CONSERVATION AND DEMOCRATIZATION: IMPERATIVES OF NATIONAL FOREST POLICY

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This article presents a legal critique of national forest policy. The questions it seeks to answer are whether specific national forestry programs sufficiently address the issue of conservation and whether these programs allow for democratic access to and management of forest resources. While it is unavoidable with a topic like this to make comments and conclusions from an environmental and economic standpoint, the paper will as far as possible deal only with the legal issues relating to the national forest policy in the Philippines.

I. Perspective

As to the perspective that is taken in analyzing the existing national policy on forest resources, the author admits a bias for "long term direct users" of such resources. These direct users constitute individuals and communities who, for a long period of time, have been present in forest areas, engaging in small-scale utilization of forest and other upland resources, usually for subsistence purposes. They would include indigenous cultural communities who have been in such areas since time immemorial as well as migrants from the lowlands who entered the forest zones at least 20-30 years ago. These direct users are to be distinguished from commercial users, such as big logging firms, and from recent migrants.

There are two reasons for this bias. First, social justice considerations require a recognition of the rights of these direct users. For example, on the part of indigenous cultural communities, justice and equity demand recognition of their ancestral domains, many of which are found in forest zones.

Second, there is sufficient evidence to show that a national forest policy which appreciates the positive role of these direct users would be ecologically sound and desirable. It has been shown that the

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most effective and just way of preventing further environmental damage to forests and other upland resources is to recognize the documented and undocumented private property rights of communities and individuals who have been long-term occupants and direct users of these resources since time immemorial.

With these considerations, this article shall begin with the forest situation in the Philippines and shall then proceed to a discussion of the relevant provisions of the 1987 constitution. After identifying the legal standards by which the national forestry policy should be evaluated, five existing forestry programs of the Department of Natural Resources and Environment (DENR) will then be analyzed. These are: the Timber License Agreements, Timber Production Sharing Agreements, Industrial Tree Plantations, Contract Reforestation and the Integrated Social Forestry Program.

II. The Forest Situation

Lungs of the earth. An appropriate designation for the rapidly diminishing tracts of green that have become the object of concern of many a conservationist and ecologist. In 1970, forests covered around 1/3 of the planet.[1] Today, tropical rain forests, which are concentrated in South East Asia, Insular South East Asia, in West and Central Africa, and in and around the Amazon basin of Latin America, cover less than 2% of the world's surface, a drastic reduction to less than half of their original area.[2]

In the 1970's, South East Asia was one of the richest in tropical forests, accounting for 19% of the world's total reserves and 40% of the world's log exports.[3] Unfortunately, the region also suffers from the highest rate of forest destruction in the world,[4] losing 5,000 hectares every 24 hours, according to a 1984 FAO study.[5] Hamida estimates that forests in general are being demolished at the rate of 25 hectares per

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[1] Capistrano, *Wood Resources of South East Asia*, TROPICAL FORESTRY AND INDUSTRIES, Jan.-Feb. 1970, at 2.

[2] Hamida, *Stop Destruction of Rainforest Before It's Too Late, Warn Environmental Experts*, IMPACT, May-June 1988, at 25.

[3] McDowell, *Development and the Environment in ASEAN*, PACIFIC AFFAIRS, Fall 1989, at 307.

[4] *Can Asian Forests Still be Saved?*, THE SEARCA DIARY, April 1987, at 7.

[5] *Tropical Forestry Plan May Save Asia's Forests*, WORLDWOOD, Oct. 1987, at 39.

minute.[6] The effects of such heedless destruction are now being felt far and wide. Nature has gone on strike.

1. Forest Cover

The Philippines has a total land area of 30 million hectares, over 62% of which is claimed by the Government.[7] As of the end of the year 1988, 14.2 million hectares had been classified as alienable and disposable and 15 million hectares as forest lands.[8] These numbers, however, are misleading.

Under the Revised Forestry Code of the Philippines, "forest lands" are deemed to include the public forest, the permanent forests or forest reserves, and forest reservations.[9] Public forest is defined as the mass of lands of the public domain which has not been the subject of the present system of classification. Permanent forest or forest reserves are lands of the public domain subjected to the present system of classification and determined as necessary for forest purposes. Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes.[10]

With such broad definitions, the term "forest land" can in fact refer to virgin forests, old growth commercial forests, non-commercial forests, and even to totally denuded open lands. This is confirmed by the Forest Management Bureau (FMB) which estimates that only 57% of the so-called forest lands are actually covered with forest.[11]

Estimates of forest cover vary widely. DENR records show that as of 1988, 11.80 million hectares (39% of the total land area) were classified as production forests covered mostly with dipterocarp, 2.84 million hectares (9.5%) as protection forests, and 0.37 million hectares

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[6] Hamida, *supra* note 2.

[7] Umali, Agrarian Reform in the Public Domain (March 30-31, 1987) (unpublished paper presented during the Haribon Foundation/World Bank Workshop, A National Strategy for the Sustainable Development of Forestry, Fisheries, and Agricultural Resources in Manila, Philippines), cited in Lynch and Talbott, *Legal Responses to the Philippine Deforestration Crisis*, 20 N. Y. U. J. INT'L. L & POLITICS 679 (1988).

[8] *Forest Resources Management and Development*, 1988 DENR ANNUAL REPORT 6.

[9] Pres. Decree No. 705 (1975), sec. 3(d).

[10] Pres. Decree No. 705, sec. 3(a), (b), and (g).

[11] Rivera, *RP's Forest is 9.2 Hectares*, LIKASYAMAN, Sept. 1987, at 10.

(1.23%) as non-forest.[12] In comparison, Lennertz and Uebelhor, by 1988, measured the country's forests at 6.3 million hectares or only 21% of the total land area.[13] The recommended level is about 54%.[14]

2. Rate of Deforestation

Likewise, the figures on the rate of deforestation show wide differences. The Institute of Church and Social Issues at Ateneo de Manila estimates the rate of destruction of primary forest at 100,000 hectares per year.[15] The Task Force on Environmental Management and Education, on the other hand, places it at 220,000 hectares per annum.[16] Both groups predict that by the year 2000, our forests will be virtually wiped out.

From 1972-1988, the rate of deforestation was placed at 54% for forests of all types and at 58.4% for virgin stands.[17] According to a 1984 FAO study, the Philippines lost one-seventh of its forests between 1975 and 1980.[18] The Philippines, with a 1.0% annual deforestation rate (91,000 hectares deforested annually), is described by the World Resources Institute as having "higher than average rates of deforestation and large areas affected."[19] The FAO has warned that

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[12] *Forest Resources Management and Development, supra* note 8.

[13] Lennertz and Uebelhor, The Philippine Forest Resources Inventory: Application of Results to Foreign Policy (Feb. 1988) (Phil-German Forest Resources Inventory (FRI) Project, Seminar Proceedings, Q.C., Phil.), cited in Bautista, *The Forestry Crisis in the Philippines: Nature, Causes and Issues* (publication forthcoming in Development Economies Journal, Institute of Developing Economies, Tokyo, Japan).

[14] Novenario, *Compromising Our Forests and Future,* Daily Globe, Feb. 10, 1990, p. 13.

[15] ICSI, *Forests Can Never Be Replaced,* The Manila Chronicle, July 23, 1988, pp. 4-5.

[16] Task Force on Environment Management and Education, *Environmental Management and Education in the Philippines Today,* July-Dec. 1986, cited in Lynch and Talbott, *supra* note 7.

[17] Sen. Mercado's privilege speech first presented to Pres. Aquino during the visit of the Swedish Minister in April 1988, cited in Haribon Foundation's response to the pending Lower House Bills presented at the Congressional Hearings of the Committee of Natural Resources, Aug. 4, 1988.

[18] *Tropical Forestry Plan May Save Asia's Forests, supra* note 5.

[19] 1987 WORLD RESOURCES REPORT, cited in Repetto, *The Forest for the Trees? Government Policies and the Misuse of Forest Resources,* WORLD RESOURCES INSTITUTE, May 1988, at 6.

the Philippines, along with Indonesia, Malaysia, and Thailand, could lose all of its productive natural forests in less than 40 years.[20]

Tropical rain forests are not only watersheds; they are also the homes of countless species of plants and animals, many of them as yet undiscovered or unidentified. Tropical rain forests exhibit a rich biodiversity unmatched by any other biome. They hold sources of medicines and industrial products and contain a valuable but largely unexplored gene pool that can be of great use to agriculture. Forest destruction has deprived us of these resources. An estimated 40% of the country's native species has been irretrievably lost due to the destruction of our forests.[21]

3. Causes of Deforestation

Where lies the blame for the critical state of our forests today? This question, an extremely touchy one, has generated various polarized answers.

Commercial loggers have been denounced as the root cause of the present forest crisis. In 1988, there were 137 major logging concessions in the Philippines.[22] These, together with the minor concessions and the rampant illegal logging operations, could conceivably be responsible for the sadly depleted condition of our forest resources.

On the other hand, some authors are of the opinion that loggers are no longer mainly to blame for the rapid deforestation. They point at the *kaingineros*, who practice swidden agriculture, as the primary culprits. According to the FAO, forest resources are more rapidly destroyed in areas which have a high population density and where shifting cultivation has not been effectively stopped.[23] Reports place the number of *kaingineros* in the Philippine uplands at 15 million and they are blamed for 75% of the deforestation.[24] Other authors, however, maintain that such estimates of kaingin-caused deforestation

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[20] *Asia's Forests Are Becoming Poverty Wastelands*, AGRIBUSINESS, Feb. 1989, at 10 .

[21] Novenario, *supra* note 14.

[22] Walpole, *Stop Blaming The 'Kaingeros' for the Destruction of our Forest*, The Manila Chronicle, Aug. 10, 1988, p. 4.

[23] *Asian Forest Resources Ravaged at Alarming Rate*, THE PHIL. LUMBERMAN, Jan. 1982, at 41.

[24] Walpole,*supra* note 22.

merely reflect the prejudiced lowlander's view of the upland farmer's agricultural methods.[25]

Both destructive logging and kaingin-making are considered by some authors as the main agents of large scale forest destruction. To these two practices is attributed the destruction of 1.24 million hectares of commercial dipterocarp forest in a mere 10 years.[26] As Reyes succinctly puts it, "destructive logging is the biggest facilitator of kaingin-making."[27]

It is unfortunate that the word *kaingin* has acquired a destructive connotation, for this is both unjust and untrue. The *kaingin* methods of the different kinds of upland dwellers should be distinguished. For example, the cultural communities or traditional *kaingineros*, as they are called, through centuries of living off the land, have developed environmental awareness and are wise to the ways of caring for their land. *Kaingin*, as they practice it, is increasingly recognized as being non-destructive to the environment. Not surprisingly, two of the more successful social forestry sites in the Philippines are covered by ethnic communities. It is also interesting to note that tribal peoples inhabit the best preserved forests of the world.[28]

In the final analysis, the loss of our forests can be attributed to a number of factors: [29]

(1) State policies with respect to land classification and distribution -- the concentration of landholdings in the hands of very few people drive thousands to the forests in search of land;

(2) Development patterns of the country -- increasing population; slow growth of job opportunities in the city and countryside;

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[25] Aguilar, Social Forestry for Upland Development: Lessons from Four Case Studies 2-4 (1982).

[26] Reyes, Perpetuating the Dipterocarp Forest in Productive Condition, in 1984 THE KEY TO PHILIPPINE FOREST CONSERVATION: THE DEFENSE OF THE DIPTEROCARPS 46.

[27] *Id.*

[28] *Tropical Forests: A Plan for Action*, THE ECOLOGIST, 1987; reprinted in IMPACT, May-June 1988, at 21-22.

[29] Bautista, *The Forestry Crisis in the Philippines: Nature, Causes, and Issues* (publication forthcoming in Developing Economies Journal, Institute of Developing Economies, Tokyo). *See* also *Tropical Forests: A Plan for Action, supra* note 28 and Repetto, *The Forest for the Trees? Government Policies and the Misuse of Forest Resources*, WORLD RESOURCES INSTITUTE, May 1988, at 12-13.

(3) Government policies toward forest exploitation -- the promotion of development schemes such as plantations, ranching, and dams which have led to the bulldozing and inundation of prime forest land;

(4) Weak enforcement or even non-implementation of state policies on the forest and natural resources;

(5) Exploitation-oriented state policies on natural resources;

(6) Limited perspective and interests of loggers and exporters; and

(7) Displacement of traditional communities exercising customary law over the forest, leading to weakened control over resource use.

In the face of such rapid deterioration in the forest situation, an analysis of the national forest policy assumes importance.

III. Constitutional Standards

Three constitutional concepts are relevant to the issue of access to forest resources. These are: *first*, the concept of ownership of forest resources; *second*, the concept of exploration, utilization and development of said resources; and *third*, the mandate on the State to protect the environment.

1. Ownership and Control of Forest Resources

The principal legal concept that the Philippine government relies upon to control the utilization and management of natural resources is the *regalian doctrine*. The premise of this concept is that all natural resources in the territory belong to the State and therefore private ownership or title must emanate from the State. Hence, the regalian doctrine, according to the official view, states that all lands not covered by official documentary certificates of title are presumed to be owned by the colonial regimes' sovereign successor, the Republic of the Philippines.

This view has found expression in Article XII, Section 2 of the 1987 Constitution which provides that:

> All *lands of the public domain*, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, *forests or timber*, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

On the basis of the regalian doctrine, the Executive Branch, through the DENR, exercises an almost unrestrained control over land tenure decisions affecting millions of Filipinos living within the so-called public domain. This includes all forest lands.

Lands which have been occupied by indigenous cultural communities since time immemorial are also included among lands of the public domain because they are usually situated in upland forest zones. By such inclusion, these time-immemorial occupants have been effectively disenfranchised of their rights to their ancestral lands, resulting in their being categorized as squatters in their own lands. This injustice has been further institutionalized by Section 15 of the Revised Forestry Code (P.D. No. 705) which provides that no land of the public domain eighteen percent (18%) in slope or over shall be classified as alienable and disposable. Under this provision, majority of indigenous uplanders have become illegal occupants in their own lands, subject to criminal prosecution.[30]

The propriety of using the regalian doctrine as the foundation of Philippine natural resource laws has been questioned by legal scholars. It has been pointed out that the doctrine is not only patently unjust but it is also legally and historically flawed.[31]

While it was the principal weapon used by the two colonial masters of the Philippines, Spain and the United States, to consolidate their use and control of Philippine natural resources, political independence did not lead to the rejection of the regalian doctrine. Ironically, the same concept was enshrined in all post-independence constitutions of the Philippines, thus ensuring the systematic marginalization of many Filipino citizens.

What makes matters doubly ironic is the fact that both Spanish law and U.S. and Philippine jurisprudence do not support the inclusion of ancestral lands in the public domain.

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[30] Pres. Decree No. 705 (1975), sec. 69.

[31] *See* Royo, *Regalian Doctrine: Whither the Vested Rights?*, 1 PHILNAJUR 1 (1988).

The Law of the Indies, for example, provides evidence of recognition of indigenous rights over property. In fact, as one author concluded:

> Contrary to the popular belief that respect or recognition of time-immemorial possession by Indians is an exception to the general rule that all lands belong to the Crown, these laws ordain that native or indian land rights are primary and superior.[32]

As early as 1909, native titles have already been recognized in the Philippines. In the landmark case of *Cariño vs. Insular Government*,[33] the Court laid down the rule recognizing native titles, saying that

> it might, perhaps, be proper and sufficient to say that when as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.

The Cariño rule clearly establishes, at the very least, an exception to the regalian doctrine by excluding from its operation the ancestral domains of indigenous cultural communities. This interpretation finds constitutional support in Article XII, Section 5 of the 1987 Constitution which provides that the State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

Unfortunately, the government, through its forestry programs, among others, continues to insist on including ancestral lands within the public domain. The continuing underestimation of the official population of upland areas is just one indication of the failure to concretize this Constitutional recognition through workable policies. While there may be a trend towards giving indigenous cultural communities more access to the natural base, the DENR programs remain based on the erroneous premise that ancestral lands are part of the public domain. All occupants of said lands, irrespective of length of occupancy, are still considered squatters. The pejorative label of *kaingero* continues to be used indiscriminately against all upland cultivators, conveniently ignoring the variations in farming practices and ecological sensitivity between different users.[34]

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[32] *Id.*

[33] 41 Phil. 935.

[34] *See* Lynch and Talbott, *Legal Responses to the Philippine Deforestation Crises*, 20:3 N. Y. U. J. INT'L. L. & POLITICS 679 (1988).

Among the reasons that is frequently cited to support this situation is the need to protect these lands, usually located in upland forest zones, from ecological misuse and degradation. The implication is that the time-immemorial occupants are incapable of utilizing upland forest resources in an ecologically sound manner. This is unfortunate as it ignores the role of upland indigenes in maintaining an ecologically sound environment. Because they have been on the land for generations, these communities possess a wealth of local knowledge and concern, including a reverent attitude toward, as well as a duty to conserve, the natural bounty around them. Furthermore, it must be pointed out that the monopolization by the DENR of the mandate to protect the forests has clearly not yielded satisfactory results. Forest denudation continues to escalate even as commercial users derive the most profits from upland resources.[35]

From the point of view therefore of both equity and ecology, there is a need to rethink the application of the regalian doctrine to ancestral lands in forest zones, and by analogy, to forest lands occupied and held by long-term migrants. The national government must be willing to yield both ownership and total control over upland resources. This is necessary if indeed there is to be democratization of access to and management of forest resources. This is also an imperative demanded by the Constitution.

2. Modes of Utilizing Forest Resources

Article XII, Section 2 of the 1987 Constitution, the provision which embodies the regalian doctrine, likewise establishes the modes of utilizing forest resources. Said provision states:

> The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens...
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> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens...

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[35] *See* La Viña, *Recognition of Ancestral Domains: An Imperative for a Democratic Upland Resource Management*, in OUR THREATENED HERITAGE, 1989.

An analysis of the above provision reveals three modes by which all natural resources, including forest, could be explored, developed and utilized. These are: first, the State may directly undertake such activities; second, the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens; and third, Congress may, by law, allow small-scale utilization by Filipino citizens.[36]

This enumeration in Article XII, Section 2, according to one author, is exclusive. Under the principle of *inclusio unius est exclusio alterius*, the Constitution, by enumerating the allowable modes of exploration, development and utilization, clearly intended to exclude all others which are not enumerated.[37]

This restrictive interpretation finds support in the Constitutional Commission deliberations on this provision. During said deliberations, Commissioner Villegas, Chairman of the Committee on National Economy and Patrimony, was asked whether, upon the approval of the Constitution, no timber or forest concessions, permits or authorization can be exclusively granted to any citizen of the Philippines nor to any corporation qualified to acquire lands of the public domain. The latter impliedly answered in the affirmative by saying "would Commissioner Monsod like to comment on that? I think his answer is yes."[38]

There are two obvious reasons for doing away with the former system of granting licenses, concessions or leases.

The first is economic. Under the old system, the government benefits only through fees, charges, *ad valorem* taxes, and income taxes of the exploiters of Philippine natural resources. Compared to the enormous profits reaped by licensees, grantees and concessionaires, these benefits are minimal.[39]

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[36] Lotilla, *Developing the Law on Fisheries and Living Aquatic Resources*, 10 PHIL. L. GAZ. 1, 2 (1989).

[37] *Id.*

[38] 3 RECORDS OF PROCEEDINGS OF THE CONSTITUTIONAL COMMISSION 260, quoted in Lotilla, *supra* note 36, at 2.

[39] Draft Proposal of the 1986 U.P. Law Constitution Project, p. 9, quoted in Lotilla, *supra* note 36, at 2-3.

The second reason is ecological. The rejection of the former system is partly based on the realization that unhampered commercial exploitation of our natural resources is causing massive environmental degradation. Hence, under the new system, where the State plays a more active and dominant role, it is hoped that the State will not only obtain a greater share in the profits but "it can also actively husband its natural resources and engage in developmental programs that will be beneficial to the nation."[40]

While the State is accorded the primary responsibility for development and utilization of forest resources, participation by the private sector is not prohibited under the Constitution. Both the second and third modes allow such a participation.

Under the second mode, three types of agreements are allowed: co-production, joint venture, and production-sharing. It would not be practicable, in this paper, to discuss the characteristics of these agreements and how they differ among themselves as well as with license, lease or concession agreements. Such a discussion is too technical for our purposes. It is sufficient to observe that the common element among these agreements is "the intent to give the State greater participation in decision-making and in the sharing of profits".[41]

Under the third mode, small-scale utilization by Filipino citizens, the State is mandated to play a less active role. This mode was included "in recognition of the plight of marginal fishermen, forest dwellers, gold panners and others similarly situated who exploit our natural resources for their daily sustenance and survival".[42]

In sum, there are two practical implications of the above discussion on the allowable modes of utilization of forest resources.

First, it is clear that the Constitution prohibits the State from granting leases, licenses or concessions for the commercial exploitation of forest resources. This prohibition took effect on February 2, 1987 upon ratification of the 1987 Constitution. It will not, however, affect rights which were acquired prior to the aforementioned date.[43] Concretely,

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[40] *Id.*

[41] Lotilla, *supra* note 36, at 4.

[42] Draft Proposal of the 1986 U.P. Law Constitution Project, p. 9, quoted in Lotilla, *supra* note 36, at 4.

[43] Lotilla, *supra* note 36, at 8.

this means that after February 2, 1987, the government can no longer grant timber licenses and logging concessions nor can it extend or renew existing grants. However, timber license agreements already in effect as of said date will have to be respected in accordance with the rules existing before that date.[44]

Second, direct users of forest resources, engaged in small-scale utilization, can continue to make use of such resources in accordance with existing laws.

3. Protection of the Environment

Another standard with which a forestry program should be evaluated is its environmental impact. This is mandated by Article II, Section 16 of the Constitution which requires the State to protect and promote the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

III. Existing Forestry Programs

Applying these constitutional standards, an analysis of some of the major forestry programs of the DENR is now appropriate.

1. Commercial Logging

a. *Timber License Agreements*

The Timber License Agreement (TLA) is familiar to most Filipinos. Commercial logging, concessions constituting tens of thousands of hectares, persons becoming millionaires overnight - all these are possible because of timber license agreements.

Simply put, a TLA is an agreement between the national government and a private person, natural or juridical, granting the latter the privilege to engage in logging activities, *i.e.* , to cut and harvest timber, in a specific forested area under certain terms and conditions. Among others, incorporated in a TLA are the following:

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[44] *See* Exec. Order No. 278 which incorporates into statutory law this interpretation of art. XII, sec. 2.

(a) A stipulation of the annual allowable cut or harvest of the particular forest land included in the TLA;[45]

(b) The duration of the privilege to harvest timber, the maximum period of which is 25 years, renewable for another 25 years. The law, however, provides that the privilege shall automatically terminate the moment the harvestable timber has been utilized without leaving any logged-over area capable of commercial utilization;[46]

(c) The size of the concession, which shall be limited to that which a person may effectively utilize and develop for a period of fifty years;[47]

(d) A provision requiring the licensee or lessee to implement a reforestation program;[48]

(e) A verification that the area is vacant and available for logging purposes;[49]

(f) A stipulation stating that the protection of the concession area shall be the full responsibility of the licensee;[50]

(g) The payment of license fees and other forest charges;[51] and

(h) The stipulation that it can be revoked by the government for just and valid causes, including non-compliance with its terms and conditions. Under the Revised Forestry Code, a TLA, as a privilege granted by the State, can be amended, modified, or canceled by

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[45] Pres. Decree No. 705 (1975), sec. 26.

[46] Pres. Decree No. 705, sec. 27.

[47] Pres. Decree No. 705, sec. 28.

[48] Pres. Decree No. 705, sec. 27.

[49] This is a standard clause in a TLA.

[50] *Id.*

[51] *Id.*

> the President whenever required by the national interest.[52]

Bearing in mind the above-enumerated characteristics of TLAs, several critical comments are in order.

First, from the standpoint of social justice, it is clear that the system of granting TLAs falls short of constitutional standards. For example, the indiscriminate granting of TLAs by the DENR has, through the years, resulted in massive dislocation of indigenous peoples and other uplanders. Notwithstanding the requirement that the concession area must be vacant, it is a fact that there are very few upland areas which remain unoccupied.

Second, TLAs are obstacles to democratization of access to forest resources. Only those with the necessary capital and resources can hope to engage in large-scale commercial logging. Historically, less than five hundred individuals or entities have engaged in such an activity. In most cases, it is a fact that logging concessions usually cover thousands, even tens of thousands, of hectares. This is in spite of the provision in the Revised Forestry Code which calls for a diffusion of the privilege and its benefits to as many qualified and deserving applicants as possible.[53]

Third, TLAs, as the legal device which makes commercial logging possible, are responsible for much of the deforestation that the Philippines has experienced and continues to experience. In spite of the stipulation that loggers must reforest, we know for a fact that in many cases, no reforestation happens in concession areas. Moreover, when TLAs are granted over unoccupied primary forests, the logging roads that are built inevitably result into opening up the area for lowland migration.

Finally, as already pointed out, TLA's are prohibited under the 1987 Constitution. No new TLAs are allowed and upon the expiration of existing TLAs, they can no longer be renewed or extended. However, while TLAs are on the way out,[54] its replacement, the Timber Production-Sharing Agreement (TPSA) contains provisions similar to TLAs. Except for the share of the government in the logging

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[52] Pres. Decree No. 705, sec. 20.

[53] Pres. Decree No. 705, sec. 58.

[54] Existing TLAs number around 75. According to DENR Secretary Fulgencio Factoran, he hopes to bring this down to 50 or less by 1992. However, the area covered by TLAs was not substantially decreased.

proceeds, which is substantially increased, the TPSA is almost a clone of the TLA.[55] Hence, the above comments continue to be relevant even with the expiration of all TLAs.

In sum, it is clear that the constitutional prohibition on TLAs is justified by both social justice and ecological considerations. That the government continues to allow existing TLAs as well as TPSAs is an indication not so much of rational and sound policy-making but of the political pressure that commercial loggers are capable of exerting.

b. *Timber Production Sharing Agreement*

A Timber Production Sharing Agreement is a State-granted privilege to develop and utilize timber resources in a specified area whereby the government and the TPSA holder share in the timber cut, gathered, or produced or in the cash value of the same.[56] The license may be issued for a period not exceeding 25 years, renewable for another 25 years, at the option of the Secretary of Environment and Natural Resources.[57]

The government policies on timber resources are (1) to ensure the sustainable productivity and expanding availability of, and equitable access to, timber resources for the continuing support to dependent industries and the generation of employment opportunities and revenues; (2) to provide a system of rational harvesting and gainful and efficient utilization of the resource; (3) to provide the government with an equitable share in the utilization of the resource; and (4) to rationalize timber-dependent industries.[58]

To pre-qualify for bidding, the applicants must be either Filipino citizens or corporations or associations organized under Philippine laws, at least 60% of whose capital is owned by Filipino citizens.[59] Disqualified are those who are already holders of TLAs or TPSAs; those who have derogatory records such as violation of anti-dummy laws, tax evasion, illegal logging or smuggling, or unauthorized subcontracting of forestry patents and licenses; and former holders of TLAs and/or other forest permits which had been cancelled or not

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[55] *See* DENR Adm. O. No. 23 (1989).

[56] DENR Adm. O. No. 23, sec. 3.

[57] DENR Adm. O. No. 23, sec. 31.

[58] DENR Adm. O. No. 23, sec. 31.

[59] DENR Adm. O. No. 23, sec. 31.

renewed because of violation of forestry rules and regulations.[60] In the case of corporations and associations, the qualifications of the officers or principal stockholders/partners shall be considered.

The areas open to TPSA, provided they are unencumbered, are (1) virgin or old growth forests; (2) residual forest within permanent forest areas which have not been logged for at least 25 years; (3) alienable and disposable lands containing timber; (4) civil and other reservations; (5) expired/cancelled TLA and expired PTPA with remaining volume that can be economically and sustainably utilized; and (6) reforestation areas and other plantations within forest lands that are available for harvesting, without adversely affecting environmental considerations.[61] The maximum area that can be covered by the grant is 40,000 hectares, in line with the state policy of providing equal access to timber resources without disturbing the supply of raw materials to dependent industries.[62]

The prohibited areas are the national parks, proclaimed and/or critical watersheds, wildlife sanctuaries, wilderness areas, islands with an area 10,000 hectares or less, areas covered by a logging ban or where logging is prohibited by the Secretary, areas with existing TLA, and areas covered by conflicts, appeals, and/or other legal claims unless otherwise authorized by the Secretary.[63]

Implementation of the TPSA program began with the issuance of Provisional Timber Production Sharing Agreements (PTPSA). Six pilot projects were set up, the evaluation reports of which are still with the Office of the Secretary and are not yet available for release.

The Logging Ban Issue

A number of bills concerned with the logging ban have come out of the halls of Congress. Among them is the controversial Senate Bill No. 1404, introduced by Senators Alvarez *et. al.*, which favors a partial logging ban. This bill, known as the selective logging bill, bans logging in national parks, game refuges, bird sanctuaries, wilderness areas, watershed areas, natural mangrove forests, geothermal reservations, small islands of not more than 10,000 hectares land area,

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[60] DENR Adm. O. No. 23, sec. 31.

[61] DENR Adm. O. No. 23, sec. 31.

[62] DENR Adm. O. No. 23, sec. 31.

[63] DENR Adm. O. No. 23, sec. 31.

virgin and old growth forests, and in provinces with 40% or less forest cover based on their individual land area.[64]

Logging operations may also be prohibited in provinces with more than 40% forest cover if the Sangguniang Panlalawigan, upon petition of the residents and after public hearings, files an application with the DENR for a total ban.[65] Finally, logging may also be banned in areas open to logging if the DENR determines after thorough investigation that the logging operations have caused or are causing damage to the environment.[66] However, logging may be allowed in concession areas with at least 50% forest cover even if these concessions are located in a province with less than 40% forest cover, subject to the provision that should the forest cover in the concession fall below 50%, then the TLA will be deemed automatically cancelled.[67]

To discourage illegal logging, the selective logging bill proposes to punish violators with a fine of not less than ten times the assessed value of all the logs and timber found in the possession of the offender at the time of apprehension and by imprisonment of not less than six years but not more than ten years.[68] These fines, as well as forest charges and all income derived from the utilization of forest products, shall accrue to the National Treasury and shall be used as a forest protection and maintenance fund.[69]

Senate Bill No. 1404 was offered in substitution of five log ban and forest conservation bills earlier filed in the Senate, namely: Senate Bill No. 706,[70] introduced by Senator Pimentel, Jr., recommending a total logging ban for the next 25 years, Senate Bill No. 806[71]

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[64] Entitled "An Act to Protect the Forest by Banning Logging Operations in Certain Provinces, Providing Mechanisms for Its Effective Implementation and for other Purposes", sec. 4.

[65] S. No. 1404, sec. 4.

[66] S. No. 1404, sec. 4.

[67] S. No. 1404, sec. 8.

[68] S. No. 1404, sec. 26.

[69] S. No. 1404, sec. 23.

[70] Entitled "An Act Totally Banning Logging Operations for the Next Twenty-Five Years".

[71] Entitled "An Act to Prohibit Logging and Timber Cutting Within a One Hundred Kilometer Radius in All Primary Sources of Hydroelectric Power Systems, Hereby Declaring All Timber Concessions or Licenses in These Areas Cancelled, and for Other Purposes".

introduced by Senator Tamano, Senate Bill No. 917[72] introduced by Senator Alvarez, Senate Bill No. 1010[73] introduced by Senator Romulo, and Senate Bill No. 1094[74] introduced by Senator Guingona, Jr.[75]

The selective logging bill calls for a limited ban so as not to endanger the logging industry.[76] Its supporters claim that the bill makes an effort at balancing conflicting economic, environmental, social and political interests, and reconciling the same with the principle of sustainable development.[77] Principal author Senator Alvarez says that Senate Bill No. 1404 provides not only for a selective log ban but also for a program of sustainable development, which he defines as allowing the use of natural resources for the needs of the present generation without sacrificing future needs of succeeding generations.[78] The bill, Senator Alvarez claims, is in harmony with and derived from the *Master Plan for Forestry Development*, a 7-year study undertaken by the DENR.[79]

The problem with the idea of sustainable development is that it does not take into account the immediate needs of the impoverished people who make up the bulk of the country's population. Is the goal of sustainable development truly attainable in a poor, third world, developing country such as ours? What is meant by the phrase "needs of the present generation"?

Logging concessionaires, according to the Asian Development Bank, can realize, after expenses, net profits of as much as P100,000 per hectare harvested at the first cutting. This figure already assumes full

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[72] Entitled "An Act to Ban Logging Operations in Certain Provinces of the Philippines".

[73] Entitled "An Act to Conserve the Country's National Forest Resources, Prohibit Logging Operations for the Purpose and for Other Purposes".

[74] Entitled "An Act to Rationalize a Comprehensive Logging Ban in Order to Protect and Conserve the Remaining Forests and for Other Purposes".

[75] Committee on Natural Resources and Ecology, S. Rpt. 918, 3rd Sess. (1989).

[76] Fernandez, *Senators Press Alvarez To Scrap Selective Logging Ban Bill*, Daily Globe, April 23, 1990, pp. 1 and 8.

[77] Dipasupil, (Committee Secretary, Senate Committee on Natural Resources and Ecology), *There are no Quick Fixes to the Forest Crisis*, Daily Globe, March 30, 1990, p. 5.

[78] Alvarez, *Alvarez On Selective Logging Ban*, Daily Globe April 25, 1990, p. 5.

[79] *Id.*

compliance with the terms and conditions of the license.[80] Such huge profits are hardly surprising considering that the government collects only P30.00 out of the average selling price of P2800/cubic meter of log. The government thus earns only P3000/hectare while it has to spend P15,000 - P25,000/hectare of mostly borrowed money to finance its reforestation schemes.[81] It is clear that the "needs" that are being met are the needs of the logging concessionaires and not the needs of the general public. The cost to the country, its land and its people is far greater than the $300 million in foreign exchange earnings reportedly generated by the logging industry.

Selective logging, it is argued, is scientifically sound. It is believed by some ecologists that high species diversity can be maintained only at intermediate levels of disturbances. In other words, if there is too much disturbance to a community or in the other extreme, if there is no disturbance at all, then species diversity in that community will decrease. If disturbance is too frequent, only colonizing species capable of quick maturation can occupy a site.

On the other hand, if a community is never disturbed, the most efficient or most aggressive competitor will eliminate the others and create a monoculture.[82] Under natural conditions, the desired intermediate levels of disturbances are provided by fires, typhoons, windstorms, and the like. It is contended that these intermediate levels of disturbances can also be facilitated through judicious and selective logging.

Another argument put forward by supporters of the selective logging bill is that old timber could benefit from periodic thinning. Through selective logging, diseased trees can be felled to arrest the spread of the disease and overgrown and mature trees can be harvested to allow the remaining trees to grow to their full potential. If this is the case, then it is strange that Senator Alvarez' selective logging bill bans logging in old growth forests, which could bear some thinning, and permits it in secondary growth forests of eight provinces, which according to sound forest management practice, need to be protected.[83]

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[80] Haribon Foundation, Restoring the National Economy and Patrimony (1988) (This article expressed Haribon Foundation's response to the pending Lower House Bills presented at the Congressional Hearing at the Committee of Natural Resources).

[81] *Id.*

[82] KREBS, ECOLOGY: THE EXPERIMENTAL ANALYSIS OF DISTURBANCE AND ABUNDANCE 590 (3rd ed., 1985).

[83] Editorial, *Stop Logging*, Daily Globe, Feb. 18, 1990, p. 4 .

Since about 60% of the country's remaining timber stands are in these eight provinces, namely Palawan, Agusan del Sur, Surigao del Sur, Kalinga-Apayao, Aurora, Quirino, Isabela, and Cagayan, the good intentions of the selective logging bill are suspect.[84]

There is no question that our country's tropical rain forests, or the remnants thereof, are extremely disturbed. Species diversity is plummeting, our forested land area, diminished. A suggested solution — selective logging — has been vilified by many. The alternative, the proposed total logging ban, has generated its share of virulence. The debate on their respective merits and faults continues. A study of the provisions of both bills is in order.

Forest cover is the basis upon which the selective logging ban rests. Logging is prohibited in provinces with 40% or less forest cover based on their individual land area as determined by the Department of Environment and Natural Resources (DENR) and the National Mapping and Resource Information Authority (NAMRIA).[85]

Senate Bill No. 1404 defines "forest cover" as follows: "forest cover includes pine forest, mossy forest, dipterocarp forest (closed and open canopy) and mangrove vegetation."[86] This does not tell us much. Is forest cover measured by the canopy or by the diameter of the tree trunks in the forest?

It has been noted that Senate Bill No. 917, a partial logging bill also authored by Senator Alvarez and the predecessor of Senate Bill No. 1404, did not explain how forest cover was to be measured. The same can be said for Senate Bill No. 1404. When the latter refers to greater than 40% forest cover, it is presumably referring to crown or canopy cover without recognizing forest density. Thus, a province may indeed have greater than 40% forest cover (and therefore be exempt from the logging ban) but have very patchy forests.

Forests may be categorized into adequately stocked (greater than 40% crown cover), inadequately stocked (20 - 40%), and open land.[87] The phrase "adequately stocked" as used in government statistics means adequate forest cover for major economic extraction of timber (which is 40% forest density), and not adequate forest cover for a stable environment or for natural forest regeneration (which requires

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[84] *Id.*

[85] S. No. 1404, sec. 4.

[86] S. No. 1404, sec. 3 (m).

[87] Walpole, *Saving the Forests for the People*, INTERSECT, March 1989, at 7.

70% forest density).[88] Therefore, a government assurance that a forest is "adequately stocked" should be taken with a grain of salt.

Opponents of the selective ban question the need to legislate it. The selective log ban can be carried out through executive order. TLA provisions allow the President of the Philippines to change or revoke the permit. In fact, there is a selective ban already in existence since the DENR, by itself, has banned logging in certain denuded provinces.[89]

The tougher total logging ban bill, Senate Bill No. 706, was authored by Senator Pimentel, Jr. and 16 other senators. The senators differ only with regard to the period of the ban, with Senator Pimentel favoring a 25-year period and Senator Maceda opting for a total ban up to the year 2000.[90]

Total prohibition of logging is not new in the Philippines. Even today, a total logging ban is in force in certain parts of the country. Since the start of a crackdown on illegal logging in 1988, a logging moratorium has been in effect in the provinces of Nueva Vizcaya, Agusan, Isabela, Samar, Nueva Ecija, Quezon, and Aurora. All logging operations, including those of legitimate TLA holders were suspended by the moratorium.[91] The moratorium was imposed in the province of Samar on May, 1989, following successive calamities of flashfloods and droughts.[92] The DENR has also implemented a total ban in the Ilocos region, Agusan, Surigao, Palawan, and other highland areas. The ban covers virgin forest areas with a slope of at least 50% and mossy forests with elevations of at least 1,000 meters.[93]

As an additional measure, the DENR imposed a total ban on lumber exports to take effect on July 1989. Strong opposition by wood exporters prompted the DENR to implement a partial ban instead.[94] This nationwide partial ban on lumber exports exempted only lumber

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[88] *Id.*

[89] Son, *Log Ban Bill Snagged at the Senate*, The Manila Chronicle, March 30, 1990, p. 3.

[90] Fernandez, *Senators Press Alvarez to Scrap Selective Logging Ban Bill*, Daily Globe, April 23, 1990, pp. 1, 8.

[91] Paez, *et al.*, *Senate Probes General in Illegal Logging*, The Manila Chronicle, Feb. 3, 1990, p. 7.

[92] Garcia, *DENR Imposes Total Ban on Logging in 7 Provinces*, Daily Globe, Feb. 6, 1990, pp. 1, 7.

[93] *Id.*

[94] Narisma, *Ban on Lumber Exports Imposed*, The Manila Chronicle, Sept. 18, 1989, p. 18.

products, wood-manufactured and other wood-finished products which are further manufactured from lumber or wood, as well as lumber and lumber products and boules sawn from imported wood under bonded warehouse or processed inside export processing zones.[95]

Similarly, there is also a pending Senate bill which seeks to absolutely prohibit the exportation or attempt at exportation of logs or timber, including boules, except those harvested from industrial tree plantations, tree farms, and other forest plantations.[96] This bill was introduced by Sen. Mercado and endorsed by Senators Mercado and Alvarez.

Among the objections to the total ban are that it will require importation of logs, result in loss of foreign exchange earnings from wood exports and forest charges collected by the government, entail additional costs for manpower and equipment, deprive thousands of workers of their jobs, write off millions of pesos of investment capital, and tempt people to break the law and log illegally due to escalating demand and prices of wood.[97]

However, considering the environmental disaster that confronts the Philippines, drastic measures are clearly in order. One such measure is the total logging ban.

Senate Bill No. 706 was referred to the Committee on Natural Resources and Ecology, of which Senator Alvarez is the chairman. As already stated, the Committee recommended that Senate Bill No. 706 and four other related bills be substituted by Senate Bill No. 1404.[98] Senate Bill No. 706 is objectionable since it sought to ban logging of all types for a period of 25 years.[99] This would include small-scale logging for domestic purposes. It would also prejudice indigenous people who live off the land. Clearly, the bill did not address the problems of poverty, housing, and fuel needs of the upland dwellers.

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[95] DAO No. 19 (1989).

[96] S. No. 471 entitled "An Act to Absolutely Prohibit the Exportation or Attempt to Export Logs or Timber and Boules, Providing Penalties Therefor and For Other Purposes", sec. 4.

[97] Dipasupil, *There Are No Quick Fixes To The Forest Crisis*, Daily Globe, March 30, 1990, p. 5.

[98] Committee on Natural Resources and Ecology, S. Rpt. 918 recommending approval of S. No. 1404 in substitution of S. Nos. 706, 806, 917, 1010, and 1094, Cong., 3rd Sess. (1989).

[99] S. No. 706, sec. 1.

A better measure, and the one being pushed by Senator Mercado, is a total ban of all commercial logging for a specified period. Senator Mercado's proposed "killer amendment" to Senate Bill No. 1404 makes it unlawful for any natural or juridical person to cut or destroy any tree standing on, or engage in commercial logging operations in, all types of forest lands for a period of 25 years. Exempted from coverage of the amendment are industrial tree plantations, tree farms, nipa and mangrove forests, and other agro-forest farms planted to plantation species.[100]

A study by the US Agency for International Development (USAID) does not favor a total logging ban, in that responsible operators who have cared for their residual stands are more likely to maintain their second growth than will the government.[101] This study puts too much faith in loggers and is belied by the performance of commercial loggers, past and present, in the Philippines. It was revealed by satellite data that in 1988, 4 million hectares or 65% of the 6.13 million hectares under logging concession had no forest cover. Out of the 154 concessionaires, 91 had more than 60% of their area without forest cover.[102] TLA licenses require concessionaires to maintain a minimum of 40% forest cover. For the most part, this minimum was not met.

According to the DENR Master Plan, only 5 - 10% of a typical logging area is cleared of trees.[103] Even without enrichment planting, these areas are supposedly eventually reclaimed by the forest through revegetation from adjacent areas. The DENR asserts that even in the worst cases, the forest is able to renew itself if not converted to other uses. Admittedly, the forest has vast capacities of regeneration but natural reforestation is a slow process and it could take years before the

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[100] The debate on the logging ban question has been raging for months, with Sen. Mercado claiming that 14 senators have agreed to back his proposal, and Sen. Alvarez claiming an equal number of supporters. The "killer amendment" was eventually adopted with modifications. This version of Senate Bill No. 1404, known as the "Total Commercial Logging Ban Act of 1991", was passed by the Senate on third reading. The proposed legislation bans "commercial logging operations in all types of natural forest" for a period of thirty (30) years from the effectivity of the Act. *See* S. No. 1404, secs. 4 and 5. The bill must still be reconciled with similar legislation passed by the House of Representatives and is awaiting action by a Senate and House Conference Committee convened for that purpose.

[101] Melencio, *DENR Recommends Destruction of Bridges to Save Virgin Forests*, Daily Globe, Feb. 5, 1990, p. 1.

[102] Haribon Foundation, *supra* note 80.

[103] DENR, *Logging as Cause of Forest Destruction*, MASTER PLAN FOR FORESTRY DEVELOPMENT 2 (draft).

forest can become once again stable. Moreover, the DENR itself acknowledges that logging exposes the forest to conversion to other uses. Logging provides the roads through which migrants in search of land may enter.[104]

Proper logging is described by the Master Plan as merely crop harvesting done at predetermined times, leaving a healthy forest and providing government with revenue, industries with raw material, people with employment, and the country with foreign exchange.[105] The Master Plan even refrains from decrying poor and illegal logging, claiming that it does not permanently destroy the forest which continues to perform its former protective function after "just a short recovery period." Poor and illegal logging, it is contended, is bad from the standpoint of sustainable production, but not in the way they are being pictured --- as the cause of forest destruction and its consequent environmental damage. This remarkably naive and blinkered view turns a blind eye to the successive calamities that have befallen the Philippines.

2. Industrial Tree Plantations

An industrial tree plantation (ITP) refers to any forest land extensively planted to tree crops primarily to supply raw material requirements of existing or proposed wood processing plants and related industries.[106] Essentially, it is a lease granted to qualified persons for a period not exceeding twenty five years, renewable for another 25 years.[107] Nominal rental and other fees are required to avail of this privilege. Various tax and other incentives are also available.[108]

The trees to be planted in an ITP are basically commercial trees. ITPs may be established for the planting of trees for the production of raw timber, pulpwood and other crops available for energy conservation, or for other government sponsored development projects, if found viable.[109] Trees and other products raised within the ITP belong to the lessee who shall have the right to sell, contract, convey, or

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[104] *Id.*, at 3.

[105] *Id.*, at 2.

[106] Pres. Decree No. 705, sec. 3(t); *see* also DENR Adm. O No. 01 (1989), sec. 3(a).

[107] DENR Adm. O. No. 01 (1989), sec. 8.

[108] Pres. Decree No. 705, sec. 36; *see* also, DENR Adm. O. No. 01 (1989), secs. 15-25.

[109] DENR Adm [illegible] (1989), sec. 1.

dispose of said planted trees and other products in any manner he sees fit in accordance with existing laws, rules and regulations.[110]

Applying the standards of social justice and democratic access to forest resources, ITPs would also fall short. First, as in the case of TLAs, although to a lesser extent, only those with the necessary capital and resources can engage in commercial tree farming. Second, for those with ownership claims over particular lands, such as indigenous cultural communities, the ITP is not an equitable option inasmuch as it implies a recognition that the State owns the land. Third, the granting of an ITP lease can itself lead to the eviction of communities, indigenous or migrant, from lands that they are presently occupying. A case in point is the Bukidnon Industrial Plantation Project (BIPP), a joint reforestation project of the Republic of the Philippines and New Zealand. The BIPP has drawn flak from the sectors affected by this reforestation scheme. In particular, the project will affect residents of three to four municipalities in Bukidnon numbering 14,579. Eighty-five percent (85%) of the affected residents are Lumads or indigenous peoples, mainly Higaonon and Bukidnon peoples.[111]

From an environmental point of view, a program encouraging ITPs appears to make sense. However, such a program can also be ecologically dangerous if not implemented properly. While only open, denuded, brushland, and inadequately-timbered areas outside forest concessions are available for industrial tree plantations,[112] there is no guarantee, given the not-so-efficient record of our bureaucracy, that other forest areas are mistakenly or in bad faith made available. If this happens, forest denudation is bound to escalate.

To conclude, the basic flaw in the industrial tree plantation program lies in the fact that it is premised, not on the need to contain and overcome ecological damage, but on commercial use and exploitation. As seen from our historical experience of commercial logging, this primacy of commercial interests will lead us nowhere but to environmental disaster.

3. Contract Reforestation

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[110] Pres. Decree No. 705, sec. 34; *see* also, DENR Adm. O. No. 01 (1989), sec. 23.

[111] *See* Manaligod (ed.), STRUGGLE AGAINST DEVELOPMENT AGRESSION (1990).

[112] DENR Adm. O. No. 01 (1989), sec. 4.

The contract reforestation scheme is one of the newer forestry programs of the DENR. It involves an agreement entered into by a private individual or entity with the government wherein the former agrees to implement a series of activities required to reforest denuded areas, with the DENR paying for duly accomplished activities. The program provides incentives to the private sector, NGOs and local government units so that they will become DENR partners in forest resources conservation, development, management and utilization.[113]

In practical terms, contract reforestation simply means that the government pays a private person for reforesting designated areas. For this purpose, the government has obtained loans from the Asian Development Bank and other international institutions.[114]

There are three distinct types of contract reforestation: (1) Family Approach Contract Reforestation; (2) Community Contract Reforestation; and (3) Corporate Contract Reforestation.[115] The main distinction between the three is the allowable area of each. Family contracts can cover from one to five hectares.[116] Community contracts are allowed from five to one hundred hectares,[117] while corporate contracts do not appear to have a maximum limit.[118]

With respect to duration, contract reforestation is carried out under three year contracts, after which the reforested area is supposed to be turned over to the government.[119] To answer the issue of what comes next, the DENR has developed the concept of Forest Land Management Agreements (FLMA) whereby the contractors assume responsibility for maintenance and protection of a reforestation project in recognition of which the DENR allows the former to utilize commodities grown in the project for consumption and commercial purposes.[120]

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[113] *See* Umali, Contract Reforestation: Today and Tomorrow 6 (Discussion paper presented at a seminar on "Contract Reforestation", held at the Philippine Business for Social Progess Bldg., Manila, Oct. 26, 1989).

[114] *Id.*, at 6.

[115] DENR Memo Circ. No. 11 (1988), sec. 9.

[116] DENR Memo Circ. No. 11, sec. 11.

[117] DENR Memo Circ. No. 11, sec. 31.

[118] DENR Memo Circ. No. 11, sec. 48.

[119] *See* DENR Memo Circ. No. 11, secs. 29 and 48.

[120] *See* DENR Memo Circ. No. 11 (1990).

From the constitutional standpoint, there is no doubt that contract reforestation is an allowable mode of utilization. It will probably fall under co-production or joint venture.

Applying social justice considerations, however, the contract reforestation scheme is questionable. With respect to long-term direct users, contract reforestation does not offer any real security of land tenure inasmuch as the contracts are only for three years. The awarding of FLMAs is not sufficient because such awarding is dependent on DENR criteria and action.[121] The government can always revoke the FLMA, leading to the eviction of long-term direct users. The FLMA also stipulates a period of twenty-five years, renewable for another twenty-five years, as the maximum term of the Agreement.[122] In short, the FLMA is premised on government ownership of the land and therefore fails to adequately meet the demand for land security of forest occupants, particularly the ancestral domain claims of indigenous communities.

Finally, from an ecological perspective, although contract reforestation, if implemented properly, appears to be an adequate response to the problem of deforestation, it is obvious that deforestation cannot be stopped by reforestation alone.

4. The Integrated Social Forestry Program

The Integrated Social Forestry Program (ISFP) is based on the declared government policy "to democratize the use of public forests and to promote more equitable distribution of the forest bounty".[123] The program is supposed to provide a legal mechanism which would enable the government to harness the labor of uplanders in implementing its environmental programs, while at the same time democratizing access to forest resources. According to one author, the establishment of the program was an admission on the part of government that its general policy of prohibiting outright the entry of persons into classified forest lands without a permit or license is unimplementable.[124]

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[121] *See* DENR Adm. O No. 71 (1990), secs. 5-8.

[122] DENR Memo Circ. No. 11 (1988), sec. 8.

[123] DENR Memo Circ. No. 11 (1988), sec. 1; *see* also, Preamble of L.O.I. No. 1260.

[124] Gatmaytan, *A Critical Appraisal of the Social Forestry Program*, 2:1 PHILNAJUR 9 (1989).

Under the ISFP, qualified individuals or communities are allowed by the government to continue occupying and cultivating the uplands. ISFP participants, through individual or community stewardship agreements, are given a tenure over the land for a period of 25 years, renewable for an additional 25 years.[125] In exchange, the program participants are required to undertake forest-guard duties and reforestation activities. They are prohibited from committing certain acts, such as cutting or harvesting timber crops when notified by the DENR that to do so would adversely affect the forest ecosystem.[126] From the standpoint of modes of utilization, the ISFP clearly constitutes small-scale utilization and is therefore allowed by the Constitution.

However, while the ISFP, as it is today, contains progressive elements, it still falls short of the constitutional demand of social justice - at least with respect to the vested rights of indigenous cultural communities. While the DENR presently consents to a non-waiver of ancestral domain stipulation in the Stewardship Agreement, the legal enforceability of this stipulation is doubtful given the nature of the contract.

At its core, the ISFP is "nothing more than a glorified lease contract".[127] As such, it does not offer any real security of tenure over the land. For one, it has a term - 25 years, renewable for another 25 years. For communities which have been occupying the land since time immemorial, the 50 year limit is patently unfair. There is no assurance as to what will happen after 50 years. Moreover, the agreement may be cancelled for such causes as non-compliance with its terms and conditions, violation of forestry laws, and "when public interest so demands".[128] The last clause is particularly dangerous for being vague. Too many injustices against indigenous peoples have been committed in the name of public interest and national development.[129]

To conclude, as a mechanism for democratizing access to forest resources, the ISFP is a step in the right direction. However, it

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[125] DENR Memo Adm. O. No. 97 (1988), sec. 1(a).

[126] DENR Memo Adm. O. No. 97 (1988), sec. 8.

[127] Gatmaytan, *supra* note 124, at 10.

[128] DENR Memo Adm. O. No. 97 (1988), sec. 13.

[129] Gatmaytan, *supra* note 124, at 28.

remains inadequate with respect to its treatment of the ancestral domain rights of indigenous cultural communities. From the point of view of forest migrants, the ISFP also needs to be developed further so as to grant more land security than that which exists at present.

IV. Conclusion

By way of recapitulation, a few conclusions on the national forest policy, as revealed by this analysis of existing forestry programs, could be made.

First, our national forest policy continues to be biased in favor of commercial use and exploitation. This primacy given to commercial utilization can lead us nowhere but to ecological disaster.

Second, while programs accommodating direct and subsistence use are now in place, much still has to be done to establish a forestry system which is truly democratic.

Third, from the perspective of social justice, the national forestry policy continues to ignore the demands of millions of upland indigenes for recognition of their ancestral rights. A democratic forest regime calls for a decisive resolution of these demands.

Finally, the challenge before the government, and before all of us, is to formulate and implement a national forestry policy that is able to reconcile the demands of social justice and environmental sustainability. For this to be possible, we must act decisively, with political will, now.