

FOREST AS COMMON PROPERTY AMONG PHILIPPINE INDIGENOUS PEOPLES

Domingo I. Nayahangan *

INTRODUCTION

Of the various natural resources found in the Philippines, the forest is one of the most valuable in terms of socio-economic benefits. Official statistics show that in 1969, at least 15 Million hectares of the country's 30 Million hectare land area was forestland. However, two decades later, the area of forestland has gone down to a mere 6.6 Million hectares. The rate of deforestation is alarmingly high at 14 hectares per hour or 119 hectares per year - among the highest in the world; and reforestation rate has been noted to be far behind the rate of deforestation.¹

The increasing population in the forestlands has been blamed for this very high deforestation rate. Government researchers found that there are at least 8 Million forest dwellers as of 1990.² Together with an undetermined number of loggers, individual or corporate, legal and illegal, these forest users are tagged as the main source of pressure on the resource.

Forest dwellers not only cut trees for fuel wood and building materials but also slash and burn the forest cover of specific areas in order to convert them to farmlands. Loggers, of course, fell trees to produce timber for commercial purposes. As the demand for the product proportionately rises with every increase in population, the intensity of the cutting of trees likewise increases transforming hitherto large forested areas into logged-over forestlands. Historically, these logged-over areas eventually turn to unproductive and later open grasslands for want of proper harvesting technology conducive to natural or minimally assisted regeneration.

Indeed, it is not hard to see that the population variable, specially when it is analyzed from the viewpoint of the law of supply and demand, is a significant factor behind the continuing loss of forestlands. But even if this is so, such analysis may not be sufficient to prove that it is the primary cause of deforestation. As a matter of fact, a paper written earlier on the subject has expressed the view that 'the explanation for deforestation lies not only in the demographic factor, but depending upon the period, in the action and inaction of the private sector and the state'. It went on to explain that one such state inaction is that it 'does not impose sufficient restrictions on access to forestlands nor does it limit timber extraction to sustainable yield levels'.³

* The author is a member of the Ifugao tribe in the Cordillera Administrative Region in northern Luzon.

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This observation clearly suggest that population per se does not generate effective pressure on the resource unless it has access to it. And in a situation where the utilization of the resource is not effectively regulated, such access is readily available. Resources which the entire population could freely appropriate are of the nature of common (or more appropriately open-access) property and are therefore bound to be overconsumed.

There are however portions of the forest which have been successfully saved from the tragedy that tends to befall the commons. These are found in the territories that indigenous cultural communities call their ancestral domains.

Each indigenous cultural community has its own ancestral domain and within the bounds of this territory, it exercises various property regimes defined by its own customs and traditions. Some properties belong to individuals; others to families and clans; and still others to the community in general. Properties attributed to individuals, families and clans are regarded as private while those which belong to the whole community are common. One such property which essentially belong to the latter category is the forest.

With a view at discovering alternative management systems for this environmentally and economically critical resource, this paper attempts to explore the forest as common property among Philippine tribal communities. It aims to analyze the socio-economic and cultural framework within which these communities manage the resource and describe the external factors that adversely affect such indigenous management system.

The paper however does not presume to be an exhaustive analysis of the subject. It simply provides bits of information which may hopefully help researchers investigate the matter more closely and exhaustively.

The Indigenous Cultural Communities

The Indigenous Cultural Communities of the Philippines are a people who have their "own particular culture, way of life, or socio-cultural and economic institutions which distinguish them from the rest of society; whose way of life or culture adhere to those institutions and systems which are generally associated with, or are related to those which are indigenous to the Philippines; and whose identity develops within the context of the aboriginal or original association with, or use or occupation of a specific, defined territory".⁴

From a historical perspective, these people were those who successfully resisted Spanish and American rule and socio-cultural influence throughout four and a half centuries of colonial regime in the Philippine Islands which covers the period from 1521 to 1946.

Propelled by an indomitable spirit and a deeply rooted love for freedom and independence, they distanced themselves from the foreign conquerors and often engaged them in combat with their crude armaments. But the odds were simply overwhelming and in time they were forced to withdraw into the interior regions of the islands where the steep

mountainsides, deep ravines, and thick forest covers served as their natural shields against the invaders. In the vast mountainsides, hinterlands and valleys, they lived freely and continued to cling to their indigenous culture and way of life. Isolated from the Filipino majority who succumbed to colonial domination, they attained none of the socio-economic and cultural advancement that the latter enjoyed. Thus, by colonial standards, they were backward and uncivilized and must be treated differently. They became the Filipino cultural minorities.⁵

Property Rights Within Ancestral Domains

The ancestral domains of the indigenous cultural communities are generally contiguous territories. These domains are composed of lands and other resources therein which have been occupied and possessed by these communities since time immemorial by themselves or through their predecessors in interest. It includes adjacent lands and resources generally known as belonging to them which are necessary for their socio-economic and cultural well-being.⁶

Within these territories, the indigenous communities recognize some critical land-based natural resources such as water from mountain springs and rivers, forests, swidden and rice lands, pasture lands, mineral lands and residential lands. With respect to land, they generally exercise three types of rights. These are: 1) communal land rights, 2) indigenous corporate land rights, and 3) individual land rights. These three types may be found in some communities simultaneously, as in the Cordillera communities in northern Philippines, but a combination of only two of such land rights may be found in other communities.⁷

Communal land rights are exercised by all members of the community within a defined territory in relation to the exploitation of these resources. Indigenous corporate land rights are exercised over land 'belonging to a decent group, a family or a ward', while individual rights are rights over lands which have been devolved to individuals.⁸

For most indigenous communities, the forest is the resource that is usually held in common. The same thing is true however to water from rivers and lakes used primarily for fishing and irrigation purposes. Swidden lands, on the other hand, are generally indigenous corporate properties. The members of the clan to whom the lot is devolved by founding ancestors, who introduced some form of improvements on the land, are free to exercise usufruct rights over the resource; while rice terraces and small tree lots near the village usually belong to individuals. These are resources invested with considerable amount of labor and materials in order to make them more productive. They are generally devolved to a person through inheritance.⁹

The Forest as Common Property

The members of an indigenous community exercise equal rights of access to the forest which they can exploit to satisfy their needs. Ordinarily, what they derive from the resource are lumber with which to build their houses, firewood for cooking, wild game for food and other forest products for a variety of other purposes.

But the privilege to freely benefit from the forest is confined to the members of the community. People outside the village can have access to it only with permission from the villagers. For such permission to be granted, existing customary rules that were in place for generations must be observed. Moreover, the forestland cannot be alienated to any person who does not belong to the village. Neither could the timber extracted therefrom be used for commercial purposes.¹⁰

These customary and traditional limitations on the use of forest resources emphasize the fact that in actual contemplation, forests inside the ancestral domains of the indigenous communities are regarded as communally owned. While these are basically common pool resources, there is a responsibility to protect and sustainably manage them which usually lies in the hands of the tribal community concerned. The task of carrying out this responsibility rests on the shoulders of the entire community through its leaders and is passed on from one generation to the other.

Management of Communal Forests

In managing the forests, the indigenous communities faithfully observe ecologically sound, ritualistic practices imbued with social, cultural, economic, political and even moral considerations. Along with the land and the waters, they regard the forest as an economic base which has a profound influence in their lives. As a matter of fact, they equate land to life; and land to them necessarily includes the resources in it foremost of which is the forest. For this reason, they recognize and are perpetually aware of the high stake they have in the sustainable management of the resource.

The management system which the indigenous tribes have developed for the forest and other resources within their ancestral domains operates under the framework of their customs, traditions and beliefs. Every aspect of their relationship with the resource, from utilization to maintenance, is defined under the terms of these unwritten yet perfectly understood maxims that have endured the test of time and change. Ancestors, spirits, elders and peace pacts provide the sanctions to ensure proper observance of the system.

To the Tinggian community of northern Luzon, for instance, a piece of land, forest or river is not simply the land, forest or river that an outsider sees. It is the land, forest or river that was bequeathed by their ancestors and guarded by the spirits (anito).¹¹ These are integral parts of their ancestral domain and, as such, they are subject to the community's customary laws (Kadawyan). There are 'specific seasons when these are open for exploitation such as January to March for rattan (forest product) gathering, and April to May for communal fishing. Otherwise, these are prohibited for exploitation (lapat).¹²

Similarly, the Kalinga community, also in northern Luzon, has a set of customary laws and beliefs that govern the exploitation of the forest and other natural resources in their territory. With respect to resources located in different villages, these rules are embodied in the peace pacts (bodong) which is a 'political institution whereby the papangats (community leaders) of two

or more villages establish laws and agreements by which to govern their respective rights to these resources'.¹³ Within a specific village, however, use rights over the commons are regulated by the "Apa" (prohibition) which is declared and enforced by a "Pangat". By such declaration a pangat could withdraw from common use certain resources. An apa declared on a forest bars the cutting of trees therefrom until the same is lifted and access to the forestland is reestablished.¹⁴

The basic principle behind this form of forest management is controlled access to the resources which derives its force and effect from custom-bound coercive measures that are mutually agreed upon through village elders or tribal leaders. As shown above, it is deeply rooted in the culture of the northern tribal communities. The same thing is true however among indigenous communities in the Visayas and Mindanao.

In the Visayas, this is exemplified by the Taubuid Mangyan community of Mindoro whose way of life revolves almost entirely on the sustainable utilization of forest resources. On account of cultural and environmental factors, their subsistence pattern rotates from trapping and gathering in the forested areas to root crops and grains in cleared and cultivated forestlands.¹⁵ The adherence to shifting cultivation which allows cleared, burned and harvested forestlands several years to fallow is itself a control system on the use of the resource as it prevents destructive consumption. Rights to common property, specifically the land and forest resources, are regulated through a village leadership structure composed of the men heads of families who openly discuss issues of common concern. The ultimate decision however is made by the hereditary leader (Magurang) who also functions as religious or ceremonial leader.¹⁶

Then there are the Manobo people of northern Mindanao, whose property rights are regulated by what they term as "batasan". This is a set of rules which encompasses concepts of habit, custom and law'.¹⁷ Under the Batasan, a man can occupy and utilize any unowned land, and necessarily the forest in it, beyond the village limits. He can invite people to settle in the area so that eventually, they form a hamlet and later a village. As founder, he assumes the position of datu (leader) and the power to distribute the surrounding forestlands. In time, a village right of ownership is developed over the entire jurisdiction. The use of all natural resources within the village property is strictly guided by the Batasan which is enforced by the datu.¹⁸ In this way the resource is managed sustainably with little danger of destruction of the renewable resource base.

The Islamicized indigenous communities in the south have a similar system of communal ownership of common property. Within the general territory of a community, fullest individual ownership rights to land pertain only to permanent fields. All members of the tribe exercise use rights over other sites and resources, including the forest.¹⁹ However, to use unowned sites an individual must obtain permission from the headman (tagmustahak).²⁰ Once such permission is granted, he uses the resource according to the "adat" or customary law which, among others, ensures that the consumption of the communal property is not abused.²¹

The practice of communal ownership of forest resources in ancestral domains is common to the one hundred or more identified indigenous tribal groups. At the core of this property regime is the principle of open but controlled right of access to the resource which is founded upon the bedrock of customary law. While forests outside indigenous community ancestral domains are consumed in a manner wherein 'each user acts independently to maximize personal gain',²² those within it are utilized with due regard to the needs of other members of the community and those of future generations. Moreover, users of the former tend to underinvest in maintaining the common resource because an investment by any of them will produce benefits that must be shared with others,²³ while users of the latter are bound by custom to invest as much as they could in maintaining the resource precisely for the benefit of others in the community.

The Indigenous Communal Property Regime In the Context Of The Existing Politico-Legal Framework

It is sad to note, however, that the indigenous communal property regime, which embodies a range of ecologically sensitive and economically sound traditional practices, is in constant threat of extinction. Largely because of colonial influence, land and forestry laws are characterized by Western concepts. Western land laws, as they were made to apply to the Philippines, revolves around the Regalian Doctrine, a legal fiction introduced by the Spanish colonizers which essentially means that all lands and natural resources belong to the state as part of the public domain and therefore, to avail of their benefits, one has to obtain a grant from the state evidenced by a paper title, patent, contract or permit.²⁴

As it is, this doctrine runs counter to the indigenous land law which vests ownership or use rights over land and resources on the basis of first use and investment of labor which one might call the "pioneering" concept of land acquisition. This concept postulates that the first to use the resource and infuse labor for its improvement and maintenance, especially if the same has been done consistently over a long period of time, acquires security of tenure over it which other people are bound to recognize and respect.

Precisely because of this conflict and the fact that the indigenous communities have, from the very beginning, stood their ground against colonial subjugation, they rejected the Regalian rule and refused to register their lands even for the purpose of availing themselves of the required paper titles or other similar documents. As a consequence, by virtue of the prevailing Western-oriented national law, specifically the Maura Law of 1894, they have lost their ownership rights to the land and became technically squatters thereon. The land they have long occupied has now become part of the public domain.

The effect of that law extends up to today as the Regalian principle continues to prevail. Thus, all lands and other natural resources which the indigenous cultural communities have possessed and occupied since time immemorial, assumed the nature of public property. As such, these resources become subject to the regulatory powers of government and in effect lost the security of communal ownership.

In regulating the use of public property, government employs 'coercion rather than willing consent to coordinate behavior'. This is the 'danger inherent in reliance upon political organization'.²⁵ Coercive measures are carried out through an administrative system that is set within the framework of the bureaucracy which is generally prone to degenerate into a pathological institution.²⁶ Mostly because of its limited capability, the bureaucracy's ability to maintain its enforcement mechanisms for protecting and preserving the publicly owned resources often falters and in many cases even becomes untenable. Consequently, many of these resources are being overconsumed.

In the case of the Philippine forest, the basic regulatory statute is the Revised Forestry Code. The law proceeds from the principle of state ownership of forestland and prescribes all forms of disposition of these resources mostly through a system of agreements, licenses and permits. Among others, it has outlawed "kaingin" or "slash and burn" farming in forest lands and indiscriminately labelled upland dwellers, including indigenous cultural communities, as "kaingineros", and squatters on public lands.²⁷ It does not distinguish between real kaingineros, generally migrant farmers, who regard the forest as public property and swidden farmers, mostly original inhabitants of the uplands, who consider the forest as communally owned. Together with timber licensees, the law treats kaingin and swidden farmers as the major users of the forest. And being so regarded, they are expected to unconditionally submit to corresponding government rules and regulations. Under pressure from these external control systems, local responsibility for forest protection simply disappeared.

In sum, except for a few modifications which tend to once more enlist the participation of upland dwellers in forest protection and rehabilitation such as the Integrated Social Forestry Program, the policy of state ownership of forest lands and other natural resources has disregarded communal responsibility for managing the forest which has been the practice of indigenous communities through the centuries. In effect, it has reposed in government the exclusive power and responsibility to manage the forests.

Following this mandate, the government, through the Department of Environment and Natural Resources, spends a comparatively large sum of money annually on forest protection and conservation. But the task is quite enormous and government resources have invariably been insufficient. Correspondingly, government control of the resource has been inadequate, a situation that has created a suitable setting for the forest to turn, as it did, to the status of common property.

CONCLUSION

There are lessons to be learned from the indigenous cultural communities relative to the universal thrust to effectively manage the commons. Their indigenous management system for common forest resources in their ancestral domains could be a source of valuable insights on how the overexploitation of the regenerative capacity of the resource could be averted. The system which revolves on the concept of communal ownership of forest resources has proved

feasible and effective for centuries in the traditional enclaves of indigenous communities where it was left free to take its course.

Definition of communal property and regulation of resource utilization by custom law offers a good alternative in view of the deficiencies inherent in the enforcement of statutory and administrative sanctions. The Philippine experience has shown that in the countryside where most, if not all, of the forest is located, coercion as a regulatory medium for the use of forest resources is far less potent when compared to the force that emanates from existing customs and traditions. Given this fact, it may well be a matter of national interest to recognize indigenous law and allow the indigenous cultural communities play a lead role in environmental resource management programs using their native technologies.

More importantly, the ancestral domains of the indigenous communities could easily pass as models of community environments with well-balanced ecosystems.

To the indigenous communities, the concept of ancestral domains revolves mainly on the land and other resources which their ancestors have long possessed and handed down to them through past generations. It is the place where they, as a community, live and where their customs and traditions are rooted. In it, too, dwell the spirits of their ancestors and gods.

Here we see a complex interrelationship of man, land and ancestors which one author aptly described, thus:

"To speak of ancestral land is also to speak of the deep spirituality, the affirmation of the fact that land belongs not to all Lumads as such, nor to the Igorot, nor to Allah but to some conception of reality which in the process nourishes the unity between human beings and nature. This profoundness of spirituality underlies the whole meaning of ancestral land. So when one says a piece of land is ancestral, one also affirms the sociological connection between the present and the past which nourishes the present, shaping the vision that is clearly emerging today.

In a way, these tentative formulations as to the rich imagery and symbolism of ancestral land partly explains the capacity of ancestral land to elicit so much profound emotions and actions because it is invested with so much human values."²⁸

Given this socio-cultural and spiritual foundation, it is not any wonder that the indigenous communities maintained a deep respect for their environment and developed a potent system for preserving it. Such system is founded on a clear, albeit unwritten, specification of culturally defined property rights.

This experience may offer a rich source of ideas which could guide the formulation of present programs for arresting the continuing degradation of the environment. While in some

communities this indigenous concept has been eroded by modernization, the basic principle on which it stands still endures and could provide the anchor for cultural revival.

Thus, if present society must succeed in its effort to save the ecosystem from total destruction, it should be open to the lessons that may be drawn from indigenous practices and most of all preserve this wellspring of indigenous knowledge by allowing tribal communities to continue to nurture their customs and traditions through the full recognition of their ancestral domains.

NOTES

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