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Perla Q. Makil

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INTRODUCTION

The protectiveness over Philippine forests is not a recent phenomenon. As early as 1863, the Spanish government established the *Inspeccion General de Montes* to study forest resources, promulgate rules and regulations concerning its utilization, and prescribe fees for its use. In response to the alarming rate of forest denudation, a Royal Decree was promulgated in 1874 which made it a crime to cut timber for commercial purposes.

The policy of forest protection was continued by the American administrators during the American regime. A Bureau of Forestry, along with its regional offices, was established and numerous legislations were enacted to protect the forest and its resources. Examples are the Philippine Bill of 1902, Public Land Act No. 926, and the Forest Act of 1904. It was also at this time that forest exploitation for financial gain began.[1]

Notably absent in the various legislations was a concern for the forest occupants affected by their implementation, particularly in the right to use what has been declared forest lands. While the Act of 1904 did make mention of "residents within or adjacent to" the territory of timber licensees who may be "permitted to

1. Dean C. Worcester, writing in the 1900s, put it well: "The commercial outlook for the Philippine lumber industry is very encouraging. No more greedy lumber exists than Manila has offered being due primarily to the stimulus given to all lines of industrial development by the economic policy of the insular government." He was ecstatic about the Philippine forests' potential: "In them people have a permanent source of wealth like money in the bank for the inhabitants of the islands . . . " See his *The Philippines Past and Present* (New York: McMillan, 1914), pp.846-47, 858.

cut or remove timber, firewood, and other forest products . . . for domestic purposes," the vigilance over the forest was exercised more for the protection of the trees that were exploited for commerce and trade than for the forest residents who were similarly affected by this exploitation. A quick review of earlier forest laws and policies reveals how insignificant forest occupants have been in the total legal framework of forest preservation.[2]

Moreover, the traditional concept of the forest as a source of capital expansion by other parts of the economy was reinforced by the continual granting of legal privilege to those who could exploit it for commercial benefit, e.g., to timber concessionaires and owners of other wood industries.

On the other hand, forest destruction has been blamed largely on the so-called illegal squatters or *kainginеros,* who have been the object of punitive legislation particularly since the passage of the *Kaingin* law in 1939. More recently, however, the government has shown greater willingness to accommodate the kainginero within its system of forest preservation. Through a program of kaingin management, the government now seeks to resettle or integrate the kainginero into the "socioeconomic mainstream" of Philippine society. Furthermore, the government seems to have given more serious thought to the problem of "primitive tribes" who are residents of the forest (P.D. No. 389, 1974). In a recent summary of forestry policies for the eighties by the new Minister of Natural Resources, the settlement of the forest occupancy problem through a "humanistic solution" in the "most socially judicious manner" was one of the stated forestry goals.[3] It is hoped that a more specific manifestation of this intention will be seen in forthcoming programs of the Ministry.

An appreciation of the social dimension of the problems affecting forests and forest use surfaced slowly. Its significance began to be recognized by policy-makers as the full impact of population pressures and forest denudation became increasingly felt. For

2. Outside of the forest itself, the important categories of forest "inhabitants" given legal protection are game and fish (Act 2590, 1961; Act No. 3915, 1932; Forestry Administrative Order No. 7, 1934; Republic Act No. 122, 1947; Ministry of Natural Resources Administrative Order No. 1, 1974), wild flowers and other plants (Act No. 3983; FAO No. 10-1, 1934; Act No. 2812, 1919), and pasture lessees and permittees (Forestry Circular No. 160, 1956).

3. See Teodoro Q. Peña, "Natural Resources: Policy Directions for the '80s," in *Fookien Times Philippine Yearbook* (1981-82):212.

instance, the effect of forest destruction has been made more dramatically visible by floods and other natural disasters that have come to bear on the populations of nations who have long maintained that their forest resources were inexhaustible and their forests a perpetual source of income and environmental protection.

More recently, concerned observers of the deteriorating forest conditions have raised questions about forest management. Traditionally, it has been placed in the hands of foresters or those licensed by law to utilize it for commercial purposes. Today there is a strong demand for a new kind of forest management that would include the significant involvement of the communities of people who depend on forest resources for their sustenance.[4] This demand is justified by the consequences of forest depletion on the survival of these communities as well as others who are more indirectly affected by forest conditions. Case studies have shown that much of the legal restrictions placed upon forest occupants or those dependent on the forest for simple needs, e.g., firewood, are based on a lack of understanding on the part of the legislators on what the people themselves want or need.[5] More significantly, however, it is also due to the tendency of decision-makers to be more readily accommodating to those who rationalize extensive forest exploitation by arguing that they are contributing to the general development of the country's economy.

This article is based on a study which involved the analysis of selected forestry policies of the Philippine government. While the study included policies prior to the seventies, this article discusses only those promulgated during this period, particularly those that apply to the present.[6]

4. This orientation is subsumed under the rubric "social forestry," a concept which departs from the traditional view that sees the forests in terms of conservation and propagation largely for commercial exploitation. Social forestry gives specific attention to noncommercial forest users/dwellers, e.g., the cultural communities in the uplands and lowland farmers who have been pushed to the uplands in search of agricultural opportunities that the lowlands could not provide. Thus social forestry urges that forests and people be considered equally important in the formulation of forest plans and policies because they must coexist for mutual survival and growth.

5. See for instance Filomeno V. Aguilar, Jr., *Social Forestry for Upland Development: Lessons from Four Case Studies* (Quezon City: Institute of Philippine Culture, Ateneo de Manila University, 1982).

6. For a fuller discussion of the study results, see Perla Q. Makil, *Toward a Social-Forestry Oriented Policy: The Philippine Experience* (Quezon City: Institute of Philippine Culture, 1982).

THE DECADE OF THE SEVENTIES: A DAWNING OF SOCIAL FORESTRY?

Policy-making on forestry for the period prior to 1970 might be characterized as generally oriented toward the protection and preservation of forests alone. Where concern for people existed, it involved those who were granted special privileges by law to make use of the forests for commercial purposes such as the timber concessions, and, to a more limited extent, for personal advantage, e.g., the communal forests and pastures. Forest occupants who depended upon the forest for basic subsistence were not of any particular concern. More accurately, therefore, forestry policies prior to the seventies can be described as generally favorable to forest protection for business purposes.

FAO NO. 11

Forest Administrative Order (FAO) No. 11 of 1 September 1970 ushers in the decade with "rules and regulations governing the disposition, harvesting, development, and utilization of forest products." It restates the basic policy enunciated in the Forest Act of 1904, which emphasizes forest perpetuation in productive condition. More specifically, however, it spells out other requirements for the awarding of licenses for commercial and forest utilization, namely, that (1) the award should "advance the economic and social welfare of the Filipino people," (2) the size of the area covered by the license should be "capable of supporting a predetermined wood demand and other uses of dependent industries or communities on a continued basis under an approved management plan," and (3) the award should be through public bidding (Section 1.3.a). However, "when public interest demands," a vacant forest area may be awarded to any "qualified applicant" who has the capability "to develop the area applied for . . . and his *capacity to promote wood industrialization and the socioeconomic development of the region*" (Ibid., italics supplied).

These conditions enlarge the commercial licensee's obligations, to include not only a responsibility to maintain the forest in productive condition but to make sure that the enterprise will benefit the general public's well being, at least, in the region where the

concession is located. On the other hand, because of the overwhelming concern for large-scale development, the significant utilization of the public forest becomes limited to those who can afford to do so. The bias in favor of those who possess more resources to mobilize for this purpose thus remains inherent in the policy, to the disadvantage of others who are less endowed.

Section 1.3.c of FAO No. 11 also provides that private rights (over such places as those of abode and worship, burial grounds, and old clearings) of cultural minorities and others within the concession area shall be respected and thus excluded from the coverage of the license, as long as those claiming private rights have evidence of occupation and title. Logging operations would not be allowed in these places. However, if the concessionaire gets a permit from the licensing authority, these private rights can be set aside and the concessionaire can then log the entire area.

It is puzzling that such an escape clause as would virtually nullify a legal privilege given to the less advantaged should be provided in the law. It actually paves the way for the right of the concessionaire to win out once again over that of the cultural communities. Furthermore, under the same legal provision, the identification of the private rights of cultural minorities is the responsibility of the Bureau of Forestry "whenever resources of the Bureau permit"; otherwise, by the prospective licensee prior to licensing. Human failing suggests that a potential licensee could hardly be expected to report anything that would jeopardize the approval of his application. Neither would an agency, in this case the BFD, with limited resources be expected to ably check on the veracity of the licensee's report.

The requirement to present evidence of occupation and title raises another set of questions. What exactly is the "evidence" required? Must it be a certificate of title registered with the Civil Registry? What "other muniments of title" are acceptable to prove occupation and title? Would it be enough to show customary possession or occupation of the land in question? If so, how would one prove that? The FAO provisions are far from clear and the uplanders who may have private rights to claim are faced with another source of uncertainty to be overcome in order for them to take advantage of the privilege offered by law. It seems that FAO No. 11 falls far short of a laudable objective.

Two other provisions of this legal document are noteworthy for their recognition of the social impact of some forest activities. These are: (1) a concern for pollution, Section 49.b (7), and (2) that which allows poor residents without communal forests to extract forest products for their personal use, Section 51.a (2)(b). Given the record in the satisfaction of social concerns provided by law, however, there is need to determine whether these are honored, and how.

PRESIDENTIAL DECREES

After the declaration of martial law in 1972, a number of presidential decrees addressing forest problems were issued. These declarations continued the essence of earlier policies in their concern for forest-based industries. P.D. No. 54 (November 1972), for example, provided stiffer penalties for illegal logging as part of the protection given to vital industries against "economic saboteurs and opportunists." P.D. No. 267 (August 1973) reestablished the Presidential Committee on Wood Industries "to study, discuss, and arrive at action recommendations to solve problems concerning the wood industry" and participate in national-level planning regarding the industry. P.D. No. 330 (August 1973) penalized timber smuggling or illegal cutting as qualified theft because "it is the solemn duty of every citizen to protect public forests and forest resources from indiscriminate logging, senseless denudation, and wanton destruction to the detriment of present and future generations." P.D. No. 331 (November 1973) required the employment by timber licensees, lessees, or permittees of a registered forester and the maintenance of their own forestry departments staffed by registered foresters. And in June 1973 P.D. No. 209 authorized the creation of communal tree farm pilot projects in Ifugao and Benguet.

P.D. No. 209. This decree has interesting provisions. It declared the need to rehabilitate denuded watershed areas and authorized the development of pilot communal tree farm projects in Ifugao and Benguet. As might be expected, the denudation of watersheds was again attributed to "improper cutting, squatting, cultivation, and uncontrolled burning," all of which have caused "the drying of streams and creeks, erosion of soil, and siltation of dams affecting hydroelectric power irrigation systems." Further,

all these caused forest degeneration to such an extent that the raw materials needed by the wood industries became insufficient.

As one reads on, it becomes clear that P.D. No. 209 was primarily a response to the problems facing the industries dependent on wood. It declared: "there is a great need for raw materials to supply the wood carving and mining industries in the provinces of Ifugao and Benguet as well as long-fibered species for the pulp and paper industry."

To implement the decree, it was directed that tree planting in the watersheds be done by the residents of the barrios where the pilot projects would be located. Without the barrio people's help, the decree said, "the rehabilitation of these watersheds and forest lands would be slow, difficult, and expensive."

It is rather curious that the burden of watershed rehabilitation in this case should fall on the barrio residents when the intended beneficiaries were not the residents themselves but the forest-based industries. It could, of course, be argued that the people would benefit indirectly from the consequences of the improvement of the watersheds, e.g., the filling up of creeks and streams, the control of erosion, and the like. Nevertheless, it is ironic that one of the early attempts to involve upland residents in a program of forest regeneration was to make them work horses for users other than themselves. Neither is it accidental that the intended beneficiaries were those who had the legal privilege to exploit the forest for their profit-making ventures.

P.D. No. 389. It was not until 1974 that a more serious social orientation in favor of the many varied upland residents in forestry policies began to appear. P.D. No. 389, or the Forestry Reform Code of 1974, seems to be the seminal policy declaration in this regard. Although the major tasks under this decree were the codification, revision, and updating of all forest laws and the creation of the Bureau of Forest Development (BFD), a positive reference to a resolution of the kaingin issue was made for the first time. One of the specified goals was the "resettlement or integration of settlers in public forests through a system of kaingin management" in order to integrate them "into the socio-economic mainstream." Section 5(e)(5) directs the Forest Protection and Utilization Division of the newly-created BFD to "develop a program for the settlement of shifting cultivators occupying the public forest." Kaingin management is one of six

functional sections of this division. Section 7 reiterates that the BFD shall be responsible, among others, for "the implementation of a continuing program of kaingin management within the public forest."

Section 34, in turn, clarifies the concept of kaingin management mandated by Sections 5 and 7 and expands it to include a relocation plan. Several tasks are involved in the implementation of kaingin management: (a) a complete census of all forest occupants, (b) a survey of the size of land occupied by the forest occupants, (c) the identification of beneficiaries under the kaingin management plan, (d) provision of an agro-forestry program, and (e) a relocation plan.

The relocation plan was intended for "primitive tribes" who were identified to have resided in the forest since 4 July 1955, or nineteen years prior to the effectivity of P.D. No. 389. They were to be permanently settled (resettled is probably a better term) "on designated areas reserved for the purpose, such as unoccupied alienable or disposable lands" (Section 34, paragraph 3).

Why the relocation of primitive tribes was deemed necessary is not clear. However, at least two reasons are plausible. First, the declaration of an area as a public forest makes the continued presence of the primitive tribe in the area illegal. Second perhaps is the assumption that their continued presence in the area would prove harmful to the forest. Neither explanation justifies relocation.

What kind of management was envisioned under Section 34 of P.D. 389? It would seem that kaingin management meant forest management solely by the Bureau of Forest Development, which included the relocation of forest occupants, the provision of an agro-forestry development program, and a continuing program of assistance whenever necessary. All this was meant to prevent the encroachment into the forest by these occupants.

The institution by P.D. No. 389 of kaingin management was part of a set of remedies prescribed by policy-makers to meet an urgency pointed up by the country's experience with "catastrophic floods and droughts" prior to the enactment of the Code. No doubt, the experience jolted policy-makers into recognizing that excessive commercial exploitation of forest resources could have far-reaching and devastating effects. Thus, other goals were expressed in the presidential decree, namely: (1) the gradual

phasing out of log exportation and (2) the abolition of short-term licenses in favor of longer terms of ten or twenty-five years. The first was to make way for the development of wood industries "through a system of disincentives and incentives," and the second, to give the licensee "security of tenure, thus assuring the conservation of the forest," perhaps a solution to problems encountered in the sixties with respect to short-term permits.[7]

There is no question that P.D. No. 389 was a vast improvement over previous codes in terms of the consideration it gives to the social impact of forestry laws. Yet the qualitative difference between the remedial measures provided for the kaingin farmer on the one hand, and the commercial exploiter on the other is clear: while the former would be "managed" into integrating with the socioeconomic mainstream, the latter would be given "incentives" or "security of tenure" to maintain their profitable ventures. Why the law can be so unequivocal about benefits for the commercial licensee, particularly with regard to "security of tenure" and "incentives," but not when it comes to the kainginero, is not so easy to understand.

While Section 34 speaks of the relocation of "primitive tribes" under the kaingin management program. Section 37 addresses the rights of "national cultural communities" (NCCs) relative to the granting of licenses, leases, and permits. Paragraph one of this section provides:

> No licenses, leases and permits . . . shall be granted in provinces and cities which according to the latest official population census are inhabited by members of the national cultural communities, without a prior inspection jointly conducted by the representatives of the Bureau and of the Commission on National Integration and a certification by said representatives that *no members of the cultural communities actually occupy or possess, or have a claim* to all or portions of the area applied for; and in cases where only portions of the area applied for are in the occupation or possession of, or claimed by, members of the said national cultural com-

7. Interestingly enough, this was also intended to eliminate "petty graft" associated with the renewal of short-term licenses, a candid acceptance that graft does occur in the implementation of forestry policies. The scale of the problem (i.e., how "petty" or "grand") is, of course, debatable, though perhaps irrelevant to the basic problem: simply that it occurs. Indeed, sensitive though it may be, the issue of graft (and corruption) and its role in the ineffective implementation of forestry rules and regulations over the years may be worth pursuing. Perhaps the legal division of the BFD or an impartial outside body could be given this responsibility.

munities, the same shall be *excluded or deemed excluded* (italics supplied).

In short, under this provision, the rights and claims of NCCs should be respected in decisions to grant licenses, leases, and permits. This policy seems to apply the 1973 Constitution's provision (Section 11) which obligates the State to respect the customs, traditions, beliefs, and interest of NCCs in policy-making and implementation.

However, subsections d, e, and f of Section 37 bear scrutiny for they seem to provide exceptions to paragraph one. To quote these provisions (italics supplied):

(d) A & D Timber Licenses – a license issued by the Director for the clear-cutting and commercial utilization of timber over forested lands that have been declared as alienable or disposable but *not yet covered by a title of ownership.*

(e) Private Land Timber License – a license issued by the Director for the cutting and commercial utilization of timber in a private land *the title to which is not registered with the Bureau.*

(f) Registered Woodland License – a license issued by the Director for the cutting and commercial utilization of timber in a private land *the title of which is registered with the Bureau.*

What effect do these subsections have on the rights of NCCs under paragraph one? If NCCs have claims over areas covered by the application for license, but these claims are not evidenced by any title spoken of under subsections d, e, or f, will the area be "excluded or deemed excluded" from the issuance of timber and woodland licenses? Whose right prevails in conflict situations that might arise under these provisions? Section f is particularly noteworthy because it speaks of a license that would be granted to an applicant despite paragraph one which expressly prohibits it, and a title duly registered with the Bureau. In short, these three sections effectively nullify Section 34.1 of P.D. 389.

Furthermore, is there a difference between the "primitive tribes" under Section 34 and the "national cultural communities" under Section 37? If no difference exists, (as we are inclined to think) how should these separate provisions of law be reconciled? Why is relocation deemed the appropriate response to the "primitive tribes," rather than one which respects existing rights, as in the case of the "national cultural communities?"

P.D. No. 410. Presidential Decree No. 410 (March 1974) expanded the coverage of Section 34 of P.D. 389 to include all members of the national cultural minorities, Christian or Muslim, in the "opportunity to own the lands occupied and cultivated by them . . . and their ancestors" for at least thirty years prior to 11 March 1974. And, if the land occupied or cultivated were unappropriated public agricultural lands, i.e., they were not 'ancestral' but had been occupied and cultivated by cultural communities for at least ten years, these were also considered ancestral and would thus fall within the coverage of P.D. No. 410 (see General Administrative Order [G.A.O.] No. 1, 1974). It would appear that these provisions indicate a significant change in the thinking and attitude of policy-makers about the uplands and upland residents.

Yet a reading of the order implementing the decree indicates the contrary. The order provides such numerous exemptions from the coverage of P.D. No. 410, that one wonders whether anything at all would be left for allocation among the NCCs at 5-hectare size farm lots. To begin with, under G.A.O. No. 1, the implementing order of P.D. No. 410, what are "disposable lands," i.e., lands that may be owned by the NCCs/tribal communities? Section 1.b.(2) enumerates the following:

a. portions of existing reservations actually occupied and cultivated by members of the National Cultural Communities for at least ten years before 11 March 1974, and not actually needed for military reservations or any other kinds of public or quasi-public reservations.
b. lands falling under reservation below 18 percent slope.
c. lands falling under 18 percent slope to 50 percent slope, provided the NCCs member should plant permanent trees of economic value.

What are *not disposable* under P.D. No. 410? Already we have exceptions included in Section 1.b.(2)a, namely those "needed for military reservations or any kinds of public or quasi-public reservations." Add to these those enumerated by Section 1.b.(1), namely, military reservations (again), reforestation reserves, municipal and city communal forests and pasture reserves, national parks and all forest areas below 18 percent slope along rivers, creeks, lakes, etc. of less than 250 hectares each, and those specifically enumerated by Section 1(3). These are the public

domain previously reserved for settlement purposes by the Department (now Ministry) of Agrarian Reform and other areas reserved for public or quasi-public purposes, including proclaimed forest reserves, watersheds, forest reserves, national parks, game and wildlife sanctuaries, national historic sites, forest areas for research, scenic, recreation or fish and wildlife purposes.

Section 1(3)(c) adds to Section 1.b.(2), i.e., those that are disposable, when it provides that "forest areas covered by forest concessions, leases, permits, pasture lease and other forms of licenses and permits . . . shall be reassessed if presently occupied or cultivated by members of the NCCs." However, an important caveat burdens this privilege. Section 1.(3)(e) also provides that these reassessed areas "shall be subject to forest laws, rules, and regulations." Which of the numerous prohibitions is referred to is anybody's guess.

G.A.O. No. 1 enumerates the requirements for the issuance of an Ancestral Land Patent to land acquired under P.D. No. 410. These include: (1) acquisition of a Land Occupancy Certificate; (2) membership in a farmers' cooperative; and (3) an investigative process by a committee of five who will conduct a census of NCCs and prepare reports for the Regional Land Director who shall order a survey and subdivision into five-hectare lots. Finally, the NCCs are given ten years from 11 March 1974 to perfect their title to their lots.

The conditions imposed for the implementation of P.D. No. 410 seem empty and dilatory. For instance, considering the country's disastrous experience with farmers' cooperatives, demonstrated anew by the experience with the *Samahang Nayon*, it is puzzling that membership in one is required of a patent applicant. Since the rationale for the requirement is not specified, one can only wonder about its realism and practicality. Furthermore, how long will it take for the investigative process, the census and surveys to finish? Is the ten-year period alloted to perfect one's title realistic considering all these preliminary tasks? Perhaps not. Is it any wonder that P.D. No. 410, as implemented by G.A.O. No. 1, has remained ineffective to this day?

P.D. No. 705. The year 1975 saw the formulation of yet another presidential decree, this time called the Revised Forestry Code of the Philippines (P.D. No. 705), because it repealed some provisions of the Forestry Reform Code (P.D. No. 389), issued

only the year before, as well as other related laws. In general, P.D. No. 705 incorporates the basic forestry policies that have been declared since the Forest Act of 1917. These include the wise use, protection, rehabilitation, development, and maintenance of the forests in productive condition. It reiterates the idea of "multiple use" of forest lands enunciated by P.D. No. 389, adding that such would be for the promotion of "development," "progress," "science and technology," as well as the "public welfare" (Section 2). It directs the hastening of systematic land classification surveys and supports the establishment of "rational" wood industries.

Unlike the previous forest codes, this code explains a number of forestry concepts and expands the definition of "forests." Instead of a single brief reference to what a forest is (as in the case of Act No. 1448 and Republic Act No. 2771), it speaks of various types of forest, specifically public forest, permanent forest, forest lands, and forest reserves (Section 3). Also, for the first time, national-level policy declared forest lands with a slope of 18 percent or over not alienable and disposable (Section 15). Any previous contrary classification was nullified and the lands affected were once again considered forest land. This declaration reaffirmed the provisions of FAO No. 65 (1972) which classified lands with a slope of 18 percent and over as forest lands.

The rationale for this slope criterion is not known to us, but it brings about a number of concerns particularly as it affects the existing rights of upland residents at the time the law went into effect. For instance, this provision does not take into account the suitability of lands with 18 percent slope or over which were formerly alienable and disposable. That is, in determining areas to be released for agricultural purposes, P.D. No. 705 fails to consider that there are agricultural lands with an 18 percent slope or over, titled or not, such as the rice terraces in Northern Luzon, and which have functioned as such long before P.D. No. 705. It might be argued that Section 15 of P.D No. 705 specifies cases which are exempted from reversion, such as those covered by existing titles or those that have been occupied continuously for thirty years. However, under the same Section 15 these exemptions are disregarded "when public interest so requires." Public interest is, of course, left undefined and the forest occupants affected are left to deal with an omnipresent threat to their claims

to a piece of land.

Furthermore, Section 15 of P.D. No. 705 recognizes only existing titles, approved public land application, or those who have been in continuous possession for ten years *and* have qualified for a free patent. Forest occupants who do not fall under any of these categories but who were occupying lands with an 18 percent slope or over on 19 May 1975, were decreed to be "squatters" to be dealt with under Section 53. Although Section 53 specifically prohibits their prosecution, it makes no provision at all for the acquisition of a full patent on the part of those whose occupancy has reached thirty years. It would seem, then, that for this group of uplanders, their chance for a more secure land tenure was virtually obliterated by P.D. No. 705. Three years later, P.D. No. 1559 was to add a further source of uncertainty for this group of forest occupants, when it provided for their ejection and relocation "whenever the best use of the area so demands." As in the case of "public interest," "best use" is also left undefined, to be determined by the Director of the Bureau of Forest Development. Indeed, the constitutionality of this Decree has been questioned on these provisions.

Sections 51 to 53 of P.D. No. 705 provide for kaingin management. Like Section 34 of P.D. No. 389, they require the complete census of all forest occupants (kaingineros, squatters, cultural minorities, and others) and prescribe an agro-forestry program for their benefit. In addition, occupants are to be asked to undertake forest protection measures, not to expand their clearings beyond what they had when the decree went into effect, and to undertake activities imposed by the BFD management plan. Nonperformance of the last two requirements make the forest occupants concerned criminally liable.

P.D. No. 705 speaks of a management plan under the Bureau of Forest Development, a specification lacking in P.D. No. 389. Nevertheless, what is envisioned as kaingin management under the 1975 decree is no different from that provided in 1974. It is still a management plan formulated by the BFD to be run solely by the BFD. What the BFD prescribes, the forest occupants will obey, whether it be for measures of forest protection, what trees to plant, where to plant them, and when, or where to live – in-place or a relocation area. This policy is implemented under the Forest Occupancy Management Program (FOM) which began in

1975.

P.D. No. 1559. It was not until 1978, with the enactment of P.D. No. 1559, which amends P.D. No. 705, that the idea of "joint" or "co-management" of the forest was introduced. It recognized the "need to provide sufficient incentives to encourage and further expand the participation of the private sector in forest management, protection and development . . . within the concept of joint or co-management of the forest resources" (paragraph 3, page 1). Two inter-related questions immediately come to mind. First, to whom does co-management apply? Second, how is the "private sector" to be interpreted?

What does the phrase "private sector" refer to?[8] One might interpret "private sector" to include both the private developer and those who may depend on the forest as a place to live in and a source of livelihood. This interpretation would include the so-called tribal Filipinos, who have always lived in the forest and used it as a resident would. It would also include the lowland landless laborers who, while they may not have been forest occupants for as long as some tribal Filipinos are, have moved to the uplands in search of a way of life that is better than what is available in the lowlands. In short, unless otherwise interpreted, the phrase "private sector" could refer to the forest occupants and other users, such as the private concessionaire and other lowlanders who may use the forest but not live in it. The accuracy of this interpretation can be tested by examining what P.D. No. 1559 provides for kaingin management.

P.D. No. 1559 retains the provisions of P.D. No. 705 (Sections 51 to 53) on this matter but adds a proviso to Section 53 (on criminal prosecution) to the effect that "kaingineros, squatters, cultural minorities and other occupants shall . . . be ejected and relocated to the nearest accessible government relocation area" any time that the Bureau Director shall decide that to be the "best land use." Nothing is said about co-management as far as kaingin management is concerned. As in P.D. No. 705, therefore, the only logical interpretation is that management

8. It will be recalled that ever since the first issuance of permits and leases to private applicants, the "private sector" had been given the main responsibility of managing the area covered by its lease or permit. To date, this responsibility remains and includes providing a system of forest regeneration in order to keep the forest in "productive condition." Furthermore, supervision from the appropriate government forestry agency continues to be minimal.

Table 1. Provisions for kaingin management under three Presidential Decrees.

1974 P.D. No. 389 (Section 84)	1975 P.D. No. 705 (Sec. 51-53)	1978 P.D. No. 1559 (Section 53)
1. Census of forest occupants	1. Complete census of kaingineros, squatters, cultural minorities, and other occupants	
2. Survey size of lot	2. Determine lands for occupancy	
3. Identify beneficiaries	3. Show extent of occupation and resulting damage/ impairment to forest	(Same as Sections 51-53 of P.D. 705 but adds that forest occupants can be ejected and relocated to the nearest government resettlement area "whenever the best land use of the area so demands.")
4. Prevent further	4. Enlist help of other government agencies licensees, lessees, and permittees in census	
5. Provide agro-forestry program	5. Prescribe an agro-forestry program	
6. Stabilize land claims of primitive tribes	6. Occupants undertake forest protection measures	
7. Permanent settlement in relocation areas	7. No criminal prosecution of forest occupants entering the forest before 15 May 1975 if: (a) they do not increase their clearings; (b) they undertake activities imposed by BFD management plan, 2 months for notice thereof.	
8. Determine continuous occupation and possession since 5 July 1955.		
9. Assistance when necessary.		
10. Kaingin-making penalized by forfeiture of privileges under Kaingin Management Prog., ejection, & confiscation of tools work arrangements.		

under P.D. 1559 remains the sole responsibility of the BFD. Table 1 compares the various legal provisions for kaingin management.

If what Table 1 presents is indeed the case, one can only interpret "the private sector" to mean those who are licensed under Chapter III of the Revised Forestry Code (P.D. 705 as amended by P.D. 1559) for "Multiple Use and Management." These are the licensees/permittees/lessees for timber, wood processing, and industrial tree plantations and tree farms. Obviously, the concept of co-management envisioned in the Code does not include the involvement of forest occupants in forest management.

Chapter III of this decree provides for the utilization and management of the forests.[9] It includes an explanation of what "multiple use" should be and the regulations affecting timber, wood processing, and other special uses, such as pasture, wildlife, recreation, and others. What stands out about these provisions is that they refer mainly to commercial use, such as logging, the wood processing industry, industrial tree plantations and tree farms. This should not come as a surprise, however, considering that government policy stresses development and progress for the country. Yet one must wonder about the forest occupant who is as much a user of the forest as the logging concessionaire, the industrial tree farmer, or the wood industrialist.

It is most interesting that in neither P.D. No. 705 nor P.D. No. 1559 do forest occupants come into the picture in Chapter III, which includes all of Sections 19-67, until the provisions about forest protection and management. They figure quite prominently in Sections 52 and 53. Section 52 provides for the "census of kaingineros, squatters, cultural minorities, and other occupants and residents in forest lands," presumably in preparation for the program of managed occupancy provided for in Section 51. Section 53 speaks of "criminal prosecution," addressing mainly kaingineros, squatters, and cultural minorities.

The stark contrast in the treatment of the forest "developer" and the forest "occupant" is hard to deny.

Section 58 states that "the privilege to utilize, exploit, occupy, or possess forest lands, or to conduct any activity therein, or to establish any wood-processing plants, *shall be diffused to as many*

9. P.D. Nos. 705 and 1559 are interchangeable in this section because these provisions in P.D. 705 were not repealed by P.D. 1559.

qualified and deserving applicants as possible" (italics supplied).

Who are "qualified" and "deserving?" Sections 59 and 60 provide the answer, as follows:

> "Sec. 59. *Citizenship.* In the evaluation of applications of corporations, increased Filipino equity and participation beyond the 60 percent constitutional limitation shall be encouraged. All other factors being equal, the applicant with more Filipino equity and participation shall be preferred.
>
> "Sec. 60. *Financial and technical capability.* No license agreement, license, lease, or permit over forest land shall be issued to an applicant unless he proves satisfactorily that he has the financial resources and technical capability not only to minimize utilization but also to practice forest protection, conservation and development measures to ensure the perpetuation of said forest in productive conditions."

The strong preference for corporations and the financially and technically able for forest use is undeniable. There is no chance for the forest occupants – the so-called cultural communities, tribal Filipinos, kaingineros, illegal squatters – to be co-managers or qualified users in the manner envisioned by this Code.[10]

QUESTIONS

Other questions also come to mind. One, what happens to those in actual possession or occupation at the time multiple use is evaluated? (This same question was raised with respect to the 18 percent slope requirement.) Will they be allowed to stay or shall they be ejected and relocated under the best-land-use policy of Section 53? At this point, P.D. No. 410, decreed a year before P.D. No. 705, recurs to mind. What happens to the rights of national cultural communities recognized by this decree? Interestingly, these are not at all mentioned in P.D. No. 705 nor in P.D. No. 1559. Two, under the optimum-benefit policy of Section 22, paragraph two, would not the forest occupant who has neither the sufficient capital nor other resources to utilize the forest for the country's development and progress, however these terms are defined, be naturally excluded from the multiple-use policy? Three, in the determination of agricultural lands that would be

10. This echoes our earlier discussion on the provisions of FAO No. 11. The constancy of this theme is underscored by the fact that while FAO No. 11 rules came out as early as 1967, P.D. No. 705, as amended by P.D. No. 1559, was promulgated in 1978.

alienable and disposable, much fuss is made concerning the 18 percent slope and over requirement. In the case of multiple use, however, where the beneficiaries are clearly not the poor forest occupants but those who are better equipped with capital and other resources for forest utilization, no obstacle approximating this requirement is presented. Why is this so?

The difference, it might be pointed out, is that under Section 19, the forest lands are not being alienated nor disposed of since they are covered by lease, permit, or license only. Nevertheless, the point is that when it comes to benefits accruing to forest occupants, be they kaingineros, squatters, cultural minorities, and others, the law is unduly harsh. When it comes to those who want to use the forests and other public lands for commercial or profit-making ventures, the law becomes quite accommodating. Moreover, this attitude seems to be legitimated by claims towards "development," "progress," the "public welfare," and the like. Indeed, the partiality for the economic utilization of the uplands and the systematic exclusion of uplanders from forest use, in the forestry laws enacted in 1978, has not declined. This is further illustrated by the provisions for the penalties applied to kaingin-making over time as summarized in Table 2. Despite claims to the contrary, a more lenient attitude towards the kaingineros is not substantiated.

BUREAU OF FOREST DEVELOPMENT

A subsequent BFD circular (No. 14, series of 1979), introduces the idea of participative planning in FOM projects, perhaps as an aspect of joint or co-management. Section 1.4 of the circular states: "Participative planning should be resorted to at all times. This means involving the kaingineros and all other persons affected by, and who will affect the success of, the plan. Planning in this manner enables the Bureau to tailor the plan with the values, aspirations, needs and expectations of the people, to the extent that the broader national interest of forest conservation is not jeopardized."

Well-intentioned though this provision may be, one immediately notes that participatory planning is actually not required. The wording of the circular ("should be employed") implies that its application depends entirely on the inclination of the planning

Table 2. Kaingin penalties imposed by selected pieces of legislation over time.

Period (Law)	Penalty			
	Fine	Imprisonment	Rental	Others
1904 (A 1148) Sec. 25, 1	Twice the regular forest charges	Maximum of 30 days	–	–
1939 (CA 447) Sec. 2751				
Timber land	Thrice the regular forest charges	2-4 mos.	–	–
Forest Reserves	Four times the regular forest charges	4-6 mos.	–	Ejection and forfeiture
Other Public Forests	Twice the regular forest charges	1-2 mos.	–	–
1960s (RA 3701)				
Timber land	6 times the regular forest charges	6-12 mos.	–	–
Forest Reserves	8 times the regular forest charges	6-18 mos.	–	Ejection and forfeiture
Other Public	4 times the regular forest charges	3-6 mos.	–	–
1974 (P.D. No. 389) Sec. 34, 5	₱500.00	Maximum of 6 months	10 times the regular charge	Ejection and forfeiture
1975 (P.D. No. 705) Sec. 53	8 times the regular forest charges	2-4 years	–	Ejection, costs of restoration
1978 (P.D. No. 705)	8 times the regular forest charges	2-4 years	–	Ejection, costs of restoration
Second offense	8 times the regular forest charges	4 years	–	Ejection, costs of restoration
Third offense	8 times the regular forest charges	8 years	–	Ejection, costs of restoration

officer involved. Neither do the succeeding sections (1.5 and 1.6) require that the views of the kaingineros and others be included in the FOM plan prepared by the district foresters and submitted to the Regional Office for review and evaluation prior to the final approval of the BFD. Indeed it is more realistic to expect that by the time the process reaches the point where the BFD reviews the plan for approval, the initial consultations, if at all held with the forest occupants who will be affected by it, will be too far removed to affect the BFD's decision. A more convincing provision for participatory planning insofar as forest occupants are concerned is definitely needed.

CONCLUDING REMARKS

This review has pointed up some realities in forestry policies. Foremost is the differential treatment accorded to varying forest users. For our purposes, we limit the discussion to two of these, namely, the commercial forest user and the agricultural forest user. The first regards the forest as a source of profit; the second, as a source of livelihood. Forestry policies over the years have been generally accommodating to the first, providing incentives for forest exploitation and adopting a more or less hands-off attitude insofar as running the business is concerned. True, there are penalties provided for violation of the various privileges but very seldom have these been enforced. Nor are they severe. The assumption is that the forest user-for-profit knows how to run his business and thus needs no close supervision.

Not so for the agricultural forest users. At best, they have been treated like second-class citizens, objects of policies which are, more often than not, baffling for their ambiguities and contradictions. At worst, they have been treated like criminals, encroaching in places where, legally, they should not be, and treated punitively for their activities.

As cultural minorities, their rights to the land they have occupied for years – some long before many of the policies saw print – have sometimes been recognized, but often disregarded. Where these rights are given recognition (generally after painstaking efforts on the part of the user to fulfill some bureaucratic rules), public/national interest or best-forest-use or some other vague reason, could be used to take them away again. The Biblical

passage which says "What the right hand giveth, the left hand taketh away" is not an inappropriate description of the reality faced by many uplanders. Clearly, the land-rights issue needs urgent scrutiny.

As kaingineros, they have received the brunt of the blame for forest destruction. It matters not that they usually pick up after commercial loggers who have left for other timber-rich areas leaving their waste and destruction behind. Nor that these agricultural slash-and-burn practitioners apply their own indigenous methods of regeneration after they use the land. The assumption is that as "illegal squatters," they are destructive to the forests. Thus they need to be regulated and disciplined. Why is this so? What difference is there between the overcutting concessionaire, big or small, and the slash-and-burn practitioner? At least three considerations come to mind.

First, is a question of legality. While the activity of the timber concessionaire is "legal" because it falls within the limits prescribed by legislative provisions, that of the kainginero usually is not. In an orderly society, he who commits what is adjudged to be illegal generally bears the responsibility for the consequences of that illegal act. In the case of forest destruction, it would seem that the consequence for the kainginero has been to absorb the blame that would otherwise be shared by others whose legal activities have also caused as much, if not more, destruction in the uplands.[11] Furthermore, there seems to be an assumption that the legality of the act, e.g., having a permit, necessarily makes forest occupation non-destructive. The experience has been, (and we suspect official records will support this) that the issuance of various permits, licenses, and the signing of numerous lease agreements have not guaranteed proper forest use over the years. Forest destruction and activities supposedly outlawed by these legal privileges could not be stopped by the agreements. Hence, the current miserable state of Philippine forests.

Secondly, there is the matter of privilege resulting from a difference in social class. Our examination of forest laws has revealed a bias in favor of those who are able to meet the re-

11. A BFD report estimates that in 1979 alone, 52.9 percent of the total forest destruction was due to kaingin-making. However, the report does not say when kaingin was practiced – whether it was only after the destruction of primary forests by private loggers, i.e., in logged-over areas left behind by authorized concessionaires who moved out to new timber-rich areas.

quirements in the acquisition of the privileges of forest use, such as procedural literacy or the capability to fulfill bureaucratic requirements (e.g., filling out and filing forms in proper offices), an acceptable technical know-how evidenced by a college diploma or degree, and, most importantly, the financial capability to put up the required capitalization or credit line. Certainly, the likelihood of achieving these requirements would be much greater on the part of members of the elite than among those who are not.[1 2] Closely linked to this is, of course, the ability to understand the policies and requirements that are often expressed in legalistic jargon and in the English language. Obviously, the handicaps are piled on the side of the upland forest user.

Third, is the government's development ideology, which encourages large-scale exploitation for profitable ends, such as, international trade and increased government revenue. The developer is preferred to the small forest user for the contribution he presumably makes to the country's goals toward public welfare and the national good. As discussed in earlier sections of this article, the government's stance towards the developer seems to be one of leniency and accommodation.

Given these considerations, it should not come as a surprise that the kainginero or the so-called illegal squatter, and the tribal Filipino, have suffered either the burden of the blame for the destruction of Philippine forests or virtual exclusion from the privilege of undisturbed possession or use of a parcel of forest land. In most cases, these groups suffered both.

The language of the law reinforces this differential treatment. Not only is it a foreign tongue, its terminology is much too technical. The use of technical language, whether legal or scientific, certainly adds to the confusion in the interpretation and understanding of the law. So much so that consultation with an interpreter, often a judge, is needed to get at the "true" meaning of a legal provision. (Court records will show that interpretations among judges and justices vary between judicial levels and within them.) The numerous "whereasses" and "provideds" that clutter many a legal document boggle the mind of the uninitiated. No wonder commercial forest users have lawyers in their employ to

12. The difficulties encountered with the forestry bureaucracy are illustrated in the formation of the Kalahan Educational Foundation. See Aguilar, *Social Forestry for Upland Development*, pp. 48-96.

take care of these legal technicalities. Fortunately for them, they can afford it. We cannot say as much for the agricultural forest user. Simplicity and clarity in language seem farthest from the minds of policy-makers.

This is not to suggest that laws be in the native tongue (there are several, to begin with, despite a national language). However, if English must be used, lawmakers should strive for simplicity and clarity of expression, and put an end to a confusing and anachronistic style.

Other problems plague forestry policies. First, is the problem of land tenure and titling. This has persisted over time, particularly since the authority to settle conflicting claims between the government and private claimants was transferred from the judicial to the executive department. Prior to 1966, when the courts had jurisdiction over the issue, a simple rule of thumb was used. The courts asked: Is the land in dispute more valuable for agricultural than for forest purposes? If the evidence presented by the Bureau of Forestry Director failed to show that the land was more suitable for forest than for agricultural use, the courts decided in favor of the private claimant. The courts were more inclined to favor agricultural use, enunciating a land-for-the-landless policy. Whether this would be the best way to deal with the problem today, we are not prepared to say. Nevertheless, it is an avenue worth reviewing to see what aspects of the process can be extracted for application to the age-old problem of land tenure and titling.

Second, forestry policies heavily favor a forest development orientation which requires large tracts of land and long-term agreements for sustained economic production. The translation of this outlook in development projects and profitable ventures, which tie up the forests for long periods of time, has proved inconsistent with the rights of uplanders whose basic needs are often sacrificed for these activities. With this orientation, the uplander has little chance for a fair share in the benefits offered by the forests.

The conflict between the government's state-centric and corporate management-centered "development" policy, on the one hand, and the people's urgent needs, on the other, causes anxieties and problems which, in turn, heighten the conflict of interests of those involved. The urgency of these problems has not

diminished despite claims to a more enlightened orientation of later and more current forestry policies. It seems, then, that the search for practical solutions should begin with a reorientation of government priorities that would reduce the scale of development envisioned for the "public welfare." This way, perhaps the problems faced by the smaller forest users can be more realistically accommodated.

Perhaps what is needed is a compromise, or an openness for a give-and-take solution, where the participants in forest activities – the government, private developers, and the small forest user – can meet together to consider the various ramifications of the issues involved. It is not hard to see who should be giving more and taking less. The uplanders do not have much to offer, except perhaps to give up a portion (which portion is the question) of the little that they have. Whatever they may claim as their own is drowned by uncertainties created by the ambiguities and biases in government programs and policies, some of which we dealt with above. The government and the private developer possess so much more than the uplander. Thus they can come more than half-way, perhaps two-thirds, three-fourths, or even all the way in the offering of solutions, to give the uplanders an edge at the bargaining table, where they (the uplanders) may provide their input into policy.

There is an urgent need to reallocate resources. This may mean that parts of the forests tagged for development projects and commercial ventures be permanently given up for the uplanders' use. We urge this particularly with respect to those areas being used or considered for projects and other activities that are only indirectly beneficial to the uplanders themselves and more directly advantageous to non-uplanders, often justified by claims based on the "public welfare" or "national interest." It is high time for a greater specificity concerning benefits for the forest occupants themselves.

Third, and related to the problem of tenure, is that which concerns an understanding of what is "public." To the government, "public" means that matters, e.g., lands and forests, of this nature are part of the government domain, which is not to be appropriated by anyone unless so authorized. Is this the popular understanding? After all, "public" also implies ownership by no one and, therefore, means that public domain may well be used

by those who urgently need it because they have little else. Thus we have vendors who sell their wares on sidewalks (while leaving enough space for pedestrians to weave in and out), and city migrants who build their shanties on public land while they earn their keep in the various factories and government projects, or through other means. Likewise, the uplanders earn a living partly through the cultivation of public forest lands for agricultural and subsistence production.

Under the government's interpretation, unauthorized occupation or use of the public domain is illegal and labeled "squatting." This is prohibited and punished. However, this interpretation may run counter to popular or customary understanding. Under the principle that what is public belongs to no one, the occupation of unused public domain may be perceived not as illegal but, rather, as quite acceptable. Given this conflicting understanding of what is public and what is not, is it any wonder that the problem of "squatting" has continued to plague our society over the years?

The 1973 Constitution mandates that the customs and traditions of cultural minorities be honored. In keeping with this mandate, a more realistic land classification should be devised to consider people's customary conceptual understanding in government policies and programs. A first step might be to have, in addition to the "public" and "private" classification of lands and forests, a "customary" classification as well.

While it may be argued that what is "customary" is already included in the term "private," we would also argue that a more specific reference to it in the policies would imply that customary classification is just as important as the two other broad terms. Furthermore, this review has demonstrated that what is customary, including those points explicitly recognized by law, tends to be buried in pronouncements, programs, and policies about private land and private use. The time has come for what is "customary" and the people's vested rights to be uncovered, dusted off, and unequivocally proclaimed so that the uncertainties that have so long blighted these can be cleared away at last.

As for people's wider involvement in forest-related activities and benefits, one can look for guidance in the policy directions for the eighties enunciated by the BFD (1980) or by the Minister

of Natural Resources,[13] as well as the implementation of forestry programs such as the Forest Occupancy Management. Perhaps the blooming of a forestry policy directed primarily towards the concerns of the Philippine poor, particularly the kaingineros, cultural communities, landless tenants, and other upland occupants may yet be realized. After all, that is what social forestry is all about – a perspective and an activity meant to improve the quality of life of the poor and the disadvantaged, specifically the rural upland dwellers. It considers people not as workers in commercial forest ventures nor grantees of legal privileges that allow them to gather low-quality or left-over timber and other forest products, like an Old Testament Ruth picking up after the authorized gleaners in the wheat fields. Social forestry is meant to get people involved, not simply as propagators or protectors of the trees but in the various decision-making processes affecting them as upland residents so that they become capable of contributing to, and participating in, matters of immediate concern not only to themselves and their families, but to the larger society as well.

All this is not to say that our lawmakers are unaware or unconcerned about these problems. Current thinking among forestry policy-makers and implementors, while still strongly biased for the commercial forest user or the "developer," indicates an awakening to the urgency of revising policies to make them more responsive to the needs of the forest occupant and the agricultural forest user. The commissioning of this study (and similar others) by the Bureau of Forest Development is a step toward that direction.

The findings highlighted here are not new, to be sure. Neither are they particularly startling. Nonetheless, it is hoped that this report will be used among many tools to evaluate and re-think policies already in the books or in the making.

13. *Fookien Times, Philippine Yearbook* (1981-82):212.