

Protecting Ancestral Land Rights in the Cordillera

Steven Rood



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FOREWORD

The 1987 Philippine Constitution enshrines the rights of indigenous cultural communities to their ancestral lands. The constitutional provisions stipulating the protection of these rights were formulated largely as a result of the struggles of ethnic communities against their marginalization from development processes and the erosion of their cultural heritage.

While the nation's legal framework upholds the rights of indigenous cultural communities over the lands their ancestors have effectively controlled for centuries, translating this recognition to delineated domains for different ethnic groups has been problematic. By examining the effectiveness of the Special Task Force on Ancestral Lands (STFAL) in identifying, evaluating and mapping ancestral land claims in the Cordillera Administrative Region, Dr. Steven Rood's report highlights some of the obstacles which have to be overcome, if the relevant constitutional provisions are to have any meaning at all.

The insights from Dr. Rood's discussion are invaluable. If, as he argues correctly, administrative action in the Cordilleras where the lands are state owned and the indigenous communities relatively homogeneous is constrained by various factors, then the prospects of effectively settling ancestral claims which have engendered violent conflicts in other areas which are not fully controlled by cultural communities are more dim.

This report launches the Peace, Conflict Resolution and Human Rights Research Reports Series of the University of the Philippines-Center for Integrative and Development Studies (UP-CIDS). It is based on research conducted from December 1991 to May 1992. Dr. Ponciano Bennagen reviewed the report while Prof. Laura Samson and Ms. Roseanna Valdez provided editorial assistance. Joy Aparis, Bella Lucas, Ellen Cometa, Victoria Tinio, Jennifer Cinco, Armando Venerando Ilowa and Xerxes Nitafan saw the report through its publication.

As in all the UP-CIDS publications, the recommendations are those of the author whose academic freedom is upheld by the University.

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Much of this research was funded by the University of the Philippines-Center for Integrative and Development Studies (UP-CIDS). At the beginning of the project Jose Endriga was Director, and for the duration of the project Emmanuel Lallana was Director. By the time I was writing the final version of a research report, Maria Cynthia Rose Banzon-Bautista was Director. It was she who solicited this revised, popular version of the report. The Directors and their staff were very supportive all throughout the project.

Intense fieldwork for this project lasted from December 1991 to June 1992. Data were gathered not only from the Baguio office of the Special Task Force on Ancestral Lands (STFAL), but also from all Community Environment and Natural Resource Offices (CENROs). Research Assistants Elena Binayat and Remedios Mangay-at made a journey of more than a month in order to visit all CENROs at one time. Various survey data and journalistic reports were also gathered. The findings of this research were presented in a forum held by the Cordillera Studies Center at the U.P. College Baguio on 11 November 1992. In that forum, Attorney Joseph Humiding presented some very useful comments. Regional Executive Director Jose Llamas of the Department of Agrarian Reform presented his view of the land issues. Useful comments were also given by Zenaida Pawid of the Cordillera People's Forum and Danilo Reyes of the Indigenous Community Affairs Division, Department of Environment and Natural Resources (DENR). Both Arturo Boquiren of the U.P. College Baguio and Dr. Julie Cabato of the Baguio-Benguet Indigenous Cultural Communities went to the trouble of providing written comments.

A final report with updated information from publications and occasional interviews was produced in March 1993. The comments of Ma. Concepcion Evanoso were of great help in the preparation of this paper for publication.

In an effort to popularize the issue of ancestral lands we also produced video tape and slide-tape presentations and comics dealing with the work of the STFAL in general, and with Ibaloy customary law in particular. Parties interested in these presentations should contact the Cordillera Studies Center or the UP Center for Integrative and Development Studies.

Here at U.P. Baguio, Dean Patricio B. Lazaro and Cordillera Studies Center Director Florence T. Salinas were most accommodating. Gloria Rodriguera, the finance clerk, and other staff members of the Center, provided indispensable support. Research Assistants Elena Binayat and Remedios Mangay-at made many arduous journeys. The audio-visual output for this project was handled by Minerva Chaloping and Ma. Concepcion Evanoso.

The data on Cordillera public opinion were collected under grants from the Ford and Asia Foundations. Much of the other data in this paper were shared by the DENR's Office for the Cordillera Administrative Region, headed by Horacio Ramos, until March 1992 and then by Oscar Hamada until the end of this research. Particular mention must be made of the Special Task Force on Ancestral Lands, headed by Joseph Humiding, for their assistance in this endeavor.

In my inquiries into this topic I have learned a great deal from two persons in particular: June Prill-Brett of the Cordillera Studies Center, and Marvic Leonen of the Legal Rights and Natural Resources Center. As always, Athena Lydia Casambre was ready to share her insights.

None of the persons or institutions mentioned above share any responsibility for the ideas expressed in this paper.

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PROTECTING ANCESTRAL LAND RIGHTS IN THE CORDILLERA

INTRODUCTION

In 1990, the Department of Environment and Natural Resources (DENR) created a Special Task Force on Ancestral Lands (STFAL) to identify, evaluate and map ancestral land claims in the Cordillera Administrative Region (CAR). Three years later, in January 1993, DENR Special Order No. 25 and its accompanying Departmental Administrative Order No. 2, set up task forces on ancestral lands and ancestral domains throughout the Philippines.

This paper examines the context within which the STFAL was working, the operations and accomplishments of the STFAL, and other related concerns. The goal is to examine the effectiveness of STFAL in recognizing ancestral land claims. This goal is necessary since the work of the STFAL has now been followed by a nationwide effort under DENR Special Order No. 25. It concludes with certain recommendations as to how the administration of ancestral land claims might be improved.

The focus is on the ability of the STFAL to generate meaningful administrative action. This report does not deal with the policy making that went into either the creation of the STFAL, or the issuing of Special Order No. 25. I do not detail the efforts of nongovernment organizations (NGOs) to persuade the government to respect indigenous rights to lands. Similarly, the role of other government units, such as the Indigenous Community Affairs Division of DENR Central, the Office of Northern Cultural Communities and the Office of Southern Cultural Communities, in promoting the recognition of indigenous rights is also not discussed. My justifications for omitting these valuable matters are that the question of the efficacy of government efforts is of utmost importance, and that expanding the research would have delayed the presentation of these results.

The report begins with some background on the recognition of ancestral land claims. The second part then examines the work of the STFAL. The third part discusses issues in assessing the STFAL experience, while the fourth mentions the new DENR policies. The last part contains the summary and recommendations.

BACKGROUND: GOVERNMENT RECOGNITION OF ANCESTRAL LAND RIGHTS

The research is premised on the belief that recognizing ancestral land claims is right. This is also the stand of the indigenous people of the Cordillera. Still living on the land occupied by their ancestors “as far back as anybody can remember” (since “time immemorial”) they consider control over their land vital to their societies’ survival.¹

Economist Sixto K. Roxas argued that the issue of ancestral land claims should be viewed in the context of the mainstream of Philippine politics, rather than as pertaining only to cultural minorities. Roxas claimed that the Cordillera communities are not alone in seeking control over their lands² and that lowland communities need control over their land as much as do those in the mountains.

Still, there are good reasons for thinking that the situation faced by the Cordillera is unique enough to deserve special consideration. First, over eighty percent (four-fifths) of the Cordillera region is public land, owned by the government. Thus, most of the public living in the region are, legally speaking, squatters on public land. When communities here are asking for control over their ancestral lands and domain, they are asking the government to recognize that they and their ancestors have

been "owning" the land since time immemorial even though the government has been claiming the land.

Secondly, to a degree unmatched in other regions of the Philippines, native Cordillerans are still in control of the region, by virtue of the small number of persons from the lowlands who live in the mountains. For instance, in a 1992 census of seven communities in Benguet, Mountain Province, and Ifugao, in no community were more than one-eighth (12 percent) of the residents born outside of the Cordillera.³ This means that there are not many lowlanders who have come into possession of Cordillera land by means of the national legal system's "paper" titles.

So, it seems that the reasons for protecting ancestral domain are clearer in the Cordillera than elsewhere. The Cordillerans are asking the government to give up control rather than asking fellow Filipinos to give up titled land. In short, administrative action in this context might be expected to be unusually successful. Hindrances that are found in the Cordillera may serve as important lessons elsewhere in the Philippines, where the task is even more difficult.

There are several strategies that could be followed. First, there is the judicial strategy based on the filing of court cases. Secondly, there is a legislative strategy which involves lobbying in Congress. Finally, there is the administrative strategy, asking departments of the government to recognize ancestral land rights.⁴ Naturally, these are all related. In the legislative strategy, Congress could be asked to recognize court precedents in ancestral land claims. In pursuit of an administrative remedy, information could be produced which would help Congress to pass a law. Finally, if Congress does pass a law, this should guide both administrative and court actions.

To illustrate these strategies, we can look at some examples. The *Cariño versus the Insular Government* case, decided by the U.S. Supreme Court in 1909, has been long cited as the precedent for government recognition of ancestral rights to lands. The Court decreed 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.⁵

Given this decision, it is ironic that the Cariño lands are still being disputed. Heirs of Mateo Cariño are still claiming parts of Camp John Hay in Baguio City, the land areas referred to in the Court decision. The reasoning is simple. After having been awarded the rights to his land, Mateo Cariño is said to have sold the land to Metcalf Clarke; it is the validity of this sale that is now being questioned.⁶

It is claimed that there is evidence of “unjust maneuver by third persons” in that Mateo Cariño is said to have died in 1908, before the Deed of Sale to Metcalf Clarke was executed on 4 March 1909. It is further claimed that even if there were no unjust maneuvering, Act No. 718 of the Philippine Commission requires the consent of the United States Government (or the Insular Government) for any transfer of lands “from chiefs of non-Christian tribes.” In the absence of any such consent, the transfer from Mateo Cariño to Metcalf Clarke would not be valid.

Thus, the transfer to Metcalf Clarke is claimed not to have been valid, making subsequent transfer to the United States Government not valid. Under this reasoning, the heirs of Mateo Cariño should be allowed to recover the property.

The fact that the Cariño clan no longer controls the land of John Hay is illustrative of the fact that the judicial strategy has limits. Decisions pertain only to the facts of the individual matter, and it is hard to extend a judicial principle to other cases, or to subsequent events.

Persons making a claim often turn to the executive branch of the government, seeking administrative remedies directly or indirectly from the president. This is the route followed by the La Trinidad Valley Clan, Inc. We can get a history of this case from

the documents filed with the Special Task Force on Ancestral Lands to support their application for a Certificate of Ancestral Land claim over the Benguet State University reservation. Included in this application is "A Brief History of How La Trinidad Ibalays Lost their Ancestral Land/Domain." After the establishment of the school, it acquired "wide tracts of land from the natives in return for tokens, i.e., animals, silver coins, and other items which were new to them." In 1937, the "Trinidad Agricultural School" was granted close to 1700 hectares through proclamations.

Included in the application for recognition of ancestral lands are copies of a letter to President Elpidio Quirino dated 1951, and another letter to President Ramon Magsaysay dated 1953, expressing a desire to obtain lands in the reservation. President Magsaysay is said to have commissioned Attorney Sinai Hamada to conduct an investigation, and Attorney Hamada's report recommended reducing the area of the reservation to 600 hectares with the rest being released as homestead patents to claimants. This resulted in Proclamation No. 209 declaring the land being claimed open to disposition, but this was not implemented.

Beginning with a protest letter to President Ferdinand Marcos in 1980, a renewed effort to obtain the land is documented. And yet, decades later, no final action has been taken by the government.

These failures of administrative and judicial strategies paved the way for the third strategy, the legislative one. This is illustrated by the vigorous lobbying for the passage of the ancestral lands bill in Congress which transpired from 1987 to 1992.⁷ Unfortunately, the strategy failed.

That these different strategies can be linked is seen from the fact that the Department of Justice is currently considering the endorsement of the current version of the ancestral lands bill as a priority of the administration in order to improve its chances of passage.⁸ It is hoped that administrative action by the executive branch would speed up legislative action which presumably would implement past judicial decisions.

This report will now concentrate on the administrative strategy followed by the Department of Environment and Natural Resources (DENR) in the Cordillera in the early 1990s. By evaluating this particular attempt at handling ancestral land claims we can begin to discuss the effectiveness of all three strategies.

Let us examine the provisions for ancestral land claims in the Constitution and the definition of the terms, "ancestral lands" and "ancestral domain."

CONTEXT: PROVISIONS OF THE CONSTITUTION AND OTHER LAWS

Constitutional provisions are cited as bases for action in Department [of Environment and Natural Resources] Circular No. 03, Series of 1990, "Rules on the Acceptance, Identification, Evaluation and Delineation of Ancestral Land Claims by the Special Task Force":

Article 2 ("Declaration of Principles and State Policies")
Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. (underlining mine)

Article XII ("National Economy and Patrimony") Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. (underlining mine)

The underlined portions in these two provisions are about limitations on the "rights of indigenous communities," since these are made subject to national development policies. Such provisos are common in dealing with indigenous peoples. An article examining Congress' actions towards establishing autonomy in the Cordillera cited twenty different provisions of the draft of the Organic Act for an autonomous region into which

Congress inserted the phrase “subject to” or “consistent with” national laws and policies. This was regarded as an effort by Congress to systematically restrict the policy making power of the autonomous region that was to be set up for the Cordillera peoples.⁹

It is no wonder that legal scholars associated with the Legal Rights and Natural Resources Center have warned against relying on these two provisions of the Constitution. In their stead, these scholars point to the “due process” clause:

The Constitution [Article III, Section 1] provides that “No person shall be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of the laws.” This provision justifies or even, to use a stronger word, commands the State to recognize private communal property regimes in the Philippines.¹⁰

It should be noted that there are currents within the DENR which attempt to transcend the limitations of present law, and even of the Constitutional provisions. For instance, in the *Master Plan for Forestry Development* the DENR discusses “Ancestral Lands Management,” by quoting Article XII, Section 5 as a basis for its policies, while leaving out the phrase “subject to the provisions of this Constitution and national development policies and programs.” The Master Plan then goes on to say:

DENR shall recognize the right of ICCs [Indigenous Cultural Communities] to occupy, possess, and utilize definite territories they have occupied, possessed, and utilized since time immemorial or were transferred to them by their ancestors in accordance to their customs and traditions. These areas will be determined, delineated, and their boundaries marked. Likewise, the identity of the members of ICCs occupying specific ancestral domains will be identified.¹¹

This affirmation is unqualified as written, but “there is also no indication in the MP [Master Plan] on how it will address the

ancestral land claims of indigenous communities.”¹² For instance, in the *Master Plan for Forestry Development*, there are specific targets or goals for Integrated Social Forestry, Community-Based Forest Management, and the like, but targets for ancestral lands management are “currently undetermined.”¹³

There are other laws which could be cited, but the point should be clear enough. There are contradictory strains in policy towards ancestral land rights. Sometimes the assertion of respect for ancestral land rights by the government is qualified in terms of making such rights subject to other government policies. Sometimes the respect for those rights remains unoperationalized. But, there clearly is an increasing discussion of this issue by government units, and some agencies are working to effect new policies. The DENR-CAR’s Special Task Force on Ancestral Lands is one such effort, and we will examine how that has gone. But first, we will need to discuss one more set of conceptual issues — ancestral “land” versus “domain” — and present some empirical data from public opinion surveys regarding ancestral land rights.

DEFINITIONS OF ANCESTRAL “LANDS” AND ANCESTRAL “DOMAIN”

There are two different terms used in the discussion of ancestral land rights: ancestral lands and ancestral domain. Sometimes, these are used to mean the same thing, such as the definitions put forth for the STFAL in DENR Special Order No. 31-A, Series of 1990:

1.b. “Ancestral Land and Domains” refers to all territories exclusively possessed, occupied or utilized by ICC [Indigenous Cultural Communities] in accordance with their customs and traditions, since time immemorial, by themselves or through their ancestors. This is irrespective of whether or not such lands were subsequently partitioned among the individual members of the indigenous cultural communities.

In this definition, the two terms mean the same thing. However, a distinction between the two terms was sometimes made even by the STFAL itself because such a distinction is invaluable in discussing certain issues (such as the *bogis*— see below).

A workshop of Cordillera leaders (government and nongovernment), upon considering “Ancestral Domain and Regional Autonomy,” passed a resolution which focused on ancestral domain and what the domain includes:

Workshop Resolution ...

2. “Ancestral Domain” should be defined and delineated based on the customary laws of the indigenous cultural communities.

a. The definition should encompass the differences in customary laws of the various ethnolinguistic groups in the Cordillera. “Ancestral Domain” refers to all territories exclusively possessed, occupied or utilized by indigenous cultural communities in accordance with their customs and traditions since time immemorial by themselves or through their ancestors whether communally, corporate and individually owned, irrespective of whether or not such were subsequently partitioned among the individual members of the indigenous cultural communities.¹⁴

The interesting thing about this is that within the overall category of “ancestral domain” this resolution follows the definitions laid out by anthropologist June Prill-Brett in her work, “Preliminary Perspectives on Local Territorial Boundaries and Resource Control.” There, she noted three types of property in Cordillera communities: (1) Individual; (2) Corporate (to which a kin or other group has access); and (3) Communal (belonging to the entire local community).¹⁵

These findings have been widely adopted both for policy making (by the Cordillera Regional Consultative Commission as

it drafted an Organic Act for an autonomous Cordillera) and advocacy work (as in the above resolution). It is important to note that these academic definitions based on empirical work about customary law are acceptable to a wide audience.

Based on these observations "ancestral domain" will be used in this paper to refer to the widest definition, as in the Workshop Resolution above. There is no agreement as to the meaning of "ancestral lands" so we will only say that it is some part of the ancestral domain. How that part may be defined is open to controversy but it usually refers to land which can be inherited. Within the ancestral domain there are a variety of types of "property," and this variety (and how the different types are distributed among different ethnolinguistic groups) must be respected.

Before I leave this topic entirely, I want briefly to argue against a wider definition of "ancestral domain," to encompass the entire Cordillera region. For instance, Commissioner Ponciano Bennagen, a member of the Committee on the National Economy and Patrimony and an anthropologist, is quoted in the proceedings of the Constitutional Commission as follows:

The phrase "ancestral domain" is a broader concept than ancestral land. The former includes land not yet occupied, such as deep forests, but which generally is regarded as belonging to a cultural community or region. [underlining added]¹⁶

As political scientist Athena Lydia Casambre has pointed out, the extended use of "ancestral domain" to cover the entire Cordillera region "implies and requires ... a pan-Cordillera collectivity for which collective rights ... are being claimed."¹⁷ That is, from the ancestral domain of individual cultural communities, a generalization is being made to the "ancestral domain" of the regional community. There is, however, precious little evidence that such a community exists, and it is certain that there are no regional mechanisms for managing such an ancestral domain.¹⁸

There are few arguments for recognizing an entire region as "ancestral domain." Indigenous cultural communities are not claiming the whole region, and their "customs and traditions" refer to the smaller, community-level domains. The political problems in recognizing such a wide area are much harder. Congress may be less willing to pass laws on ancestral domain if it is felt that entire regions are being transferred all at once.¹⁹

Thus, I end this section by reaffirming the community-level definition of ancestral domain, rather than the regional one.

CORDILLERA PUBLIC OPINION

Before turning to the work of the Special Task Force on Ancestral Lands, it is useful to look at how ancestral lands are viewed by the wider public. Thus far, much of the critique that has been cited is produced by activists, lawyers, or government agencies.

The first set of data comes from a probability survey of 474 respondents conducted by the Cordillera Studies Center throughout the Cordillera (outside of Baguio City) in October 1988. At this time, the Cordillera Regional Consultative Commission was drafting the Organic Act for an autonomous Cordillera, and we asked people their opinion on what powers this autonomous government might be granted.

We obtained different results for different powers.²⁰ There is overwhelming sympathy for local or regional control over natural resources, with four-fifths (80 percent) approving. However opinion is more divided about basing land ownership "more upon ancestral rights than upon official titles from the Philippine Government." For this, only about half (56 percent) approved. This ambivalence is in line with anecdotal (and occasionally research based) evidence that many indigenous inhabitants of the Cordillera are opting for official, individual titles.²¹ Naturally, this has effects on any effort to recognize ancestral land rights. We will see this in discussing the work of the STFAL.

We might expect that Baguio City, being composed largely of lowland migrants to the Cordillera, would be unsympathetic to the efforts of the Special Task Force. However, when we asked a sample of 180 Baguio City residents in May 1992 about the STFAL, we found that while many had not heard of it, those who had were sympathetic. It is perhaps not surprising that almost half of the residents had not heard of the DENR program, since it is of little relevance to many Baguio residents. It is, however, surprising that over three-fourths of those who had heard of the program approved of it, for such reasons that "the land really belongs to them," "the claimants have been there a long time," "it is their right," and the like. It seems that, even in the area that would presumably be the most hostile to recognizing ancestral land rights, like Baguio, the work of the STFAL took place in a supportive atmosphere.

The fact that these data from the general public show a supportive environment for the recognition of ancestral land rights is very important. Congress is more likely to pass an ancestral lands bill if such legislation is not seen as acceptable only to a small group of constituents.

We now turn to some details on the operation and accomplishment of the Special Task Force on Ancestral Lands. In this fashion, the possibilities and limits of administrative action can be explored.

THE SPECIAL TASK FORCE ON ANCESTRAL LANDS

INTRODUCTION TO THE STFAL

The Special Task Force on Ancestral Lands (STFAL) was formed by DENR Special Order No. 31, as amended by Special Order No. 31-A, entitled "Creation of a Special Task Force on acceptance,

identification, evaluation, and delineation of ancestral land claims in the Cordillera Administrative Region.”

Under these Special Orders, the STFAL then issued on 30 April 1990 the following “Rules on the acceptance, identification, evaluation and delineation of ancestral land claims by the Special Task Force”:

Ancestral land in Baguio City and the rest of the Cordillera Provinces shall consist of all territories exclusively possessed, occupied or utilized since time immemorial by the following indigenous cultural communities in accordance with their customary laws, traditions and practices irrespective of their present land classification and including such lands used for residences, farms, burial grounds, communal and/or private forests, and others to wit [after which follows a list of cultural communities, ending with]: 13. Other indigenous cultural communities that may be identified later.

The guidelines go on to state (among other things) that: (a) possession for fifty years creates a presumption that possession has been since time immemorial; (b) documentary, oral or physical (such as improvements to the land) proofs were due in three months for Baguio and in twelve months for the rest of the Cordillera; and (c) ways to handle environmentally critical areas required “full participation of the Indigenous Cultural Communities (ICC) concerned”.

The STFAL issued a “Primer,” setting out in question-and-answer format the material just enumerated. There is, however, one interesting point in the “Primer” not found in the above. Question 10, “*What does an indigenous cultural community or any member thereof do to avail of this special project?*” makes a distinction between people **within the City of Baguio** (families, clans, individuals) and **outside the City of Baguio** (tribes, barangays, families, clans). This implies that individual claims would not be awarded outside of Baguio, at least until collective claims have been settled. In point of fact, individual claims outside of Baguio have been entertained, and certificates have been awarded to individuals. We will discuss this point further in a later section of the paper.

ORGANIZATIONAL FACTORS IN THE WORK OF THE STFAL

Perhaps the most important thing to understand about the STFAL is that it was composed of persons working part-time. The Chairman, for instance, was also the head of DENR-CAR's Legal Division. While the STFAL did have some full-time administrative staff, no operational personnel were full-time.

Secondly, the STFAL operated on a shoestring budget. Since in essence its operating expenses came out of the Regional Director's Office, the STFAL was severely hampered by lack of funds. The members of the STFAL devoted considerable effort to its activities, but fell short of their own ideals without resources. Information and outreach were not sufficient, investigations of claims were by necessity restricted affairs, and communications were neglected.

Finally, the status of the project among all other DENR projects was low. The Chairman of the STFAL was on the same administrative level as the Community Environment and Natural Resource Officers (CENROs), who were the ones in charge of grassroots implementation. In short, the STFAL Chair could not issue directives to CENROs. Inasmuch as CENRO work on ancestral lands is also part-time, we can see that STFAL accomplishments tended to be in competition with other DENR tasks. And, given that work on ancestral lands was not a "key result area," DENR officials were not evaluated on their assistance to STFAL work.

ACCOMPLISHMENTS OF THE STFAL

In this part we will first note the pattern of land applications and then discuss the pattern of awarding of certificates. Although certain issues will be noted, the task is merely to describe the accomplishments.

In terms of applications, the province of Benguet was the best covered area, although even here there were no applications filed from almost one-third of all barangays. Also, Benguet was the province that had the largest proportion of individual applications, either because of the individualized property system of the Ibaloy ethnolinguistic group of southern Benguet, or because of the more developed socioeconomic structure, or both. Some of the barangay claims even included a list of hundreds of individual parcels, covered by tax declarations, down to several square meters.

The Mountain Province was a relatively well covered area, with a lower proportion of individual claims. The positive effect of local leadership can be seen in the efforts of the Mayor of Natonin to have eight contiguous barangays covered by ancestral land claims, which claims were favorably endorsed by the three-man CENRO committee to the STFAL. However, the issue of coverage of Certificates of Ancestral Land Claims (discussed below under the heading of the *bogis*) is foreshadowed in that of over 32,000 hectares cited in the applications filed by the barangays, only 868 were recommended for Certificates by the three-man committee at the level of the CENRO.

The case of Ifugao is instructive in the contrast between its two CENROs. In CENRO Lamut there were a number of claims filed as a result of the CENRO's activity in late 1990, while in CENRO Alfonsolista none were filed. The reasons forwarded to account for the lack of land coverage on record are interesting: one municipality was all titled anyway; in another municipality the mayor refused to cooperate; and in a third (Mayoyao), boundary disputes prevented any activity. Thus, there were a variety of situations where STFAL results were low — where they were not needed, where government officials were not cooperative, and where there were local disputes. Under the last two situations, increased powers for the institution recognizing ancestral land claims would perhaps have produced better results.

Notable for relatively low levels of applications are the provinces of Abra and Kalinga-Apayao. In both places, there were disputes over whether entire *bogis* (territory included in the boundaries of a traditional community) should be granted certificates. These disputes seem to have hampered the filing of applications.

We turn now to the pattern of the awarding of certificates. All in all, 81 certificates were awarded, broken down as follows: (See table below.)

Certificates of Ancestral Land Claims

	Number	Claimants	Hectares
Baguio	22	39	31
Benguet	5	582	5,835
Abra	0	0	0
Ifugao	52	1,996	3,158
Mountain Province	1	176	63
Kalinga-Apayao	1	46	62

Clearly Ifugao has the highest number of awards. In point of fact, two barangays of Lagawe account for 49 of the 52 Certificates awarded. What transpired was that the STFAL took over the results of a previous cadastral survey (of public land in order to give titles) and gave out awards. This seems to be an instance where the demands for quantitative accomplishments produces some strange results. Among the beneficiaries listed in the certificates are "communal ancestral land," "barangay property," "barangay chapel," "barangay health center," "Roman Catholic Church," and "Burnay Elementary School." Clearly, these are lots in a cadastral survey which have been included in a parcel covered by a Certificate of Ancestral Land Claim.

Somewhat more serious than nonhuman beneficiaries are the awarding of three Certificates to individuals despite repeated STFAL assertions that outside of Baguio, groups would be handled first. And, in these Certificates are overlapping lists of beneficiaries (for instance, the beneficiary in IF 029 is also listed in IF 027). Here we have examples of the confusion that can arise when the issue of the relation between individual and collective claims has not been settled.

The province with the largest number of hectares awarded is Benguet, where five awards affected large numbers of people. Clearly, it is feasible to award control over large swaths of land, a point which is crucial for the question of awards recognizing ancestral "domains."

Outside of Baguio, and with the exceptions in Ifugao noted above, awards were given to collective owners ranging from 14 families (an award in Bokod, Benguet) to 503 families (a *barangay* in Hingyon, Ifugao). A point worth noting is that the areas awarded are always less than three hectares per beneficiary — a fact which becomes relevant when discussing the relation between the DENR's STFAL and the Department of Agrarian Reform.

These awards were based on cursory investigations, leaving the STFAL open to charges of carelessness. For example, beneficiary number 137 in Saliok, Natonin, Mountain Province is Attorney Basilio Wandag, Secretary-General of the Kalinga Bodong Council which was disputing with the STFAL on the issue of the *bogis*. On several occasions, Attorney Wandag assailed the STFAL for including him on a list of beneficiaries, when he did not even know about the award (and when he was not even a bona fide resident in the area). We see here the kind of problems which cropped up since the STFAL was not given sufficient funds even to conduct an objective census.

When discussing the awarding of certificates, it is necessary to note that contributory to the low score for Abra is that two certificates which were awarded in Malibcong, Abra were

refused by the beneficiaries because the area awarded did not cover the entire *bogis*. In point of fact, it was stated in interviews that the limited coverage was caused by funds being inadequate to survey a larger area. However, more is at stake in the dispute about *bogis*, so a separate section is devoted to it, below.

There have been comments that the work of the STFAL is "slow," but the question is, slow compared to what? It may be slow, considering that over a million hectares of the Cordillera is public land, but compared to other administrative actions, the pace could be seen as encouraging. Discounting the 49 certificates issued in connection with a cadastral survey in Ifugao from the total number of certificates, there were still 32 certificates issued. Similar special project, in Palawan, which targeted ten claims in six months, only managed eight, even after more than a year of preparatory work.²²

So, the pace of work does not seem to be the issue. If the STFAL were given more funds, more administrative support, and a higher level of authorization — if these organizational factors had been addressed — then the work of the STFAL could have been speeded up.

There is no denying the sincerity of members of the STFAL who worked under immense handicaps. Still, beyond sincerity and organizational flaws there remains the question of whether the STFAL, as an administrative strategy, offered the best method for moving forward in the recognition of ancestral land claims.

In order to address this wider question, I turn to the discussion of several issues.

ISSUES IN ASSESSING THE WORK OF THE STFAL

In January 1991, the Cordillera People's Alliance (CPA) published a primer in Ilocano on the Special Task Force on Ancestral Lands,

Dagiti Kasapulan nga Maamuan Tayo ("Those Things We Need to Know"). Several important issues pertinent to the work of STFAL were raised in this primer, and the DENR-CAR responded to address some of these concerns.

The first had to do with the time limit set for the filing of applications. In the original circular (No. 03) issued in 1990, a time limit of three months was imposed for Baguio City, and twelve months for the rest of the Cordillera. While reflecting the sense of urgency with which the issue was being addressed, this time frame was not very realistic. Later, a formal extension was made so that the STFAL could accept applications up to December 1991; much later, in 1992, several applications were still accepted by STFAL.

Another criticism had to do with STFAL's reliance on written documents instead of oral customs and traditions. It is true that there were many documents submitted to the STFAL. The "paper war," however, was largely confined to the Baguio area, where contested claims exist dating back to the American period.

On one hand, written documents in terms of tax declarations by individual indigenous farmers are in fact common in the Cordillera. On the other hand, the STFAL has repeatedly cited oral traditions and physical improvements to the land as bases for awarding of Certificates of Ancestral Land claims. Again, the STFAL seemed sensitive to important issues being raised.

A third criticism, one not found in the CPA primer, but which is often voiced, is that the Certificates of Ancestral Land Claims are precisely that — certificates of claims rather than secure titles to the land.²³ The DENR has always asserted that they have no legal power to issue titles on ancestral land, but are issuing the next best thing. The passage of an ancestral land bill could very well strengthen the legal status of the Certificates, and in the meantime, the Certificates can serve as place-holders.

One development was the signing of a Memorandum of Agreement between the Cordillera Administrative Regional

DENR and the Department of Agrarian Reform (DAR) in June 1992. The aim of the agreement was to provide awardees of Certificates of Ancestral Land Claims more secure titles, in the form of the DAR's Certificates of Land Ownership Awards (CLOAs). With this we begin our more detailed examination of the relevant issues.

ISSUING CLOAs TO ANCESTRAL LAND CLAIMANTS

In June 1992 the DAR-CAR and DENR-CAR entered into a memorandum of agreement, and issued DAR-DENR Joint Circular No. 1, which provided for the issuing of Certificates of Land Ownership Awards (CLOAs) to recipients of the STFAL's Certificates of Ancestral Land Claims and to farmer beneficiaries of the Integrated Social Forestry Program (ISF). This agreement was cited as a landmark in resolving land problems in the Cordillera. The Cordillera Executive Board (the CAR's equivalent of a Regional Development Council) has cited the brokering of the agreement as one of its significant achievements in 1992 although the DENR and DAR had been working independently on the agreement for sometime.

There were obvious benefits to both agencies from this agreement, particularly in terms of administrative convenience. The DAR would be in a better position to implement its mandate over portions of government reservations which were not devoted to the original purpose and were suitable for agriculture.²⁴ Since such reservations cover over 80 percent of the Cordillera, the scope for increased accomplishments for DAR-CAR is obvious. The DENR would be able to upgrade the security of tenure, for both ancestral land claimants and ISF beneficiaries, and thereby answer one of the major complaints about both programs. Both agencies, for their own reasons, would thus be able to increase security of tenure for Cordillera inhabitants within limits of current law (that is, within the limits of administrative powers).

However, in May 1993, this regional Agreement was revoked by DENR Secretary Angel Alcala, and by June, relations between the two agencies had deteriorated into open hostilities (for instance in hearings of the Benguet Provincial Board).²⁵ An examination of the issues involved will illustrate some of the limits of administrative powers to redress the violation of ancestral land rights.

There were always potential problems with this procedure. The first might be termed "philosophical" or abstract, but should concern any person who is interested in changing the government's philosophy towards indigenous inhabitants. The basic point about ancestral lands is that they have been possessed by the communities since time immemorial. The basic point about agrarian reform is the transfer of title from one owner (in the Cordillera, largely the government) to the actual tiller of the land. It may be that the actual tillers of the land are glad to receive security of tenure, and willing to accept the government's claim that the land is "public" in order to obtain that security. Still, the issue of ancestral rights becomes confused in the process.

The Regional Office of the DAR was indeed aware of this problem, and wished to address it by classifying those who receive recognition of their ancestral land rights as "owners," rather than "beneficiaries." This would make explicit the government's realization that those in indigenous communities are, in fact, already owners, for whom the relevant agrarian reform provisions have to do with retaining their land rather than receiving land from another owner. However, despite advocacy by the Regional Office of the DAR within the bureaucracy, permission was not granted by the Central Office to follow this modified procedure. Hence, those who receive the CLOAs are still treated as "beneficiaries."

Secondly, and more practically, the three-hectare limit to each beneficiary receiving a CLOA can severely limit the ability of a community to secure rights over its entire ancestral domain (rather than merely over the purely agricultural part of it). The problem here is two-fold. First, the number of beneficiaries times

three yields the maximum number of hectares it is possible to award. Thus far, Certificates of Ancestral Land Claims have all had less than three hectares per beneficiary, but this is because the entire domain is not awarded.

The other aspect of this practical problem is that it focuses attention on agricultural land. Inasmuch as the STFAL is not granting recognition to the entire domain, and that the DAR-CAR CLOAs are good for a maximum of three hectares of agricultural land, there is an incentive to convert forests into farms. Clearly, this could be ecologically unsound.

This brings us to the third problem, a bureaucratic one. The mandates of the DENR and the DAR can conflict when the DENR wants to preserve a watershed, or a national park, and the DAR wants to award land to persons who claim lands within those areas. This conflict is precisely what ensued after the Memorandum of Agreement (MOA) was rescinded. The DAR, which was to grant CLOAs to those claimants given a Certificate by the DENR by virtue of the MOA, felt free after the cancellation of the MOA to go ahead and give CLOAs to beneficiaries who in the DAR's judgment were qualified. CLOAs were thus issued over part of the Mt. Pulog National Park, which the DENR vigorously opposed. Hearings were conducted by the Benguet *Sanggunian Panlalawigan* which sided with the DAR in the interest of giving their constituents tenure over land.

These are the types of problems in administrative remedies when different administrative agencies conflict with each other in their vision of the future. Their conflicting interpretations will be fought out in the courts and legislative arenas. Having noted the difficulties, we move on to the question of individual ownership.

INDIVIDUAL VERSUS COLLECTIVE OWNERSHIP

There is a persistent myth among those not familiar with the indigenous cultural communities that land is communally held.

For instance, in the previous session of Congress, Senate Bill No. 909 stated:

Sec. 21. Communal Rights. - Areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held.

As noted earlier, land can be held in three fashions in Cordillera communities, with each fashion roughly corresponding to the amount of labor involved. Lands which entail extensive preparation (e.g., rice fields) are typically held individually, while the forests are open to exploitation by the entire community. In between, in some Cordillera communities, are areas to which access is limited to a corporate group, typically a clan.²⁶

The DENR-CAR is well aware of this, and former Regional Director Horacio Ramos endorsed a letter to Senator Joseph Estrada's office pointing out that ancestral lands can be held individually. This awareness is demonstrated in the STFAL's Primer:

21. IN THE PROCESSING OF APPLICATIONS, IS THERE ANY PREFERENCE BETWEEN APPLICATIONS FILED BY INDIGENOUS CULTURAL COMMUNITIES, LOCAL GOVERNMENT UNITS IN BEHALF OF THEIR ICC'S AND CLANS ON ONE HAND AND THOSE FILED BY INDIVIDUAL CLAIMANTS AND/OR THEIR FAMILIES ON THE OTHER HAND?

Outside the City of Baguio, preference in the processing shall be given to applications by Indigenous Cultural Communities, Local Government Units in behalf of their ICC's and clans, to delineate their ancestral domain. The processing and delineation of the individual claims of members of the Indigenous Cultural Communities or their families within the domain shall follow.

However, in the City of Baguio and other highly urbanized centers in the Cordilleras, the individual ancestral land claims of indigenous peoples shall be directly processed...

As noted in the discussion of Certificates awarded in Ifugao, there have been individual claims processed.

In any case, we now have to face the question as to whether individual claims should be processed. We have repeated instances where indigenous Cordillerans have expressed preference for individual titles under the national land law. This is most prevalent in Benguet. DENR personnel in Buguias feel that the Kankanaeys under their jurisdiction would prefer individual titles. June Prill-Brett found that 90 percent of her Ibaloy respondents — despite being elders familiar with customary law — preferred the national land law.²⁷ And, as noted, the Benguet Provincial Board has sided with the DAR's issuance of CLOAs over areas of the Mt. Pulog National Park that the DENR would want to remain as protected areas.

This attitude towards individual ownership is found throughout the Cordillera. In the Social Weather Station's nationwide Survey of Rural Welfare, the Cordillera, among all Philippine regions, had the highest percentage of farmers who believed they owned their land²⁸ despite the fact that it is, legally speaking, the government's land. Cordillera citizens feel they own land as individuals by right and by custom.

More empirical work is required to be able to answer questions pertaining to the problem of individual versus collective awards. What kind of property rights exist in a community? What do the residents prefer? What indigenous mechanisms are there to administer property that is not individual?

In the meantime that information is being gathered, we urge that the community's area of control — the ancestral domain, be dealt with first. Nothing material is lost by proceeding with delineation of domain before deciding questions about individual lands. Awarding titles to individuals, however, can have harmful effects such as destroying the community's ability to regulate use of land which is not individually owned (but rather owned by the community as a whole, or some other group such as a clan). Moreover, individuals might be encouraged to convert communal forest lands into individual plots in order to be granted land awards, thus adversely affecting the watersheds and other aspects of the environment.

The STFAL was being appropriately cautious in stating that awards to groups should come first. Now, when a community is making the claim, naturally it wants the widest possible award. This brings us to the question of the *bogis*, or the entire ancestral domain.

THE BOGIS

The territory of an indigenous cultural community goes by many different names throughout the Cordillera. I have chosen to discuss the issue under the title of the *bogis* because this is the term used by the two groups with whom the STFAL had controversies.

Mention has already been made of one of the controversies. A Certificate of Ancestral Land Claim was not accepted by the awardees because it did not cover the entire *bogis*. The Malibcong Banao Bodong Federation (MBBF) had wanted five barangays to be considered, but areas in only two barangays were awarded, totaling approximately five hundred hectares. (The five barangays involved total approximately 11,500 hectares.)

The MBBF then passed a resolution requesting for the recognition of the entire *bogis* and expressing concern about how a smaller award might divide the group. The STFAL then wrote back as follows:

Your desire to have the two (2) Certificates of Ancestral Land Claims covering portions of Barangay Poblacion and Taripan encompass instead the entirety of your alleged "BOGIS" merits understanding. ... You desire the broader concept of "BOGIS" as the basis of the delineation but our rules do not allow us.

And there the matter rested — with the Certificates being revoked, as the STFAL said, "to conform with your desire."

It is in the second controversy that the reasoning became much more elaborate. In this case, the Kalinga Bodong Council

(KBC) undertook a project to "identify and delineate the ancestral domain/homeland of the peace pact practising peoples of this Province" (with funding from the UN FAO Technical Service to Agrarian Reform and Rural Development). When they forwarded a request that this be the basis for awarding Certificates, the Chairman of the STFAL wrote a comment to the DENR Secretary (15 July 1991) recommending that the request be denied. The KBC then engaged the services of Marvic M.V.F. Leonen of the Legal Rights and Natural Resources Center (LRC) who wrote a position paper opposing the STFAL's stance. The STFAL did not reply to this inasmuch as they felt that their previous comments were sufficient.

It seems that the controversies can be pinned down to two issues. First, is it possible for the STFAL to recognize the more expansive "domain"? And second, is it a wise idea to do so? I believe the answers to both questions is "yes." The answer to the first question is no longer very important, since in the new Special Order No. 25 which superseded the SO31 setting up the STFAL, recognition of domain is explicitly included as a function of the DENR.

Recognition of the more expansive coverage would be wise for three reasons. First, it is ecologically sound. Second, it would enlist more grassroots participation. And third, it prepares the groundwork for a subsequent law on ancestral land.

That indigenous control over ancestral domain is an ecologically sound practice as recognized by the DENR itself can be seen in its proclamations.

For instance, page 219 of the *Master Plan for Forestry Development* discusses legitimizing indigenous claims on Benguet Pine Forests thus:

On the side of forest conservation this could well be a very positive development. Public lands are viewed as belonging to everybody and as a consequence to nobody. Many enter and occupy them. It is quite different when the land is privately owned. Furthermore,

private owners are closer to the land and can provide protection against illegal entry and log poaching.

Similarly, the *Regional Master Plan for Forestry Development* states:

the *tayan*, *kakkaju*, *pinugo* or *muyong* [corporate group properties] are also excellent living representation of the indigenous forest management method of soil and water conservation practices.²⁹

When the DENR instituted the STFAL, it passed Department Circular No. 03, series of 1990, Rule III, Section 2 which declares that:

The ICC within recognized claims shall be given the responsibility to develop, maintain, protect and conserve said areas [watersheds, wildlife sanctuaries, wilderness, etc.] with the assistance of concerned government agencies.

In short, several different pronouncements of the DENR have recognized that indigenous control over resources is an ecologically sound practice.

Having argued that recognition of entire domains would be ecologically sound, I would also like to argue that it would encourage grassroots participation. It is noticeable that both the MBBF and the KBC are local organizations, taking the initiative, and advancing the cause of recognition of ancestral land rights. Similarly, many of the group applications were for entire barangays which (in some but not all cases) correspond to the indigenous political units.

The fact that these groups were unsuccessful in pleading their case would seem to have had a dampening effect on more groups registering their claims with the STFAL. It is significant that no claims were filed in most areas of the Cordillera. Kalinga-Apayao and Abra, in fact, had the fewest applications. We can speculate that even a few certificates of recognition over the entire domains of indigenous political units would convince others of the government's sincerity.

Now, it is true, as argued by the Chairman of the STFAL, that there is no legal warrant for granting titles to the wider

ancestral domain. Current law does state that there must be actual and physical possession in order for a title to be awarded. However, the very existence of the STFAL was a recognition of the current situation where it is impossible to get title to ancestral lands. In connection with this, I would like to argue a third point — that the certification of the more expansive domains would lay the groundwork for implementing any new law on ancestral domains.

Successful delineation of ancestral domains pending the awaited law would allay the fears of Congress that recognition of ancestral domain would result in severe problems. Large parts, for instance, of the sub-province of Kalinga could be delineated with very little conflict.

There would be little conflict among indigenous communities because, in general, they are aware of the boundaries of their domains. In the Cordillera, in particular, there would be little conflict with holders of legal titles, since most claims to the wider ancestral domain pertain to areas within the public lands. This last fact could be demonstrated to Congress, and perhaps help convince them to pass an ancestral lands bill.

A focus on ancestral domain would also reinforce the need for new legislation. As mentioned above, the process of granting CLOAs has increased the security of tenure of individual beneficiaries, but this does not apply to entire domains. Thus, it is plain that new legislation is needed to supplement the DAR and DENR efforts. My contention is that administrative delineation of domain would be the empirical demonstration of such a need, and that recognition of ancestral domain is practical.

THE CURRENT STATE OF ADMINISTRATIVE ACTION

Provincial and Community Special Task Forces on Ancestral Lands throughout the Philippines were created in January 1993

with the issuance of DENR Special Order No. 25. This order explicitly provided for the recognition of ancestral domain by the provincial task forces, and left the recognition of ancestral lands that are not part of an ancestral domain to the community task forces. Thus, the DENR-CAR's STFAL was abolished. The DENR also issued Department Administrative Order No. 2, providing the "Rules and Regulations for the Identification, Delineation, and Recognition of Ancestral Land and Domain Claims."

These documents represent a headway for the cause of ancestral rights for two important reasons. First, there is an explicit recognition of ancestral domain, including "adjacent areas" which are needed by the community for the maintenance of their way of life. I believe that the issue of the *bogis*, the entire ancestral domain, was perhaps the most important controversy arising out of the actions of the STFAL earlier in the Cordillera. Allowing communities to apply for the certification of entire domains is very helpful in paving the way for future action.

Secondly, within the bureaucracy, work on ancestral domain and ancestral lands will now be a "key result area." Thus, DENR personnel will now be evaluated on the basis of their progress in this area. Henceforth, CENROs and PENROs will not be able to ignore the issue as they had been able to when work was being headed by the Chairman of the STFAL who had no supervisory power over them.

Some of the criticisms which were made of the STFAL will also apply to the new task forces. In particular, they will still be issuing certificates of claims, not titles. During the time of the STFAL, progress on recognizing land claims took the form of a Memorandum of Agreement with the DAR, to give CLOAs to those awarded certificates of claims. Given that this memorandum of agreement applied only to the Cordillera, and that even here it was rescinded, it is far from clear whether the DAR-CAR's procedure for giving CLOAs for ancestral lands will be adopted; and, in any case, the application of this procedure to ancestral *domain* is questionable. Ownership of ancestral domain and lands will still require new legislation.

Special Order No. 25 makes explicit mention of nongovernment organizations and people's organizations. Hence, we can hope that the grassroots will be more actively involved in the implementation of this order.

The implementation of SO 25 and DAO 2 in 1993 continues to suffer from lack of funds as did the Special Task Force in the Cordillera. The highly unrealistic timetable (90 days for an information campaign, then 10 days for a listing of communities, etc.) was not followed. However, DAO 2 does specify that from 1994 onwards, funds for ancestral land rights will be included in the regular budget of the DENR. Since it is too early to evaluate the impact of this new administrative initiative, we can try to draw lessons from the experience of the STFAL in the meantime.

SUMMARY AND RECOMMENDATIONS

I consider the work of the Special Task Force on Ancestral Lands to be a sincere and valuable effort to recognize ancestral land rights. Several criticisms that were pointed out earlier — such as the short time span, or lack of security of tenure — have been addressed, albeit within the limits of STFAL's administrative capability i.e. application deadlines were extended and CLOAs issued by the DAR.

However, certain issues have yet to be addressed. One is how to generate sufficient consensus within the DENR itself to help give more weight to the recognition of ancestral land rights. I would argue that success breeds success, and what the STFAL has been able to accomplish (along with its counterpart in Palawan) should be more widely disseminated.

In this regard, I would like to stress the importance of ancestral domain. If forced to choose, I would stress the

recognition of "ancestral domain" over the more restrictive concept of "ancestral lands." Ancestral domain is necessary for the preservation of the indigenous culture. In addition, claims for domain tend to cover areas where there are few competing claims. Claims for ancestral land, on the other hand, (at least in the Cordillera) tend to cover the more built-up areas, particularly near Baguio City where the land is more valuable and the stakes are higher. Competing claims often overlap and clash with titles held under the national land law.

Individual claims to ancestral land often need to be considered in a broader context. A useful suggestion has recently been made by ex-Congressman Honorato Aquino: to establish a study commission "for the purpose of conducting a comprehensive and in-depth study of ancestral lands in Baguio City." The suggestion could be expanded to include all of the Baguio-La Trinidad-Itogon-Sablan-Tuba (BLIST) area in view of other ongoing planning exercises which treat BLIST as a unit. The establishment of such a commission, at the BLIST level, would have the added virtue of ensuring that consideration of ancestral land claims becomes an integral part of the planning process.

I would also like to stress the need to encourage grassroots participation in the recognition of ancestral land rights. I have already argued that the inclusion of the entire ancestral domain of an indigenous cultural community would stimulate grassroots involvement in policy formulation and implementation. One constant factor in the process of claiming ancestral domain is the indigenous cultural community asking for recognition. When they see that this is possible, they may be more willing to cooperate with the DENR. For instance, the DENR could engage in the process of training indigenous communities to survey their own traditional boundaries, thus bringing the traditional and technical delineations of domain closer together.

In this regard, the potential for nongovernment assistance in the recognition of ancestral lands has not been realized.

Nongovernment organizations (NGOs) have always been at the forefront of the struggle for recognition of the rights of indigenous communities in general, and in the setting up of the STFAL, in particular. However, their participation in the actual operations of the STFAL was often minimal.

We have here a problem of mutual distrust. The STFAL perceived NGOs to be either special pleaders for ancestral land claimants, or unreservedly hostile to the STFAL's work. This view unnecessarily downgrades the sincerity of NGOs. Nongovernment organizations, on the other hand, perceived the STFAL either as non-responsive or as representing a government lacking in commitment in recognizing ancestral rights.

I think both sides lose in this situation. NGOs lose the opportunity to influence a significant government process. A confrontational stance does not necessarily lend persuasive power to groups seeking recognition for ancestral rights. At the same time, the DENR loses the opportunity to tap the skills of NGOs in mobilizing popular participation with possible outside resources. For instance, in Palawan, NGOs and the DENR cooperated in an effort to delineate ancestral lands, with assistance from the UN Food and Agriculture Organization.

As noted above, the new mechanism under Special Order No. 25 and Departmental Administrative Order No. 2 provides for a role for NGOs. NGOs, preferably based in the area, and recommended by the communities themselves, will be represented in the new Special Task Forces. Hopefully, both the DENR and the NGOs will be able to take advantage of this fresh start to maximize the benefits to the community.

THE NEED FOR RESEARCH

Much research needs to be done, either by academics or by full-time DENR personnel who have been trained in social investigation.

For instance, if ancestral domains are to be recognized and managed by indigenous cultural communities, the question is whether there exist indigenous mechanisms for managing the domain — including dispute settlement among individuals within the domain. Clearly, in some areas there are such mechanisms. In other areas, property has become truly individual in character and thus, it may not be wise to award the entire ancestral domain.

It is pertinent to point out that there are areas, even in the Cordillera, which are not part of any individual cultural community's ancestral domain. We clearly need a census of indigenous communities and their domains.

And, it should be pointed out that, if individual claims are to be awarded, investigation must be carried out to determine whether or not individual ownership of property is appropriate, given the customs of the community.

Finally, a crucial question has to do with the resource management practices of the indigenous communities. I have mentioned a presumption (on the part of the DENR and myself) that recognition of ancestral domain would be ecologically helpful. However, we certainly need to test that presumption.

Here, we can see that the budget for investigations of the claims must be considerably increased, since each certificate would require one or two weeks (rather than one or two days) of investigation. In addition to a documentation of the adequacy of customary law for the type of certificate being applied for (domain or individual), a determination of who the beneficiaries are (either by traditional rules regarding community membership, or by a census) would also be required.

It would also be best to have a follow-up research on the progress made under the new SO 25 and DAO 2. Now that the recognition process will be implemented nationwide and now that it has been decentralized, close monitoring by outside agencies would help the DENR maximize its successes.

A FINAL WORD ON ANCESTRAL LAND LEGISLATION

Given the above recommendations, we would still be operating within a restricted legal format. For instance, if entire domains were issued certificates, then the three hectares per beneficiary available under DAR's CLOAs would become clearly inadequate.

Passage of an ancestral lands bill, establishing a national commission to undertake the delineation and recognition of ancestral land rights, is most desirable.

Unfortunately, such an event looks unlikely at the moment. Executive endorsement of the bill seems hostage to a national land use policy aimed at the "best use" of the land. This is precisely the sort of thinking we must try to overturn. The policy of "best use" should now be subject to prior ancestral rights.

The activities of the STFAL have received a qualified endorsement from the public. Successful continuation of this project may be one of the best ways to change the way policy makers think about ancestral lands. We can thus hope that the DENR will vigorously implement Special Order No. 25 and Departmental Administrative Order No. 2, in order to show Congress that recognition of ancestral rights to lands is feasible, as well as desirable.

ENDNOTES

¹Prill-Brett, 1988: 2

²Gaston Z. Ortigas Peace Institute, n.d.: 10

³These unpublished data came from a study conducted by the Cordillera Studies Center under a grant from the International Development Research Centre of Canada. Neither institution is responsible for the interpretations offered here.

⁴Augusto Gatmaytan in Gaston Z. Ortigas Peace Institute [n.d.: 14-15]

⁵Cariño vs. Insular Government, 41 Phil. 939-941, as cited in Heirs of Cariño, 1992: pp. 14-15

⁶Heirs of Cariño, 1992

⁷*Baguio Midland Courier*, 19 January 1992

⁸Letter from Justice Secretary Franklin M. Drilon to *The Manila Chronicle* [27 July 1993, p. 5]

⁹Rood, 1989: 387-389

¹⁰La Vina, 1988: 10

¹¹DENR, *Master Plan for Forestry Development* [30 June 1991: pages 97ff]

¹²Bautista, 1991: 11

¹³DENR, *Master Plan for Forestry Development*: 294

¹⁴CSC-FES Seminar, 1991

¹⁵Prill-Brett, 1988

¹⁶quoted in Cristobal, 1990: 66

¹⁷Casambre, 1990: 11-17

¹⁸Rood, 1991: 526-529

¹⁹Now, it may be that the most effective way to recognize the individual ancestral domains is to institute an autonomous region for the Cordillera as called for in the 1987 Constitution. This is a matter to be explored, but not in this paper. There are treatments, such as "Recognizing and Protecting Rights to Ancestral Domain: A Core Element of Cordillera Regional Autonomy" (Chaloping, 1992) which look at the interrelationships between these two issues. However, this paper will not deal with this important topic.

²⁰Rood, 1991: 538

²¹Prill-Brett 1992: 51-53

²²de Leon, 1992

²³CSC-FES Seminar, 1991

²⁴Llames, 1992: 68,74

²⁵*Baguio Cordillera Post*, 13 June 1993 and 20 June 1993

²⁶Prill-Brett, 1988

²⁷Prill-Brett, 1992: 51

²⁸Arroyo: 1992

²⁹Prill-Brett, 1988: 15

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About the UP Center for Integrative and Development Studies

The UP Center for Integrative and Development Studies (UP-CIDS) was established in September 1985 to promote interdisciplinary studies on critical topics that influence development policies and issues.

The UP-CIDS initiates and supports research involving innovative methodological approaches and multi-disciplinary collaboration. While public policy questions are the primary concern of UP-CIDS, it also encourages basic research that is needed for informed formulation of policy.

The UP-CIDS functions under the Office of the UP President. The UP-CIDS has four major programs, the UP State of the Nation Assessment Program; the Peace, Conflict Resolution, and Human Rights Program; the Educational Research Program; and Special Programs. For further information, contact: The Executive Director, UP-CIDS, UP Diliman, Quezon City. Tel. Nos. 97-35-40, 99-96-91 (fax) and 98-24-71/79 local 5518.

UP-CIDS Peace, Conflict Resolution and Human Rights Program

The Program on Peace, Conflict Resolution and Human Rights is the U.P. Center for Integrative and Development Studies's contribution to the University's efforts to help the country grapple with its critical problems regarding peace.

The Program has been able to support several studies by faculty members dealing with peace, conflict resolution and human rights concerns. Most studies have notably dealt with the impact of armed conflict on Philippine communities, and the various initiatives to build peace and find peaceful solutions to the major armed conflicts besetting the country.

The Program has also sponsored several consultations, a regional training on domestic conflict resolution, workshops and public fora. These were aimed at building knowledge and generating interest on peace and human rights issues, enhancing human resources capability in peace and conflict studies, and developing strategies for creating the national environment for a lasting peace.

Another component of the Program is the set of researches on psycho-social trauma. This sub-program is specifically concerned with generating a database and studies on the psycho-social impact of armed conflict.

The Program is envisioned to further facilitate and broaden the participation of the University in the task of national and global peace-building.