

CUSTOMARY CONSENSUS AND DECISION-MAKING PROCESSES CONCERNING ACTIVITIES, PLANS, PROGRAMS AND PROJECTS WITHIN THE MOUNT PALAOPAO, UPPER MANGIMA AND UPPER KULAMAN ANCESTRAL DOMAIN IN BUKIDNON, MINDANAO

INTRODUCTION

The Mount Palaopao, Upper Kulaman and Upper Mangima in the Lawahan ta Tagulwan (“Body of Tagoloan river”) is one of the recognized “Talugan” or traditional seat of governance of the Higaonon, Talaandig and Bukidnon cultural communities in the northern part of Bukidnon Province, Mindanao. These three distinctive indigenous communities are considered as kin-tribes (“*migsusulad*”, “*migkadumahan*”) because they share common bonds of history, genealogy, customs, traditions and practices as attested by the accounts of their “*Gugud hu Tagulwan-Palawpaw-Kimangkil-Balatukan-Kitanglad-Kalatungan*”. The origin of accounts or narratives are also embodied, preserved and passed down to generations in the oral literary traditions of *ulaging* (chanted epic), *mantukaw* (epic prose), *kaligaun* (ceremonial chants), *kalikat* (folk legend), *batbat* (folk narrative), *antuka* (riddle), *basabasahun/basahan* (proverbs), *nanangun* (folktale), *sala* (love song), *limbay* (lyric poetry) and *idangdang* (balad), among others.

The essence of leadership in the Talaandig-Higaonon-Bukidnon worldview is based on the principle of parental responsibility, called *Ininay/Inamay*. It means that the chief *Datu and/or Bai* must look after the needs and welfare of the community as the parents of the people. Leadership functions include resolution of conflicts or disputes, helping those in need or in distress, either materially or morally. Culture as intergenerational accountability is the foundation of life and survival.

The *Ininay/Inamay* must provide for the over-all necessities of the community; and they must be produce them on his/her own account. The *Ininay/Inamay* should not impose or extort supports from his/her community to exercise power. He/She is not a supremacist overlord/feudal lord who compel submission, but a wise parent who deserve and command respect and obedience. The datu/bai must redeem (*tubus, mamaug*) the offender who cannot make satisfaction to the injured victim during conflict settlement. The *Ininay/Inamay* performs one or more customary-traditional functions within the community, thus he/she can be a *Baylan, Talamuhat/Malagbuhatâ* and/or *Palagugud* (oralists), *Balag-ulaging* (epic chanter), artists, peacekeeper, arbiter, arbitrator, mediator, wise farmer, hunter, fisherman, healer, medicine person. **Hence, women are always part in running or administering the affairs of the community or the ancestral domain.**

The Talaandig-Higaonon-Bukidnon cultural communities have their own indigenous political structure (IPS) and institutions regulating intra-tribal and extra-tribal relations. The indigenous governance system was suppressed and sought to be eradicated by half-millennium of colonialism under Spanish and American rule. But despite the centuries of ethno-genocidal racism, the tribes survive and retain their customary norms and practices; traditional mores and values.

OPERATING PRINCIPLES:

1. **Batasan.** Sacred Code, Norms, and Principles adhered to by the *Higaonon*, *Talaandig* and *Bukidnon* Peoples and hallowed by their beliefs, customs and traditions.
2. **Collective and Communal Ownership.** Traditio-historic, inter-generational, communal and communitarian ownership of the cultural commons within the ancestral domain with due respect to the global/universal commons.
3. **Cultural Integrity.** Collective and holistic treatment of culture as sacred and worthy of respect based on **(a)** *Indigenous Spirituality/ Belief Systems*; **(b)** *Indigenous Knowledge, Systems, Practices, Education, Oral Histories*; **(c)** *Traditional Leadership and Customary Law*; **(d)** *Traditional Economy and Health Care Systems*; **(e)** *Peace and Security*; and **(f)** *Environment and Indigenous Conservation Practices*.
4. **Customary Cultural Equity.** The equitable sharing, contribution and distribution of boons and bounties derived from utilization of the ancestral domain in due recognition of the material and spiritual value of the universal resources according to the belief in ***Apu ha Talabugtâ, Apu ha Bulalakaw*** and ***Apu ha Pamahandî*** (Spirit-Guardians of the Earth, Water/rivers and Mineral/financial Assets - the Sustainer of All Life) among others as an imperative of ethno-ecological justice and equity.
5. **Territorial Integrity.** Concept of ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership as provided under Chapter III, Section 4 of IPRA (R.A. 8371).
6. **Empowerment.** The ICCs/IPs shall freely pursue their economic, social and cultural development through their participation in decision-making, determination of priorities, as well as the practice of their justice system and peace-building processes.
7. **Inter-generational Responsibility.** The indigenous concept of ownership sustains the view that ancestral domains are considered community property which belong to all generations and therefore cannot be sold, disposed or destroyed. The ICCs/IPs shall have priority rights to manage and pursue sustainable and responsible development plans, programs, projects or activities within their ancestral domain.

8. **Kin-Tribes.** For the *Higaonon*, *Talaandig* and *Bukidnon* cultural communities, the mutual recognition and affirmation of being the descendants of one kindred (“*sabuwa dâ ha gimpun-an/kapuun*”) sharing common bonds of customary laws, traditions and practices as attested by the dynamics sharing of community elders’ ethno-history called “*pagugud-gugurâ*”.
9. **Native Title.** The pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs /IPs, have never been public lands and are thus indisputably presumed to have been held that way prior to *regalian* doctrine (*jura regalia*). An inherent historic rights, birthright title, God-given and inalienable as enunciated under Section 3 paragraph I and Section 11 of IPRA (R.A. 8371).
10. **Native Title Rights (*indungan ha katunged*).** God-given, substantive, inherent and wholistic virtue and rights and titles, recognized by law and conscience.
11. **Primacy of Customary Law.** Consistent with the *Inter-generational Responsibility, Cultural and Territorial integrity principles*, in the conduct of Field-Based Investigations, Free Prior and Informed Consent and other processes provided under the FPIC Guidelines, the primacy of customary law and decision-making processes by the whole compositions of the Indigenous Political Structure (IPS) of the entire ancestral domain shall be strictly observed and adhered to.
12. **Time Immemorial.** Refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.
13. **Self-Governance and Self-Determination.** Based on customary authority and traditional decision making processes of the Indigenous Political Structures (“*měnga tukud hu banuwa*”).

The consensus-building/decision-making processes of the Talaandig-Higaonon-Bukidnon Kin-Tribes within the Mount Palaopao, Upper Mangima and Upper Kulaman Ancestral Domain strictly adheres to the Customary Fivefold Kinship Doctrines or the “*Lalima-pilû ha Batasan*”, namely:

- (1) ***Batasan ha Kilalahâ*** (*Mutual Respect and Recognition*);
- (2) ***Batasan ha Sayudâ*** (*Mutual Sharing of Information, Transparency and Honesty*);
- (3) ***Batasan ha Bulig-buligâ*** (*Mutual Co-operation*);
- (4) ***Batasan ha Uyag-uyagâ*** (*Mutual Protection of Life*); and
- (5) ***Batasan ha Pabatun-batunâ*** (*Mutual Aid and Support*).

These five kinship doctrines are absolutely based on the principles of solidarity, complementarity, reciprocity and unity-in-distinction.

The traditional consensus-building and decision-making practices, procedures and processes of the kin-tribes emanate from the authentic authorities and legitimate leadership of the **“mënga tukud hu banuwa”** or the Indigenous Political Structure (IPS) referred to by Republic Act 8371 through the customary protocols known as **“kagdatal”**, **“kagsuli-suli”**, **“kagbasing”**, **“kaglambagâ”** and **“pauyun-uyunâ ha pagpatanâ hu hukum”**.

In dispensing community decisions on matters of programs and projects to be implemented within the ancestral domain, the culture-bearers and traditional experts hold the very crucial function. They are basically familiar with, and articulate on, the principles and elements of the **“agpangan”**, **“gantangan”** and **“timbangan”**.

Today, we so refer to this customary tool as the Cultural Impact Assessment or CIA. When correlated with indigenous peoples’ rights, the **“agpangan”** could be viewed as the cultural map or matrix of the indigenous peoples. It is also applied during conflict/dispute resolution processes involving individuals, community or tribal relations (inter/extra).

In relation to the **“agpangan”**, the **“tukud hu banuwa”/“pasagi”** or IPS elders/members of the tribe must be cognizant of the integrity of indigenous culture *vis-a-vis* the entire aspects or elements of ancestral domain as impact areas of interventions affecting indigenous peoples’ rights. These include, but not limited to, the following:

1. Indigenous belief systems/spirituality and the roles of the **“baylans”** and **ritualists** in relation to the sacred grounds, traditional worship areas, burial places, etc.;
- 2). Indigenous educational systems, institutions, knowledge systems, ethno-literature, arts, performances and the roles of the **“Palagnau”**, **“Palag-gugud”** (ethno-historians and mentors), epic chanters, poets and performers in relation with the earth/soil, forest, rivers, plants and ethno-historical sites;
- 3). Customary laws and the roles of the traditional elders/leaders (**“datu”** and **“bai”**) in relation to the community and territory (ancestral domain) as tribal seat of governance;
- 4). Indigenous health systems and the roles of the traditional healers and medicine persons (**“mamumulung”**, **“mangunguyamu”**) in relation to the dynamic elements of nature such as the herbal plants, medicinal trees, insects, animals, moss and mushrooms;
- 5). Indigenous economy, cooperative systems and sustainable livelihood practices and the roles of the farmers, hunters, fishermen, food gatherers, artisans and crafts experts;

- 6). Indigenous defense, peace and security systems and the roles of the peace-keepers, customary law enforcers, security forces, boundary caretakers (*"bagani"*, *"alimaong"*, *"pagalad"*, *"sabandal"*, *"laguy"*) in relation to the lands, forests, creeks, rivers, streams, wildlife, caves and traditional fortresses.

Regarding the principle of the *"gantangan"*, the *"tukud hu banuwa"/"pasagi"* or IPS members are able to gauge and measure the impact of certain project or program implemented within the ancestral domain. These customary processes are called *"kagdatai"*, *"panuli-suli"*, *"kagbasing"* or *"kapanukud"*. They pertain to the extent of both the positive and negative impacts of the activity, project or program. The responsible *"tukud hu banuwa"* has the capacity to identify and assess the impact of the intervention as to quantity, length, depth, distance, size, shape and width. The degree or extent of impact in relation to the elements of the *"agpangan"* is determined through a consensus building process called *"paulinâ"*, *"pauyaw-uyawâ"*, *"lambagâ daw pauyun-yunâ"* among the culture-bearers and custom experts based on the cultural map or matrix (**e.g.** group of *"baylans/ritualist"*, group of arbiters/conciliators/mediators, or the group of healers/medicine persons).

This process is the basis of community decision whether to accept (*"give consent"*) or reject (*"non-consent"*) a certain plan, activity, program or project; or whether to grant free, prior and informed consent or FPIC. The wisdom of our elders avers: ***"when you accept something, be wise and reasonable with your 'yes'; and, when you reject something, be wise and reasonable of saying 'no'".***

Moreover, when offenses or violations are committed, customary law provides the basis for imposing the *"salâ"* or settling the restoratory/restitutive measures (materials and/or monetary) that may equitably satisfy the aggrieved party (individual, community or the tribe at large). The upholders of the indigenous justice systems of the tribe; namely, the *"balaghusay"*, *"palagsambag"*, *"ilinsaan"*, *"dungkuan"* *"darantulan"* are guided by common-sense and analytical mind. They are informed about the rules and rubrics of customary laws based on *"tanud"* (customary practices and hallowed traditions) and *"sampitan"* (customary precedence and juricultural reference).

Regarding the *"timbang"*, the *"tukud hu banuwa"/"pasagi"* or IPS members acquire the ability and prudence to render justice (*balance, justness, fairness*) relative to the interests of the community or tribe and the applicant-proponent/s who desire to implement and/or conduct certain activity, program or project within the ancestral domain.

Appertaining violations and other offenses committed against individual and/or community, the *"balaghusay"*, *"palagsambag"*, *"ilinsaan"*, *"dungkuan"* *"darantulan"* must deliver justice to both parties of the dispute (aggrieved party and the offender). All findings during the *"kagdatai"*, *"panuli-suli"*, *"kagbasing"* daw *"panukud"* based on the ***"gantangan"*** are decisive factors in the course of attaining just settlement. Through the *"kagtanding, lambaga daw pauyun-uyuna"* process, the concerned IPS members

responsible for the indigenous justice systems may negotiate and adjust the *“panukud ha manggad”* (restorative/restitutive materials and/or monetary settlement). They may reduce (*“pababaan”*), augment (*“isaban”*) or multiply (*“kaub”*) the stipulations of the settlement guided by the *agpangan*. The process is sealed by reconciliatory ritual witnessed by the community.

Based on the aforementioned standpoints, principles and procedures, the consensus and decision-making process of the Talaandig-Higaonon-Bukidnon Kin-tribes in the Mount Palaopao, Upper Mangima and Upper Kulaman is firmly established on inclusionary and participatory dynamics of peace-building and communal living (*kaglinandang*). All component-members of the Indigenous Political Structure (*“mënga tukud hu banuwa”/ “pasagi”*) have the important roles with regards to the communal/ collective decisions affecting utilization, extraction and development of resources found within the ancestral domain.

The framework of the IPS is based on the structure of the human body acting as a coordinated whole to be convened, consulted and mobilized. It means that in relation to utilization, exploitation and development of resources found within the ancestral domain, decisions are made not by exclusive and limited function of the head, brain, mouth and the heart apart from the other members of the whole body representing the tribe.

Segregated portions of the ancestral domain may be considered and recognized as *“gaup”* or lands belonging to certain families. However, when such areas are utilized, exploited or developed into quarry, mining, plantation, road, bridge, cattle ranch, tourism and other activities and commercial purposes, they are under the collective administration and communal decision of the Indigenous Political Structure of the Mt. Palaopao-Upper Kulaman-Upper Mangima Ancestral Domain.

When dealing with the matter of free, prior and consent or FPIC for activities, plan, programs or projects, the following concerns and roles shall be coordinated, correlated before being activated, mobilized, convened and consulted:

- 1) On the indigenous spirituality and belief Systems, the *Baylans, Tagabalaan, Taga-alungan, Tagadupahan, Talamuhat, Malagbuhatâ, Pigbilinan hu Tulungdanun, Kumakaligâ, Anilaw*;
- 2) On the indigenous knowledge systems, oral history, practices, educations and arts, the *Palaggugud, Palagbatbat, Palagnau, Balag-ulaging, Palagnanangun, Palagsala, Tagpamulalâ, Palaglimbay, Palagsayaw, Palagdugsu, Tagpamulalâ, Palagbasal, Malagtambul, Tagpamiyapî*;
- 3) On the customary laws, governance and justice systems, the *Balaghusay, Palagsambag, Dungkuan, Ilinsaan, Bubung, Limbubungan, Darantulan*;

- 4) On the traditional health systems and healing practices, the *Mangunguyamu, Mananambal, Mananawal, Manghihilut, Malaglitan, Tagahalitan, Taga-talimughatan*;
- 5) On the traditional economic and cooperative systems, technology and sustainable livelihood practices, the *Malagbasukan, Malagsakum, Tagpamahandi, Mananalsal, Mamituuna, Tagpandunganhubulan, Tagpamagtû, Tagpanugpali, Mangangasu, Tagpanlala, Mangangabel, Mangguguwat, Maninikup, Palagsagup, Palagbisig, Mangingilaw, Tagpahunglusâ, Tagpanlagimu, Tagpangusina, Tagpananul, Tagpanangul*; and,
- 6) On traditional defense systems, peace, security and legislative supports, the *Pangabaga, Masikampu, Pagalad, Pamalukan, Sangkâ, Suluguun hu Datû, Datû ha Bagani, Alimaong, Sabandal, Laguy, Alimaong, Tagtanul hu pig-uyunan daw Pigbatalan, Balagsulat, Malagkudaw, Sumag, Kagun, Basbasunon, Dinawatan* and *IP Mandatory Representatives*.

During the consensus and decision-making process, each component of the IPS (*“tukud hu banuwa”/“pasagî”*) shall separately and jointly perform their respective responsibilities in accomplishing the customary processes:

First: Cultural mapping (*“kagdatal, kag-agpang”*) - identify the elements of indigenous culture and the elements of the ancestral domain that are potentially affected and impacted by the proposed activity, plan, program, or project;

Second: Impact assessment (*“panuli-suli daw kapanukud hu basingan”*) – to assess and analyze the degree and extent of both the positive and negative impacts of the proposed activity, plan, program or project. This process determines the collective decision and consensus of the community either to accept or reject a certain proposal; and

Third: Decision-making (*“kagpatanâ hu hukum”*) – this is contingent upon the impact assessment process. When the positive impacts or gains are greater than the adverse ones, then definitely consent is granted with certain conditions; when positive impacts are equitably balance with the adverse ones, then consent may be granted with certain conditions; when adverse impacts outnumbers the positive ones, then proposal shall be rejected, therefore consent cannot be granted. In case the proponent appeals for reconsideration, recommendations shall be proposed by the concerned IPS members as mitigating/compensating measures to the damages done against aspects of culture and the elements of the ancestral domain. Should the community and the proponent mutually agree on the terms and conditions, the consent shall finally be granted. Otherwise, application totally denied.

WOMEN PARTICIPATION, REPRESENTATION AND GENDER CONSIDERATION

During the whole process of consensus and decision-making, gender sensitivity and representation is customary in the tribe. Women are always participants in every component-group of the IPS. “Bai” or women leader may take part as Chieftains, *baylan*, *ritualist*, mediators, peace-builders, conciliators, ethno-historians, farmers, food-gatherer-makers, healers, medicine persons and as IP mandatory representatives. Everybody who possesses the cultural and traditional roles, such as, healers (“*mananawal*”, “*manghihilut*”), educators and performers - who notably contribute in advancing the struggles of the tribal community are recognized and encouraged to participate. Nobody is excluded or discriminated based on sex or gender.

STATUTORY BASIS FOR COMPLIANCE

For non-IP migrant stakeholders inside the ancestral domain, both state and non-state actors, these customary and legal processes seem cumbersome, lengthy and costly. But it is a statutory imperative as mandated by R.A. 8371. They are integral elements in exercising the indigenous peoples’ rights to Native Title, self-governance and self-determination over our ancestral domain. Therefore, it is the responsibility of the National Commission on Indigenous Peoples or NCIP to recognize, protect and promote these decision-making process of the indigenous peoples and to facilitate compliance by stakeholders wishing to exploit, utilize and develop any resources found within the Mount Palaopao, Upper Mangima and Upper Kulaman Ancestral Domain.

ANCESTRAL LAND TRANSFER, DISTRIBUTION AND UTILIZATION

On matters of land disposition, “*gaup*” holders have the relatively exclusive right to transfer or distribute their lands only to members of their clans and/or any person belonging to Talaandig, Higaonon and Bukidnon indigenous community within the ancestral domain. It is customary of the tribe to assign certain parcel of lands regardless of age, gender, physical and mental condition. This practice is in accordance with following situation:

1. “**Panaad**” due to illness – there are cases wherein it is customary for some members of the tribe to assign certain parcel of land when a child or someone is frequently experiencing illness, then the father (“*amay*”), mother (“*inay*”), grandparents (“*apu*”), uncles (“*tiyoy*”, “*tatay*”, “*abang*”) or aunties (“*tiyay*”, “*nanay*”, “*idang*”) shall promise to allocate a certain parcel of the ancestral land so his/her healthiness will be totally recovered;
2. “**Panaad**” for a married life - it is also customary for some members of the tribe to assign certain portion of ancestral lands when a baby is born, then likewise the father (“*amay*”), mother (“*inay*”), grandparents (“*apu*”), uncles (“*tiyoy*”, “*tatay*”, “*abang*”) or aunties (“*tiyay*”, “*nanay*”, “*idang*”) shall promise to allocate a certain parcel of the

ancestral land when the perfect time comes that the said child is matured enough and enters the married life;

3. ***“Kagtuen” hu angken*** – the most common and normal situation wherein the parents belonging to the tribe automatically assigns certain parcel of lands to their children regardless of age, gender, physical and mental capacity. In this case, the customary *“kag-agak”* or *“kagbasbas”* (apprenticeship and mentoring) by the parents is being practiced wherein a child is earlier exposed and being trained on some farming activities and techniques utilizing the land he/she is going to possess soon.

When certain parcels of lands are assigned to any members of the family or tribe, boundaries are then established and fixed using natural markers like rock, creeks, permanent tree or by planting the traditional plant called *“duwa-duwa”* - a small sized tree with a coffee-like leaves but is colored dark red. When cultivating the assigned farm lot, it is then a practiced for the culture-bearers of the tribe to perform the ***“panalabugtâ daw pangibabasuk”*** ritual every year and thereafter.

On the other hand nowadays, it is the legitimate authority of the Indigenous Political Structure (*“tukud hu banuwa”/“pasagi”*) to decide regarding transfer of ancestral lands involving persons or individuals not belonging the Native Title holders within the ancestral domain. Moreover, distribution, utilization and management of ancestral domain, particularly those areas with expired permits or concessions for cattle ranches, poultry and piggery farms, minerals, sands, gravels, caves, creeks and rivers, including tourism and housing projects, all fall within the legitimate authority of the Indigenous Political Structure.

FLOWCHART OF THE CONSENSUS AND DECISION-MAKING PROCESSES OF THE HIGAONON-TALAANDIG-BUKIDNON CULTURAL COMMUNITIES IN THE MOUNT PALAOPAO AND UPPER KULAMAN-UPPER MANGIMA ANCESTRAL DOMAIN CONCERNING THE FPIC

