demand for recognition and respect through the IPRA, seeing this for what it truly is, as an encroachment on their political and cultural autonomy. In their insistence upon the KhB, they are articulating an alternative framework by which to define their relations with the state and all it represents for them.

I agree that even their valorization of the KhB in the face of the state's perceived intention of colonizing their lands also needs further refinement and discussion, especially if it is to be carried out in the context of today's realities. The Banwaons are an exceedingly pragmatic people,

not prone at all to romantic political fantasies, and I doubt very much that they are contemplating separatism. But I believe that while they will accept the presence of the state at least under certain conditions, they will argue for greater state respect for their political and cultural autonomy.

In any case, they still need more time to reflect on, and discuss the question of the relations between the Banwaons and the Philippine state. The government would be well advised to support this process, as it only stands to benefit in the long run, from a deeper discussion of this grossly undervalued political question. In this light, it is perhaps significant that the story of Palagsulat and Palamgowan is open-ended.

In so offering an alternative, insurgent interpretation of the politics of our present, the Banwaons also illustrate the value of cultural variety.

Parenthetically, the fact that to my knowledge only the Banwaons have offered this alternative culture-derived critique of the IPRA and the state may be read as a commentary upon the state of the other indigenous nations, peoples and communities. My fear is that only the Banwaons have articulated a culture-based critique because only they still retain an alternative viewpoint. Or are the other indigenous groups similarly conscious of the cultural and political anomaly that the IPRA represents, but are more willing to compromise with the state?

In any case, the example of the KhB gives us one more reason to question the universalizing, homogenizing cultural ideas that are implicit in all state legislation like the IPRA, as well as those that are explicitly provided in the latter's text. To fail in this is to risk losing cultural resources that allow us to think alternatively.

Conclusion

Towards a Critique of the IPRA

The KhB of the Banwaons allows them to expose several elided characteristics of the IPRA and the state of which it is a tool.

They reveal the colonizing character of the state, and the IPRA's closely related function of integrating ancestral lands and domains into the state and globalizing capitalism. They show awareness of how local land disputes reflect larger confrontations between different legal systems or constructions thereof. They underscore the reality of political and cultural heterogeneity, and of the problematic, contested relations of the different cultures and legal systems that constitute Philippine society. They also show us the cultural necessity of resistance, particularly in a context

where the state is in effect dictating the terms of the relationship between state and the indigenous peoples. They finally challenge us to address the question of what it means to be an indigenous people within the framework of the state and its capitalist imperatives.

Taken together, these various points operate as a critique of the IPRA. It is quite apparent that the Banwaons, and perhaps other indigenous groups or communities as well, are demanding political and cultural autonomy from the state, its structure and laws, and not simply procedure for titling or registration of lands and resources, which in their view erodes the very political and cultural autonomy they are fighting for.

In this, the KhB also operates as well as a critique of the process of legislation.

Advocacy that operates within the policy, legislative and regulatory arenas may be viewed as a process of 'translation'. Advocates, NGOs, large POs with political links in the capital, social scientists and other supporters often find themselves positioned between the mass of indigenous communities with their respective cultural differences on one hand, and the bureaucratizing state, with its homogenizing and commodifying imperatives, on the other, trying to make each side understand the other.

In response to the clear demand for state action on indigenous issues, NGOs and other advocates 'translated' or interpreted this demand as a call for legal recognition of tenure rights, leading to the articulation of a discourse on ancestral lands and domains. During the process of lobbying and legislation, the state then further 'interpreted' this call for legal recognition as a demand for a titling process. The result is the IPRA, and its provisions on ancestral land and domain titles.

Thus the IPRA has met a call for political and cultural self-determination with a mere technocratic response; i.e., a procedure for determining who has what specified rights to which lands and resources. Something, I think, was lost in translation. In this light, it may be useful to study how implicated NGOs and advocates are in the process of formulating the state's inadequate response to the demand for political and cultural autonomy, and to consider measures to ensure if not for transparency and accountability, then for critical, sociologically-grounded analysis.

It may be instructive that the Kalinga martyr Macli-ing Dulag—who spoke for, and still speaks for so many indigenous communities and

advocates—never actually said a word about titling indigenous lands. He even rejected well-meaning offers of legal assistance given by Sen. Jose Diokno himself, saying it would amount to an admission that the Kalinga and Bontok communities doubted the righteousness of their struggle.

Towards a Critique of Kiyala ha Batasan

For all the richness of insight that their political stance affords us, however, their cultural viewpoint also has its flaws. In the main, their highly polarized perspective simplifies social reality considerably. True, they are aware of cultural and political heterogeneity, but they also frame this consciousness as a dichotomy between Banwaon and the state, KhB and the IPRA.

The fact however is that these differing political and ethico-legal systems often co-exist and are realized through invocation and use within the same socio-political and geographic context. People—Banwaon and non-Banwaon groups or individuals—may find themselves invoking one or the other legal system depending upon circumstances. In other words, the boundary between the state and the IPRA on one hand, and the Banwaons and the KhB on the other, is porous, even negotiable; there will *inevitably* be opportunistic or contingent use of one or more alternative political or legal systems, depending upon the changing, complex context, and each actor or faction's location within it (von Benda-Beckmann 1993). This effectively blurs the boundaries between resistance and collaboration, boundaries that the Banwaon analysis would re-present as clearly and compellingly drawn across their cultural, political and moral landscape.

It is this difficulty in factoring in the subtleties and nuances of their own actual practice that dilute their otherwise powerful analysis and critique of the state and the IPRA. The consequence of this weakness is reflected in their current problems in defining and articulating a concrete alternative to the state's notion of state-indigenous peoples relations, embodied by the IPRA.

We should thus be wary of being drawn by their admittedly intelligent, even compelling, analysis to the extent that we confine ourselves to the limits of their us-against-them framework. Life, the realities of the Mindanao uplands, and the world today are simply more complex and dynamic than that framework would suggest. Rather, we may have to look towards the redefinition of the state, and its relations with its indigenous populations.

This represents a challenge for us in terms of helping to further enrich the Banwaon analysis of their context, and to allow them to enrich our own perspective.

A Concluding Challenge

On that note, we should also remember that the Banwaons and their KhB at least managed to draw attention to something many of us have failed to see, or having seen, to make known; i.e., that the state is even now in the process of colonizing the lands and resources of the indigenous peoples and communities, and its weapon of choice is the IPRA.

While it is true that there are communities and individuals that knowingly accept the terms at which the state is setting their mutual relationship, there are also those who do so out of innocence or confusion, and those as well who, like the Banwaon refuse the terms offered by the state. It is one of the failures of the IPRA that it refuses to recognize this political heterogeneity, and instead adopts for its part a take-it-or-leave-it approach in responding to the indigenous peoples' legitimate demands.

This again challenges us to recognize the IPRA and the state itself for what they are, to work without illusions about their ends and means, and to find a means of correcting the problems they will *inevitably* pose for indigenous peoples. The indigenous peoples, or indeed the state itself, would *not* be benefited from having platitudes served up to the IPRA; none of us can afford to ignore its character or defects.

We would thus do well to heed the warnings of the Banwaons, whose ancestors speak to us today, through the Kiyala ha Batasan.

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Notes

[1]G.R. no. 135385, dated 6 December 2000.

[2]Banwaon vowels are pronounced as in Tagalog or Cebuano-Visayan, except those that are written as 'u', which is pronounced with a short 'u' sound (as in the 'u' sound in 'cup'). Example: hulong-hulong.

[3]The annual rice-farming cycle begins sometime during the period from March to May, when field clearing is conducted, to the harvest from October to December, depending upon the specific variety or varieties of native rice used. In the more remote villages, rice farms are still transferred from one site to another every year. A family may have more than one rice farm, of varying sizes, not counting other fields devoted to other crops.

[4]Hunting was principally done with spears and hunting dogs (*pagpanganop*). The use of *surit* or homemade shotguns and bait rigged with small explosive charges (*ping-pong*) to catch and kill wild pigs is increasing. Trapping of large game relies largely on the *la-is* or *balatik* (spear-trap), and latterly the foot-snare (*lit-ag*). There are a number of smaller traps for birds, monkeys and other small animals.

[5]I remember one old man complaining that if the logging companies could only roll up their roads like a sleeping mat, they would have taken even the roads away with them as well, when they left.

[6]The four or five large logging companies in San Luis began to phase out by the middle- to late-1980s as local stocks of hardwoods diminished. Tree plantation companies who between them now control most of Banwaon territory gradually replaced the logging firms (Gatmaytan 1995).

[7]Most communities are at the sitio or purok level, and occasionally even lower than that, while six are duly designated barangays.

[8]The Banwaons distinguish between a datu *kasagkupan* and a datu *katangkawan*. The former are datus who preside over local community affairs and its associated rituals, like marriages and settlement of conflicts. The latter is the one datu of such stature that he is specifically entrusted with the task of resolving *lido*, i.e., cases of killings within or between Banwaon communities (*sisim ha lido*) and those between Banwaons and other indigenous groups (*lido*), like the Higaonons of the Libang River area or the Agusan Manobos.

[9]Credit for pioneering organizing work goes to The Religious of the Good Shepherd-Tribal Filipino Ministry.

[10]Like the neighboring Manobos, a man and his son-in-law refer to each other as their respective *ugangan.*

[11]There is another pattern of inheritance, where an individual passes on all of her/his land and property to only one of his/her heirs, usually but not always the eldest son (Gatmaytan 1999, 74-75 for a comparison with the Adgawan Manobos, and Manuel 1973, 139 with the Bagobos). This inheritance pattern however seems to be gradually declining.

[12]In addition to such major rituals as the hakladan and sundo which area also practiced by the neighboring Manobos, the Banwaons also have the *dumalongdong, panalugsabit,* kaliga and the *da-ging* rituals.

[13]The term 'Lumad' is a collective term for the aboriginal or indigenous, non-Islamicized populations of Mindanao.

[14]The data on the Kiyala ha Batasan is derived from an ongoing research project on Banwaon indigenous law, undertaken by the Ancestral Domains and Organizing Program of the Religious of the Good Shepherd-Tribal Filipino Ministry at Kalilid, San Luis, Agusan del Sur. Quotations in the text are taken from the handwritten transcripts of lectures by the panod, discussions and interviews conducted in the course of the project.

[15]The KhB is attributed to Bayo, a female *baylan* of the Anahawan area, upriver from the Kandiisan. One night, she had a vision that instructed her to bring her people a set of rules by which they may govern themselves. She called a council of Banwaon leaders at Salimbangon, a mountain south of the Adgawan River. There she taught them the KhB, which she had learned in her dream. The leaders all agreed to live by it. When Bayo trekked to the Tagpangi area, she met and married Nangandingan, son of Papuwa. She bore him a son, named Sinangdalan, who became a datu at Tagpangi. Bayo then went to Sinakungan, in the Libang area, where she also taught the KhB. Meanwhile, Nangandingan went to the Pulangi area in Bukidnon, where he brought the KhB. Later, he joined Bayo at Sinakungan, where they had another son, Pigsawalan, who became a datu there. In time, they both died and were buried at Sinakungan.

[16]For example, incestuous marriages (extending to the fourth civil degree) are pamalihi, but there are costly rituals like the panawi-on which do provide the union with some color of legitimacy, though these do not completely remove all the negative consequences of this violation of the cosmic order.

[17]Pamalihi is roughly translated as "taboo" or prohibition, like incest (*mag-unay*).

[18]The Manobo batasan is known as the *Sinadahan no Batasan, Gawin no Pabilowan,* that of the Higa-onon the *Bungkatol ha Bulawan nang Katas ha Lana.*

[19]Tensions between people arise from day-to-day interaction. Tensions between people and spirits may arise from failure to fulfill tulumanon, violations of taboos, failure to respect spirits' rights, prerogatives and domains, or ritual consequences of certain human actions, like illicit sexual acts or bloodshed.

[20]The KhB is also known in the local discourse as the *Ipoan ko Pinaglaw,* or more completely, the *Ipoan ko Pinaglaw daw* Kiyala ha Batasan, but it has been asserted by the panod—those learned in Banwaon laws—that the proper term for their body of laws is Kiyala ha Batasan. Strangely, the phrase *Ipoan ko Pinaglaw* even has some negative connotations, at least among some of the panod. I have noted that sometimes the Banwaons also called their laws the *Bungkatol ha Bulawan nang Katas ha Lana,* which is properly the batasan of the Agusan Higa-onons to the north.

[21]Sentinels posted at boundaries.

[22]This story is also told among the Manobos of the Adgawan River area.

[23]The term is used here in its general sense, as referring to non-indigenous, migrant populations from the Visayan and other islands, or their descendants.

[24]In other versions of this same story, The Dreamer is sometimes known as Palambulan or Palambuwan, in reference to "*bulan*", the moon, and by extension, night, sleep, dreaming and visions.

[25]At its most general, the term may simply mean respect for others. In this specific sense, it is similar to another ethical principle, called *pagnanaw.* At another level, *pandilin* also refers to the ethical prescription of respect for the gutlo of others, especially when you are within a talugan you do not belong to. The term also refers to a *pamalihi* against outsiders' eating the meat of pythons, monitor lizards (*gibang*) and certain birds (e.g., *tabon*) captured from their host's territory; i.e., visitors must not partake of creatures closely associated with the land.

[26]Among the neighboring Manobos, the equivalent term is *sayugan,* from the root word '*sayug*' or "river". It is thus possible to talk of Adgawanon, Agusanon and Umayamnon Manobos, these being the Manobo from the Adgawan, Agusan and Umayam Rivers, respectively. This linking of groups with waters may perhaps underlie the practice of some indigenous communities of referring to *Bisaya* and other migrants as *dumagat* or "people of the sea".

[27]In Banwaon traditional lore, the *dagpon* are also referred to as *kuluba ha asido, kampilan impatakilid.*

[28]Agricultural or farm spirits.

[29]The gutlo for hunting and trapping game; but may also be used to refer to the spirits concerned with these activities.

[30]For example, among the Banwaons and the neighboring Manobos, the word 'crocodile' is jokingly spelled as "D. E. N. R." Humor is, to use Scott's phrase, a weapon of the weak.

[31]I use 'communally' here with some reservation, as its connotations are problematic. In fine, I mean that individuals may borrow freely, without need for any payment or form of crop sharing, others' lands for purposes of farming. The land remains the property of the lending clan, family or individual, but the crops are the borrowers'. Borrowers may be landless, or they may have their own lands, but for some reason are unable or unwilling to work it.

[32]These are DENR contracts for industrial tree-planting operations. See DENR Administrative Order nos. 42 (1991) and 60 (1993). To note, IFMA and other tree-plantation contracts have given cause for a number of tensions or even conflicts between indigenous communities and tree-plantation companies (Gatmaytan 1995, 8-10; SAGIP 1996, 8 et seq; Gaspar 2000, 39-40).

[33]See sec. 52 (a) of the IPRA.

[34]Update: On 4 August 2001, the evacuees returned to Kimambukagyang, to find the livestock they left looted reportedly by BenHur Mansulonhay's men. They are planning a dialogue with Mansulonhay before local government officials to discuss the problem.

[35]In Agusan del Sur province, where *a community* can generally claim at most about 3,500 sq. has. as its territory, six *individuals* have secured CADCs over 6,310, 51,000, 14,225, 74,827, 7,478 and 6,095 sq. has., respectively (DENR 1998, 4). One can only wonder how many communities' territories were legally usurped by these six CADCs, or if they are even aware of the fact and its consequences for them.

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