

FOREWORD

A Multifaceted View of the Uplands

Our concept of the "uplands" largely depends upon interests that underlie our standpoint. Uplands are seen as "timberlands" by those who value profits that come from extracting lumber and wood products. These same forests could be also seen as the subject of natural resource management schemes by those who wish to explore extractive activities within the context of profit, some ecological considerations or, as is often the case, a mixture of both. Those who value the cultural interrelationships of communities and their resources in turn could also view this entire ecosystem as "ancestral domains".

When the rules over the same areas need to be clear, these perspectives inevitably clash. Thus, those who believe that "ancestral domains" are intrinsic political and property rights of indigenous communities may abhor central government control or regulation suggested by "community based resource management" programs. Ecological concerns mitigate, and at times are inconsistent with, unbridled extraction for timber and other wood products driven by more profits.

The articles in this issue of the Philippine Natural Resources Law Journal examine these perspectives as reified in three different contemporary policy instruments. Forests as assets that create timber, wood products and eventually profit is the driving concept that informs the Forest Resources Securitization Strategy (FRSS) that is well under study by the present administration. The potential of communities, under central government supervision, to achieve ecological and production targets inform the Community Based Resource Management (CBRM) programs in its various versions. Ancestral Domain

recognition acknowledge the view that collective community perspectives articulated through various cultural mechanisms such as customary law should govern how resources will be used.

Of course, each of these programs, whether in reality or in rhetoric, take the other views into consideration. They have to since they need to be acceptable in a social environment where the constituencies supporting each of these standpoints have increasingly become politically relevant. Some views are echoed by administrators in government; others, through consultants within international financial institutions. Still others, by systematic efforts of peoples' movements whose views have become popular as each of the older solutions led to crisis after crises. None of these advocates of course have full control over the historical conjunctures of their efforts.

Examining these policies therefore is an inquiry into where the "truce lines" between these advocates have been drawn. It reveals to what extent the State, through relevant agencies, have accepted or accommodated either the full view or the language resulting from it. It is evident for instance that the Forest Resources Securitization Strategy (FRSS) takes off from the symbolic recognition of tenurial rights. It however uses these symbolisms as means to subvert them by using them as basis for communities to participate in a forum that could only be controlled by those who can become savvy in the financial and trade markets. Communities benefit, not by collectively deciding on the orientation of their development, but only through sharing in the profits of others. Very little control is left to them—those that remain would in fact be largely symbolic.

This is, at its core, "trickle down" development.

Knowing the interests that are given more importance in each of the programs of course is not enough. This knowledge should inform action. After all, the lines drawn by the programs as they are now articulated do change only through informed and systematic collective efforts.

Marvic M.V.F. Leonen

*The Forest Resource
Securitization Strategy:
Selling the Security of
Philippine Forests*

ALVIN T. PAGAYATAN

I. INTRODUCTION

On January 6, 1998, Department of Environment and Natural Resources (DENR) Secretary Victor O. Ramos issued Department Administrative Order No. 1, series of 1998 (hereinafter DAO 98-01), thereby establishing the Forest Resource Securitization Strategy (FRSS). The program was seen as a solution to the government's perennial problem of finding sufficient and sustained funding for its reforestation efforts.¹

DAO 98-01 comes at a critical time when the country is in dire need of a workable and effective forestry program that will arrest deforestation (which has already reached crucial levels)²

¹ DENR Adm. O. No. 1 (1998), sec. 2 (2).

² According to the 1997 Forestry Statistics, out of the country's total land area of approximately 30 million hectares, current total forest cover amounts to only 5.4 million hectares or less than 20% of the total land area. This is in sharp contrast to the country's original 17 million hectares of old growth forests and way below the ideal forest cover of 54%. See *The State of the Philippine Environment*. Ibon Foundation, Inc. (1997), citing Percy E. Sajse, et. al., *Saving the Present for the Future: The State of the Environment* (1992).

and implement massive and nationwide reforestation. The Order also comes in the midst of severe pressure being exerted by communities and environmental advocates for the DENR to fully and genuinely adopt community-based policies in its forestry programs.

This paper analyzes the FRSS, particularly its feasibility, legality, and its effect on forest communities. In addition, this paper aims to bring to light questions regarding the real policies behind the DENR's approach to the forestry sector, particularly as to whether the Department has genuinely employed the principle of community-based forest management (CBFM), as it has repeatedly claimed, or if the Department has continued to adhere to profit-oriented commercial forestry.

II. A "PARADIGM SHIFT"?

Philippine reforestation programs have reputedly been undergoing a "paradigm shift" from the widespread use of the principle of commercial forestry to a community-based one.¹ From the archaic policies laid down in Presidential Decree No. 705 (otherwise known as the "Revised Forestry Code of the Philippines") which emphasized the utilization of forest resources for commercial purposes and provided for the criminal prosecution of persons who enter into classified forest areas without permit or license,² the principle of community-based forest management (CBFM), a more socially-oriented and community-driven reforestation strategy is said to have emerged.

The shift, at least in policy-rhetoric, to CBFM was largely spurred by the untrammelled loss and degradation of the country's forests, despite numerous plantation schemes, and more importantly, by the growing pressure on the government to recognize the capability of indigenous and migrant communities to conserve and manage forest resources, primarily due to their proximity to such resources and their time-tested, long standing practices in forestry conservation and management. As a result, strict conservation policies have been imposed, resulting in a ban on logging operations in the remaining primary forests,³ the cancellation of several Timber License Agreements (TLAs) and Industrial Forest Management Agreements (IFMAs), and the imposition of logging moratoriums in many provinces. With respect to the forest communities, their land tenure security, long weakened by state policies on land classification, have been strengthened, in recognition of the fact that they are in the best position to take care of the forests that they inhabit.

2.1 Roots of CBFM

The roots of CBFM can be traced back to the 1980s upon the implementation of the Integrated Social Forestry Program

¹ See Lucrecio L. Rebugio, *Paradigm Shift: The Key to Sustainable Forestry and Environmental Resources Management, Community-Based Resource Management: A Paradigm Shift* (1997).

² Pres. Decree No. 705 (1975), sec. 53.

³ See Philippine Agenda 21.

(ISFP), which gave qualified individuals and communities tenurial rights over the uplands for a period of at least 25 years in exchange for undertaking forest-guard duties and reforestation activities. The program was in line with the declared government policy of democratizing the "use of public forests and to promote more equitable distribution of forest bounty."⁶

Not long after, the rights of indigenous peoples (IPs) over their ancestral lands, which included vast forest areas, were recognized through the issuance of Certificates of Ancestral Land Claims (CALCs) in certain provinces.⁷ The subsequent issuances of DENR Administrative Order Nos. 2⁸ and 22,⁹ series of 1993 established the concept of CBFM at the center of national policy. Two years later, in 1995, President Ramos issued Executive Order No. 263 which mandated CBFM as the "national strategy to achieve forestry and social justice."¹⁰ In his speech in the 20th session of the International Tropical Timber Council (ITTC) and International Tropical Timber Organization (ITTO) in May of 1996, President Ramos recognized that forest loss and degradation can only be curbed if the organized local communities and IPs are given the power and the authority to embark on their own reforestation efforts.¹¹

The "paradigm shift" though has not been as comprehensive and as genuine as the government would like some to believe. For one, laws, particularly DENR Administrative Order No. 96-29,¹² continue to exclude commercial forestry areas and protected areas from the coverage of CBFM. Second, the communities remain bound to respect prior vested rights¹³ and to follow detailed development plans that are formulated with the influence and concurrence of the LGUs and, of course, the DENR.¹⁴ Third, established policies and laws notwithstanding, the government still appears determined to pursue commercial forestry with its numerous industrial reforestation programs and strategies, such as the Industrial Forest Management Agreement (IFMA) program, the Private Land Timber Permit (PLTP) program, and the Socialized Industrial Forest Management Agreement (SIFMA) program for example. Fourth, the government's annual budget always allocates to Commercial Forestry items amounts much bigger than those allotted to CBFM particulars. Over the past few years, from 1995 up to 1998, the government has relied more and more on Foreign-Assisted Projects (FAPs) to finance its CBFM programs, in sharp contrast to the increasing regular budgetary appropriations for commercial forestry.¹⁵ In the Fiscal Year (FY) 1999 General Appropriations Act, commercial forestry items continue to get the biggest allotments, while CBFM programs, with their meager allotments, would again have to rely heavily, if not tenuously, on foreign financial assistance for their effective implementation.¹⁶

Throughout all these instances that betray its bias for commercial forestry, the government has continued to

⁶ L.O.I. No. 1260 (1982).

⁷ DENR Special O. No. 31 (1991).

⁸ DENR Adm. O. No. 2 (1993) lays down the procedure for the delineation of ancestral domains and ancestral lands and recording claims thereto by indigenous communities. Among the declared objectives were: a) To protect the tenure of indigenous cultural communities (ICCs) over ancestral lands and domains; b) To pursue the Constitutional mandate for equitable access to natural resources; and c) To ensure sustainable development of natural resources within ancestral lands and domains especially the forests.

⁹ DENR Adm. O. No. 22 (1993) has the following objectives: a) Initiate community-based forest management and utilization of natural resources within second growth upland forests and residual mangrove forests to promote social equity and prevent further degradation of natural resources; b) Protect the remaining primary forests with the help of the community; c) Enhance the institutional capacity of the DENR, Local Government Units (LGUs), educational institutions and non-government organizations (NGOs) in catalyzing community based forest management.

¹⁰ Exec. Order No. 263 (1995), sec. 1.

¹¹ Excerpt from Ramos' speech: "This community-based strategy stems not out of a theoretical view of rural communities and people empowerment. It is based, in fact, on an objective assessment we have made of the state of our resources, environment and population.

That is why we are determined to restore the rights of local communities and indigenous peoples to the enjoyment of our natural resources. People who are organized, who have a real stake in the forest, who have effective ownership, acknowledged rights of use, and who have accepted the protection and management responsibilities over these forests can now be depended on to achieve our vision of sustainable management of natural resources.

We believe that only by empowering organized local communities and indigenous peoples would we be able to arrest degradation and loss of our forests. That is the core strategy for sustainable management of our forests."

¹² DENR Adm. O. No. 29 (1996) prescribes the rules and regulations implementing Exec. Order No. 263 (1995).

¹³ DENR Adm. O. No. 29 (1996), art. I, sec. 5.

¹⁴ DENR Adm. O. No. 29 (1996), art. II, secs. 9, 10, 11 and 12.

¹⁵ See LRC-KSK, *Tinted Tiger: Some Truths About the DENR's 1998 Budget Proposal*, 8 Phil. Nat. Res. L.J. 29 (1997).

¹⁶ Emily Manuel, *Estrada and the Environment: Observations on the FY 1999 General Appropriations Act (1999)*. (unpublished)

camouflage, with little success, its real intentions with community-based rhetoric. The concept of CBFM, thought to be the principle that would rehabilitate the Philippines' rundown forests, is ironically being used and co-opted by the government in its policy statements to appease advocates for a more sustainable forestry program, and in order to justify and continue with its profit-oriented forestry projects.

III. DAO BACKGROUND

DAO 98-01 prescribing the Forest Resource Securitization Strategy (FRSS) is a striking indication of the government's refusal to completely implement community-based policies in its reforestation endeavors notwithstanding rhetoric to the contrary. Although the DENR touts it as part of their program to enhance the principle of CBFM, the FRSS evokes commercialization in its purest sense, as it aims to securitize existing forest assets and subsequently sell and issue these financial securities to the private sector in order to mobilize private capital and raise funds for sustainable forestry.¹⁷ The private investors and all the other major players¹⁸ are all driven into the securitization venture by the prospect of raking in huge profits. With respect to the use-rights holders, most especially upland communities, these monetary incentives are dangled to convince them to give up their tenurial rights or rights of possession over their respective lands.

3.1 The Origins Of The FRSS

In 1995, then House Speaker Jose de Venecia filed House Bill No. 3, otherwise known as the "Billion Trees Act," which endeavored to provide the mechanism for the planting of one billion (1,000,000,000) trees on seven million (7,000,000) hectares of land. However, the enormous costs of rehabilitation of the forests, estimated in 1995 to be at least twenty thousand pesos (P20,000) per hectare and amounting to a total of at least one hundred forty billion (P140,000,000,000),¹⁹ proved to be beyond the government's financial capacity. To address the problem, a consortium made up of the Bankers Association of the Philippines (BAP), the Development Bank of the Philippines (DBP), and the Alternative Development Initiatives, Inc. (ADII), a firm specializing in merchant banking and financial management, proposed the "Tree Bank" solution, a funding mechanism that would provide the proposed Billion Trees Act the necessary funding coming from the private investor.

3.2 The Tree Bank Solution

In the scheme, the Tree Bank certificates, also called "Social Service Bonds" or "Tree Bonds", are sold and issued to private investors, with the proceeds serving as payment for the services of upland communities or contractors which would be tasked to

¹⁷ DENR Adm. O. No. 1 (1998), 2nd *whereas* clause.

¹⁸ The major players, aside from the private investors, are the trustee bank, the service consortium, and the use-rights holder.

¹⁹ See Summary of Tree Bank Briefing for Congressional Committee on the Billion Trees Act (1995) (on file with the author).

plant, grow and care for the trees in their respective assigned areas for 10 years. The income or proceeds from the project go to the Tree Bank Fund managed by the program, which would augment the DENR's reforestation funds and enable the government to finance the implementation of a total system of sustainable reforestation. The ultimate effect of the Tree Bank solution is to bring down the effective cost of reforestation per hectare over a period of forty (40) years to only Eight Thousand Three Hundred Eighty Pesos (P8,380).³¹

The Tree Bond is different from an ordinary investment bond. The Tree Bond holder is not entitled to recover the principal or the interest. Moreover, the certificate is not an indication of ownership. In return though, the bond holders get the following benefits: (a) the right to periodically check the progress of the community's activities in the reforestation area covered by the bond certificate; (b) a guarantee of sustained reforestation in the forest area assigned to the bond holder's number; and (c) priority rights in the purchase of the eventual forest products or goods, which they can get at a substantial discount.

3.3 The Proposal

In 1997, less than two years after the Billion Trees Act fizzled out in the Senate, TREECORP of Australia, a foreign corporation engaging in industrial forest ventures, together with the Philippine Rural Reconstruction Movement (PRRM), the Agrisystem Development Corp. (ASDC), the ADII and the Philippine National Bank (PNB) presented to then DENR Secretary Victor O. Ramos a proposal to securitize forest assets in the country for the purpose of raising money for reforestation. The proposal formed the basis for DAO 98-01, which came out less than a year later in January of 1998.

DAO 98-01 incorporated most of TREECORP of Australia's proposal to securitize forest assets, except in one hugely important aspect - the order excluded natural growth forests from areas that can be subjected to extraction of timber resources under the securitization strategy.³² This exclusion was subsequently embodied in section 7 of the draft of the rules and regulations implementing DAO 98-01.³³

The limitation on tree plantations and restriction on protection forests elicited adverse reactions from the corporations and banks planning to spearhead the securitization scheme. They, of course, batted for the inclusion of tree-rich protection forests not merely for management and preservation by the service consortium, but for their exploitation and extraction under the strategy.³⁴ The reason was obvious - to start with seedlings and plantlings would entail a long waiting period that may not be worth the investors' while, considering the gargantuan amounts of capital needed for such a venture. In contrast, the

³¹ *Id.*
³² DENR Adm. O. No. 1 (1998), sec. 1, last par.

³³ Section 7 of DENR Adm. O. No. 98-01's IRR provides that: Protection forests which may be included within the coverage of the securitization project, whether or not covered by tenurial instruments or ancestral claims, shall be managed and preserved by the service consortium or entity in accordance with their original purposes and **no extraction of the timber resources therein shall be allowed**. These restrictions shall be expressly provided for in the joint venture agreement as well as in the Forest Development Plan(s) and Business Plan(s). (emphasis provided)

³⁴ Interviews with several DENR foresters.

immediate utilization of the multitude of mature dipterocarp trees in natural growth forests would translate, at least in the initial cycle, into a much shortened payback period - indeed, a very favorable state of affairs for the capitalists and proponents of the strategy. As a result, potential financiers and implementors of the strategy backed out, and the planned pilot project in Bukidnon²⁴ never materialized. Consequently, the implementation of DAO 98-01 was shelved.

Later in 1998, with the assumption of the office of DENR Secretary by Antonio H. Cerilles, the order was resuscitated, heralding the new DENR Administration's strong commercial inclinations.

On August 18, 1998, a roundtable discussion²⁵ was held for the purpose of reviewing DAO 98-01 and soliciting suggestions for the formulation of the program's implementing rules and regulations. Many among the participants gave negative views on the program's implementability. Consequently, DENR officials are currently re-examining the program, studying ways to make it feasible and enticing to potential investors. Obviously, these officials are under pressure to allow natural growth and protection forests to be harvested. After all, this could be the only way that consortiums, banks, and other financial institutions will agree to implement the project. In a move that could signify its firm resolve to push through with the strategy despite the disputes and deficiencies, the DENR has already tagged the Caraga area, specifically in Agusan del Sur, to house the model securitization project.²⁶

IV. THE SECURITIZATION CONCEPT

Securitization is a financing mechanism that repackages assets or receivables into securities that are sold or traded to investors. It involves the transformation of illiquid assets into marketable securities. These illiquid assets are sold to a trust institution, which in turn uses the pool of assets as collateral to issue bonds. The trust institution then passes the proceeds back to the originators or the original holders of the illiquid assets.²⁷

Securitization, as a funding technique, has its roots in the United States in the 1970s when mortgage associations bought residential mortgages insured with the government's Federal Housing Association (FHA) and sold securities backed by the residential mortgages. The immediate effect of the set up was the shifting of the risk from lenders (or original mortgagees) to the buyers of the securities. Through the expert handling of the mortgage associations of the interest on loans and the corresponding mortgages, securities holders were ensured of returns on their investments. The whole scheme benefited the mortgage market as lenders, who before could only provide a limited amount of residential mortgages, were stripped of the

²⁴ *Id.*

²⁵ See DENR Memorandum dated Aug. 31, 1998.

²⁶ See House Committee on Appropriations Hearing on DENR Budget, Sept. 18, 1998. In a press release on November 6, 1998, the DENR reported that it was eyeing 700,000 hectares of denuded forest lands in the CARAGA region as the country's premier "timber corridor" or industrial tree farm area. According to the author's interviews with various DENR personnel, a portion of this "timber corridor" may be used to house the pilot securitization project.

²⁷ Danny P. Lizares, John P. Kelly and Michael Maloney, *Primer on Securitization in the Philippines*, 85 *REVIEW*, p. 1 (1994).

risks involved in lending. The money that these lenders received from the sale of the mortgages were in turn used to issue more loans secured by mortgages. The result, in short, was a much larger pool of liquidity in the residential mortgage market and, more importantly, the diversification of risks.

Today, securitization schemes are no longer exclusively backed by mortgage assets. It took a while before the first non-mortgage-backed transaction was completed in the form of a computer leasing-backed transaction.²⁸ Today, imagination and ingenuity have allowed a constantly widening array of assets to be securitized, such as car loans, student loans, commercial real estate, utility receivables, credit card receivables, insurance premium receivables, healthcare receivables, commercial and office equipment leases, and in the case of the FRSS, forest resources.

4.1 The Securitization Process

There are two types of securitization structures depending on the interest that the investor has on the underlying asset. Structures in which the investors acquire ownership over the underlying assets are called "pass-through" structures. Structures designed as debt instruments, which are secured on the payment of receivables, are known as "pay-through" structures. In a "pass-through" structure, a homogenous pool of mortgages is used as collateral for the issuance of securities. The holders of these securities, being part-owners of the underlying assets, are entitled to their corresponding shares in the cash flows from the pool, after deducting transaction expenses. On the other hand, "pay-through" structures entitle the security holders only to a stipulated interest, as their "investments" are treated as loans rather than the purchase of underlying assets.²⁹ The FRSS is an example of a "pay-through" structure.³⁰

The wheels of asset-backed, pay-through securitization start rolling upon the assignment or sale of receivables or other assets by the owner of these assets, also known as originator, to the issuer, also known as the Special Purpose Vehicle (SPV). The SPV is a bankruptcy remote entity,³¹ confined to activities envisaged under the transaction by its articles and memorandum of association, set up specifically for the purposes of the transaction.³² The proceeds from the assigned receivables or other assets will then be rightfully remitted to the SPV. The SPV issues to investors securities backed by the aforementioned assets. The cash flows received by the SPV will then be used to make the required payments of interest and principal to the investors. In the event that receivable payments are insufficient to cover the payments to investors, credit enhancement may be availed of to ensure the uninterrupted flow of payments to investors.³³

²⁸ See Supplement to *Asiamoney* (hereinafter *Asiamoney*), Dec. 1997/Jan. 1998, p. 2.

²⁹ *Asiamoney*, *id.*, p. 6.

³⁰ See Figure 1 for the standard pay-through, asset-backed securitization model.

³¹ One of the primary goals of securitization is to isolate the receivables/assets from the group of assets held by the originator in the event of the originator's bankruptcy. In order to adequately shield the receivables from the originator's bankruptcy estate and from the reach of the originator, it is necessary to set up what is known as a special purpose vehicle (SPV) which will purchase the receivables from the originator and issue securities backed by the receivables. The result is the assets will not become a part of the originator's bankruptcy estate should the originator become subject of a bankruptcy proceeding. This situation, of course, works to the advantage of the investors. See Michael J. Cohn, *Asset Securitization: How Remote is Bankruptcy Remote?*, p. 931 [1998].

³² *Asiamoney*, *supra* note 28, p. 2.

³³ *Id.*, at 3.

The rapid and global development of securitization is not at all surprising in view of the many advantages and benefits that can be derived from such a funding scheme from the point of view of the originator, the buyer of the receivables and issuer of the securities, and the investors. As far as the originator is concerned, securitization brings three main advantages:

1. Securitization improves the liquidity of the originator, since future payments are transformed into immediate cash. The sale of assets, even though discounted, will bring in a lump sum cash payment to the originator, which it can use to meet current obligations or use as capital for other business ventures.
2. As previously explained, securitization facilitates the diversification of funding source and provides access to the capital markets. In the case of the residential mortgage-backed securities in the United States, as the obligations or securities backed by mortgages are no longer associated with the general credit or market risk of the originating entity, which in this case, is the FHA, the resulting securities are likely to be rated higher than the credit rating of the seller. As a result, the originator can usually gain access to new markets and investors, which would otherwise not be available through traditional lending lines.
3. The funding costs are diminished along with the corresponding optimization of capital usage. Although upfront costs of securitization transactions can be expensive, such costs can be amortized over the life of the deal. Moreover, investors will tend to be more aggressive in view of the higher than normal interest yields. Consequently, the overall cost of funding to the originator will likely be lower than when traditional sources are tapped.²⁴

For the issuer of the securities (the SPV), the benefits include risk diversification, lower funding costs, access to new investors, and improved capital efficiency. For the investors, securities present a good opportunity to improve returns on investments, while at the same time maintaining the corresponding risks at acceptable levels.

For all its positive attributes, though, securitization also brings with it several hazards for all the entities involved. First, upfront costs and ongoing administration fees may be too expensive on transactions that are very small or have short average lives. Second, the assets of the originator may be too diverse or may be of such a nature as to make it difficult to assess the overall performance of the portfolio. This results in uncertainty in the performance of the portfolio and usually leads

²⁴ Danny P. Lizares, et al., *supra* note 27 at 1. (1994)

to higher credit enhancement requirements. Third, and most practical disadvantage, the originator may not possess sufficient capability to monitor and manage the assets and to provide enough performance data on the portfolio.

4.2 Rapid Growth

The rapid growth of the securitization market in the United States has spilled over to Asian countries, including the Philippines, where markets continue to be able to finance high rates of growth.²⁵ A combination of credit quality problems and increasingly limited access to new funding for many banks in Asia has increased the opportunities for the rapid development of the securitization markets in the region, where asset-backed "pay-through" structures presently dominate. Beginning mid-1990s, inroads have been made in terms of developing structural factors that would support the establishment and development of the securitization mechanism. In Hong Kong, Japan, and Australia, countries with substantial asset pools, securitization guidelines have already been established, other Asian countries are following suit. In June of 1997, Thailand established guidelines for SPVs specifically for use in securitizations.²⁶ In Indonesia, Bapepam, the capital markets regulatory body, is encouraging the development of viable domestic Indonesian market for securitized assets. A mandate for a domestic auto loan securitization has been awarded as part of this initiative.²⁷ Securitization has set foot in other Asian countries, such as Korea and Malaysia. Overall, the Asian region is being viewed by analysts as one huge growth market for securitization.²⁸

With DAO 98-01, securitization seems to have found its way to the Philippine forestry sector. However, instead of the usual excitement that such a financing mechanism generates, the appearance of securitization in this country has brought about much concern and apprehension, mostly from the environmental sector. The fear appears to be well-grounded, since the asset that is proposed to be securitized under DAO 98-01 are forest resources - natural wealth that have huge economic, social, and environmental significance.

V. THE FRSS

The FRSS prescribed by DAO 98-01 is not the typical common securitization scheme. Unlike that of the ordinary securitization, which is employed to gain financial benefits, the ultimate objective of the FRSS, at least on paper, is the reforestation of Philippine forests. Although there are obvious parallelisms between a regular "pay-through" securitization structure and the FRSS, it will be shown that situations that are not normally found in the former crop up in the latter. Indeed, the FRSS is a complicated and highly technical forestry program that is difficult to comprehend from the order itself and its IRR.

²⁵ Asiamoney, *supra* note 28 at 10.

²⁶ Asiamoney, *supra* note 28 at 40.

²⁷ Asiamoney, *supra* note 28 at 32.

²⁸ Asiamoney, *supra* note 28 at 8.

Befitting its ultimate purpose, the FRSS is a cyclical mechanism that facilitates the steady flow of income to be used for the generation and maintenance of forest resources. The forest resources generated and maintained are steadily increased with each cycle and dependence on the original forest portfolio is gradually diminished.

5.1 The Players

The strategy involves four major players - the forest use-rights holder (hereinafter "rights holder"), the securitization service consortium, the trustee bank, and the investors.

5.1.1 The Rights Holder

The "rights holder" is the entity that holds the rightful possession and occupation of the land to be subjected under the securitization program. It may be an organized community, a corporate entity, or an individual with whom the DENR has a valid and existing agreement for the development and utilization of forest resources. In certain circumstances, it may be the government itself or even a private landowner.¹⁹

The term "rights holder" thus applies to holders of tenurial instruments such as the Community-Based Forest Management Agreement (CBFMA), Industrial Forest Management Agreement (IFMA), or Socialized Industrial Forest Management Agreement (SIFMA) and the Certificate of Ancestral Domain/Land Title (CADT/CALT). If the subject land constitutes forest areas of the public domain and not covered by existing tenurial instruments or duly-recognized ancestral claims, the government is necessarily the "rights holder." Owners of private lands may also opt to include their lands for forestry purposes under the securitization program, and may likewise enter into joint venture agreements or similar arrangements with a duly authorized service consortium or other entity.²⁰ In order for a forest land to be subjected to the securitization strategy, the consent of the rights holder must first be obtained, (that is if they had not already signified their intention to qualify their land for securitization) since they have rights of use and possession over their forest land by virtue of a reforestation contract between them and the government.

5.1.2 The Service Consortium

The huge task of managing²¹ the portfolio of assets with the view of maximizing returns falls on the service consortium which may consist of a group of corporations, associations or organizations. DAO 98-01 lays down two criteria for the selection of a consortium. First, the corporations, associations or organizations that compose it are duly organized and existing in the Philippines. Second, these groups should have

¹⁹ Draft Implementing Rules and Regulations of DENR Admin. O. 98-01, Sec. 4(v). [hereinafter IRR]

²⁰ IRR, sec. 5.

²¹ Management of the forest assets shall be in accordance with the Business Plans and Forest Development Plans.

local and/or international experience, competence and commitment to undertake management of forest resources.⁴⁷ The Constitution imposes a third requirement restricting foreign ownership in companies or associations entering into a joint venture agreement with the State to a maximum of 40%.⁴⁸ This constitutional restriction will be explained in greater detail below.

5.1.3 The Trustee Bank

"Trust" refers to an agreement whereby a person or entity called a trustee is appointed by another called a trustor to administer, hold and manage funds and/or property of the trustor for the benefit of a beneficiary.⁴⁹ Basically, it is an agreement between a financial institution carrying out trustee functions on the one hand and trustors on the other, whereby the financial institution provides investment services and expertise to trustors who do not possess the time and the expertise to manage their assets wisely. The trustee is, therefore, vested with general authority and responsibility to administer and manage the trustor's assets, including the formulation of policies regarding the investment and disposition of funds or of any trust instrument.⁵⁰ The beneficiary could be the trustor or anybody designated as such.

The trustee bank is defined as a financial institution authorized to perform trustee functions under the laws of the Republic of the Philippines.⁵¹ There is no requirement that the bank be Filipino-owned. As long as it possesses a permit or license to perform trustee functions in the Philippines,⁵² the bank is qualified to participate in the FRSS.

Under the FRSS, the trustee bank also doubles as a special purpose vehicle (SPV), which acquires the usufructuary rights over the forest assets.⁵³ In contrast, however, to the normal "pay-through" securitization model, the trustee bank/SPV, under the FRSS model, does not have to remit money to the originator, since, unlike the originator in the regular securitization model, the originator has an automatic share in the net operating income of the business venture.

5.1.4 The Investors

The fourth major player are the investors from whom the money that fuels the securitization strategy originates. The access to private funds is facilitated by the purchase of securities, representing a stake in the securitized forest resources. The securities are debt instruments that entitle the investors to periodic interest payments and to the principal as well. There are no restrictions as to the citizenship of the investors, and as ownership over forest resources does not pass to the investors, the 40% constitutional limit to foreign equities does not apply.

⁴⁷ IRR, sec. 4(y).

⁴⁸ Const., art. XII, sec. 2.

⁴⁹ See Carmencita C. Santos and J. Zacarias R. Ejercito, "Trust, Investment Management and Fiduciary Business of Banks and Investment Houses in the Philippines," *BS Review* (Aug. 1993). See also Civil Code (1950), art. 186E.

⁵⁰ Ricardo Q. Cena, "A Review of Trust and Fund Management Operations of Financial Institutions (1983-1991)," *CB Review* (April 1992).

⁵¹ IRR, sec. 4 (bb).

⁵² Reserve requirements, limits on loans, treatment of required surplus and administration of trust accounts are some of the requirements that a trustee bank must comply with. These requirements are found in the Central Bank Manual for Banks and Other Financial Intermediaries, various circular letters issued by the Monetary Board, Chapter VII of Rep. Act 337, more popularly known as the General Banking Act, and the governing taxation system on the profits of trust as provided for in sections 53 and 54 of Pres. Decree No. 1158, otherwise known as the National Internal Revenue Code.

⁵³ IRR, sec. 12.

5.2 The Process

5.2.1 The First Cycle

5.2.1.1 Delineation, Inventory and Valuation

The DENR, through the Forest Management Bureau (FMB), jumpstarts the securitization process by identifying candidate forest sites for securitization.⁹ Existing rights holders who want to include their lands in the program can do so by signifying their intention to the FMB. The rights holder, the DENR for forest areas not covered by tenorial instruments, or the land owner, then forms a joint venture company (JVC) with a service consortium identified by the DENR, upon the recommendation by the FMB. The two entities will then be bound by a joint venture agreement (JVA),¹⁰ which details the institutional relationships, considerations, undertakings, and implementation process for the securitization strategy.¹¹ The agreement will cover 25 years, renewable for another 25.¹² In the context of the “pay-through” securitization structure, the JVC is the originator.

The JVC then enters into a special purpose trust agreement (STA) with a trustee bank or financial institution,¹³ whereby the bank binds itself to manage the funds that would come from the private sector. The STA’s effectivity will run as long as the JVA. The trustee also acts as an SPV, which acquires usufructuary rights over the forest resources. Included in the STA are the following provisions: the creation of a special purpose trust for and in behalf of the joint venture partners, investors, creditors and entities involved in the securitization project; designation of an independent administrator of the assets; ensuring the performance of the Forest Development Plan and Business Plan; and the protection of the rights of investors, and other stakeholders of the venture.

The JVC, mainly through the service consortium, then puts together an investment portfolio, subject to the approval of the trustee bank, and based on the assessment of the forest resources located within the project area. A general three-step process to be conducted under the JVC’s supervision is as follows:

First, the area is delineated to determine its exact boundaries and to establish the metes and bounds of protection and production forests.

Second, the resources are inventoried, taking into account their species, quantity, and location.

Lastly, the inventoried resources are valued or assessed using data gathered in the first two activities mentioned.

The forest resource assessment is discussed in greater detail in the five-step procedure below.

⁹ IRR, sec. 10.

¹⁰ With respect to ancestral lands and domains, Rep. Act 8371 (1997), sec. 57 allows non-members of the ICCs/IPs concerned to take part in the development and utilization of the natural resources for a period not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years, provided that a formal written agreement is entered into with the ICCs/IPs concerned or that the community has agreed to allow such operation. The proponents of the FRSS probably look to the aforementioned section as statutory basis for such type of a joint venture, but as will be shown later, the JVA under the FRSS may not be the kind of agreement contemplated by the said section.

¹¹ See sec. 11 for detailed description and content of the JVA.

¹² In cases, however, where the JVA is between the consortium and the rights holder, the JVA logically will last upon the termination of the use-rights term, since the land will then revert back to the control of the State.

¹³ IRR, sec. 12.

- a) **Digital Base Mapping** - This involves the creation of a map of the securitized forest area based primarily on existing references such as Forest Resource Condition Maps, Land Classification Maps, satellite imageries, and available aerial photographs. The data is then inputted into a Geographic Information System (GIS) to be jointly set up by the service consortium and the FMB. The information to be contained in the resulting map includes vegetative cover stratification, land use, geology and soils, drainage networks of major water bodies, slope classes, elevation, human settlements and existing infrastructures.
- b) **Remote Sensing Data** - This may involve the use of Geographic Positioning System (GPS), which uses satellite-derived information in demarcating a particular area. The data to be gathered here will form the basis for the Forest Development Plan and Business Plan.
- c) **Ground-Truthing, Forest Inventories, and EIA Data Generation** - Ground-truthing surveys shall be conducted for the following purposes: validation and ground delineation of the different strata identified in the base maps and aerial photographs, conducting of forest resource inventories and gathering of data for environmental impact assessment. The validation and ground delineation survey shall establish the boundaries of the project area and the metes and bounds of protection and production forests. The forest inventories determine the types and quantities of trees and other resources in the project area.
- d) **Data Analysis and Final Mapping** - This is undertaken after the completion of the ground truthing survey and forest inventories, and other data gathering activities. The final output is a digital map for the GIS, which shall be the basis for the operations of the project.
- e) **Independent Forest Valuation** - The trustee bank, subject to the approval of the DENR, shall then appoint an independent forest asset valuator⁵³ who will assess the value of the resources located within the project area. Valuation activities include confirming the and determining the availability, quantity, location, species and distribution of forest resources, as stated in the ground-truthing and other data-gathering activities. On the basis of the valuation, the trustee bank will generate and issue the security instruments.

The cost of the aforementioned activities shall be advanced by the service consortium and shall be considered part of the operating expenses. It shall be recouped following the schedule provided for in the Business Plan.⁵⁴

⁵³ IRR, sec. 14.

⁵⁴ IRR, sec. 13.

5.2.1.2 Preparation and Approval of the Plans

Upon the completion of the delineation, inventory and valuation of the entire or a sufficient portion of the project area, the service consortium is tasked to come up with a Forest Development Plan and a Business Plan, which should be prepared in close consultation with the DENR, the forest-based communities, and other stakeholders in the project.²⁶ The Forest Development Plan is a comprehensive plan for the rehabilitation, development and management of the forest resources. The plan indicates the portions of the forests that shall be devoted to production and protection purposes, respectively, as delineated and identified in the assessment. Moreover, the Forest Development Plan contains provisions detailing the rights, benefits and participation in the joint venture of the rights holder, ancestral domain/land claimant or upland communities. If the valuation of the entire project area is not yet complete, the Forest Development Plan shall provide for the continuing valuation of the still unvaluated areas.

The Business Plan identifies the revenue-generating activities, goods and services that would serve as bases for the participation of investors, creditors, upland communities and other stakeholders in the project. Both the Business Plan and the Forest Development Plan shall have an effectivity period of 25 years, but will be subject to review by the DENR every three years. As with the resource assessment activities, the expenses in preparing the Plans shall be borne by the service consortium.

5.2.1.3 Issuance and Sale of Securities

Based on the anticipated cash flow to be derived from the implementation of the Plans, the trustee bank or financial institution shall issue forest resource securities or financial instruments for sale to prospective investors in order to raise funds for the project.²⁷

Two main types of securities may be issued - the regular securities, which are issued against the anticipated cash flow and which has a fixed return and a short- to medium-term maturity; and the subordinated securities, which though non-interest bearing, entitles the holder to a proportionate share in the earnings of the residual fund of the project. The amount of securitization, types and maturities of the securities shall be provided for in the trust agreement.

5.2.1.4 Implementation of the Plans

The implementation of the Forest Development and Business Plans is vested solely on the service consortium. However, it can contract the services of forestry professionals to supervise

²⁶ IRR, sec. 14, 4th par
²⁷ IRR, sec. 15.

the activities. The consortium may also assign or subcontract certain activities or services stipulated in the Plans to qualified third parties. The DENR and the trustee bank shall see to it that the Plans are being implemented as agreed upon. In addition to field visits and periodic special reports that the service consortium shall give to the DENR, the trustee, the investors and other authorities, all records and books of accounts of the service consortium may be inspected. As for the communities, although the order aims, as one of its objectives, to ensure the equitable participation of and development of upland communities residing within or adjacent to forest areas placed under securitization,³⁶ nothing specific is provided. Section 14 states that the relationship and participation of the rights holder or ancestral claimant or upland communities in the joint venture, as defined in the Forest Development Plan, shall include training, livelihood and other socio-economic benefits. With a strategy dominated by huge enterprises, it will not be surprising if communities are relegated to the role of laborers, servicing the consortium in the furtherance of the Plans.

5.2.1.5 Restoration and Replacement of Utilized Forest Assets

Harvested and utilized forest assets in production forests shall be fully replaced and restored through timber stand improvement coupled, when necessary, with enrichment planting. In the case of plantation forests, the entire area shall be replaced with new plantlings of suitable timber species.³⁷ The restoration and replacement of the utilized forest assets shall be over and above the additional forests to be established from investments of the Forest Development Fund, service consortium, rights holder, private investors, and/or proceeds from securitization or sale of debt instruments.

5.2.1.6 Distribution of Net Operating Income

There are three accounts among which the net operating income (NOI) of the project shall be distributed. First is the Forest Development Fund, which refers to a portion of the NOI of the project, and which is automatically allocated for the development and protection of existing forest resources or the replication of new forests in the investment portfolio.³⁸ Second is the Community Social Development Fund, which refers to the portion of the income allocated for livelihood, social development needs, and direct benefits of upland communities within the project area.³⁹ The third allocation goes to the account of the service consortium as its share in the NOI in consideration of the services it provides and the risks it takes in being part of the venture. However, the consortium is required to re-invest half of this share in the NOI from securitization into the Forest Development Fund as its equity for the second cycle.

³⁶ IRR, sec. 3(e).

³⁷ No specific tree species is provided in DENR Adm. O. 1 (1998) or its IRR, but it may be presumed that the trees shall be of the same kind as those in other plantation forests- fast growing species such as mahogany, acacia and gmelina, and other commercially viable trees, such as rubber.

³⁸ IRR, sec. 4 (g).

³⁹ IRR, sec. 4 (c).

The distribution and allocation of the NOI among the three accounts vary depending on the source of capital used, the time of the issuance of tenurial instrument and the type and time of establishment of the forest project areas, in relation to the date of securitization. If the project area consists of natural production forests within CBFMAs, CADCs, CALCs or former TLAs, the resulting NOI is distributed as follows:

Forest Development Fund	-40%
Community Development Fund	-20%
Service Consortium	-40%

If the project area consists of existing forest plantations within CBFMAs, CADCs, CALCs or former TLAs established prior to the securitization and/or issuance of a tenurial instrument or ancestral claim certificate, the NOI is distributed as follows:

Forest Development Fund	-40%
Community Development Fund	-20%
Service Consortium	-40%

If the project area consists of forest plantations within CBFMAs, CADCs or CALCs established by the rights holder or ancestral claimant at their own cost prior to securitization but after the issuance of the tenurial instrument or ancestral claim certificate, the NOI is distributed as follows:

Rights Holder or Ancestral Claimant	-80%
Service Consortium	-20%

But if the rights holder is an IFMA holder who also acts as the service consortium, twenty percent (20%) of the NOI from forest plantations established prior to securitization but after the issuance of the IFMA, shall be allocated to the Community Development Fund, and the remaining 80% shall go to the IFMA holder.

If the service consortium is a separate entity, the NOI from forest plantations established prior to securitization but after the issuance of the IFMA, shall be distributed as agreed upon by the IFMA holder and the service consortium, provided that twenty percent (20%) shall be allocated to the Community Development Fund.

If the proceeds come from new or additional forests established after securitization in open and denuded areas covered by former TLAs, CBFMAs, CADCs, CALCs or IFMAs using funds provided by investment capital (e.g. service consortium, rights holder equity, and/or private investors equity), Forest Development Fund, and security capital generated from securitization of existing forest assets, the NOI shall be distributed according to their own respective contributions.

However, NOI from securitization (i.e. after payment of security capital or redemption of securities) shall be distributed as follows:

Forest Development Fund	-40%
Community Development Fund	-20%
Service Consortium	-40%

If the proceeds come from investments in other income-generating activities within projects areas, such as agriculture, livestock raising, ecotourism, etc., out of funds provided by the investment capital, Community Development Fund, and security capital generated from securitization of existing forest assets, the NOI shall be distributed in proportion to their respective contributions. On the other hand, the NOI from securitization shall be distributed as follows:

Forest Development Fund	-40%
Community Development Fund	-20%
Service Consortium	-40%

As trustee, the bank gets the right to receive, hold, and manage the funds to be generated by the project. In accordance with the Plans, the trustee bank shall establish the Forest Development Fund, Community Development Fund and other necessary accounts.⁶² Disbursement of funds is of course also under the control of the trustee bank. Those entitled to a share in the proceeds cannot withdraw their shares as they please. A drawdown schedule prepared by the service consortium has to be followed.⁶³

The first cycle ends upon the allocation of the NOI to the respective accounts set up by the trustee bank as provided in the trust agreement. The channeling of a portion of the NOI as equity capital of the joint venture and the service consortium serves as the take off point for the second cycle.

5.3 The Second Cycle

The most striking difference between the first cycle and the second cycle is the presence of equity capital in the latter. This equity capital is derived from the NOI from the securitization of the forest assets in the first cycle. This equity capital consists of the Forest Development Fund (usually 40% of the NOI) representing the equity of the partnership, and one-half of the service consortium's share in the NOI (usually 20% of the NOI) from the first cycle, representing the equity of the service consortium. Thus, most often, 60% of the first cycle's NOI shall be carried over as operating capital for the second cycle. In addition to additional equity capital that may be put in by the parties, loans from other financial institutions, such as the GSIS, Asian Development Bank (ADB), and the World Bank (WB) may be accessed in order to ensure steady financing.⁶⁴

⁶² IRR, sec. 21.

⁶³ *id.*

The equity capital of the JVC and that of the service consortium may be used to grow and manage new forest areas. To do this, it may be necessary for the partnership to enter into a simple contract or agreement with existing rights holder in the particular new forest area to undertake reforestation and utilization in the area. In case there is no existing tenurial instrument covering the new area, the partnership may have to enter into an agreement with the DENR itself, probably in the form of an Integrated Forest Management Agreement (IFMA).

In addition, the original forest portfolio will again undergo the process of securitization. The funds to be obtained from the securitization will again be used for the planting, growing and management of trees and other forest assets, and the NOI will be distributed as previously mentioned. Thus, the second cycle will have two major sources of funding - the equity capital of the JVC and the service consortium alone, both derived from the securitization of the original forest portfolio, and the proceeds from the second cycle securitization of the original project area. The resulting NOI from the securitized area shall again be allocated as done in the first cycle. In contrast, the resulting NOI from the forests formed through the use of equity capital shall be distributed in proportion to the capitalists' respective share in the equity. With the increasing presence of equity capital, the reliance of the venture on outside or debt capital diminishes, indeed a big step towards the program's goal of financially self-sustainable reforestation. As the program enters into succeeding cycles, more and more new forests emerge, resulting in increased equity capital and a diminished dependence on the original portfolio.

The following figures illustrate the pay-through securitization model of the FRSS, and the cash flows in the different cycles of the FRSS.

Figure 1
Pay-through securitization model

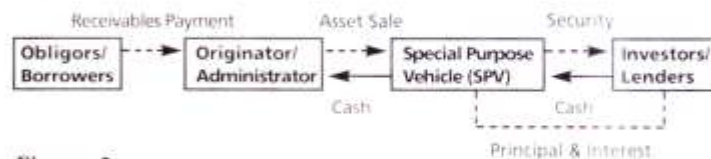
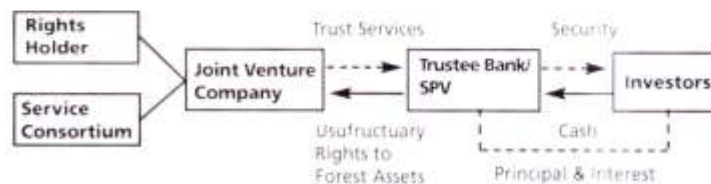


Figure 2a
The FRSS Model (First Cycle)



* See notes and illustrations of FRSS presentation by SECAL Director Romeo Acosta, Aug. 18, 1998 (on file with the author).

Figure 2b
Cash Flow Chart (First Cycle)

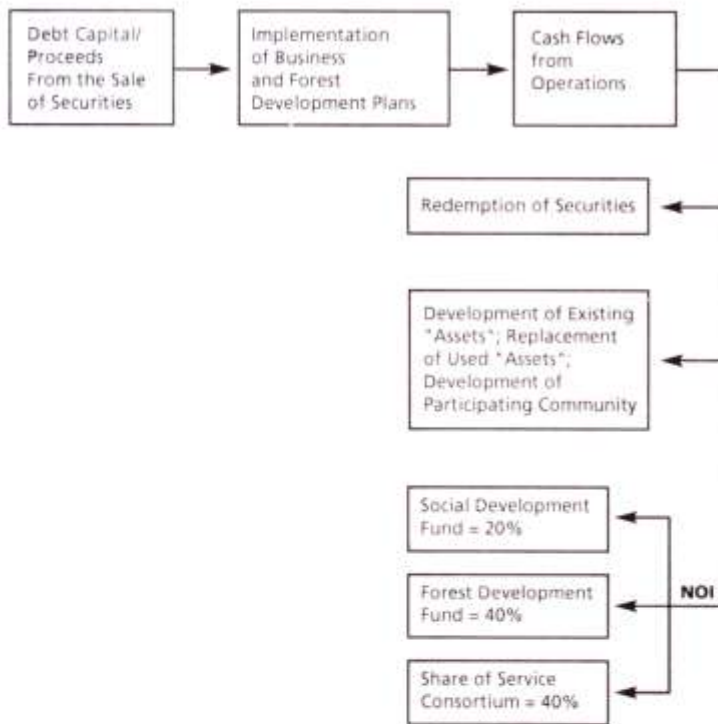


Figure 3a
Second Cycle

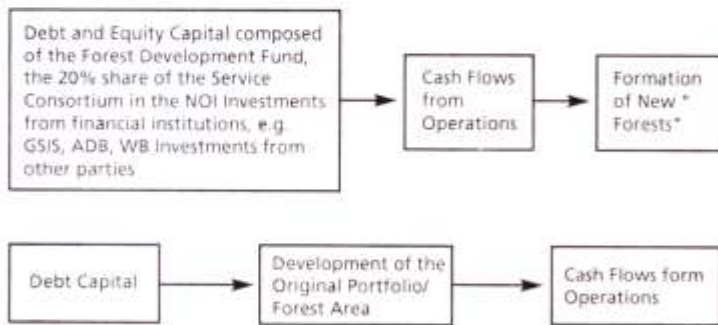


Figure 3b

Income Distribution in Second Cycle
Proceeds from equity capital -- In proportion to share in the equity
Proceeds from securitization/debt capital
- Social Dev't Fund 20%
- Forest Dev't Fund 40%
- Service Consortium 40%

The magnitude of the problem of deforestation in the Philippines can be felt by looking at its environmental, social, cultural, and economic impacts. Forest denudation has resulted in environmental disturbances such as soil erosion, siltation, endangering and extinction of flora and fauna, floods and unsanitary water supply. Indigenous peoples and upland dwellers have lost their primary source of food and shelter, causing their displacement and dislocation. On the economic aspect, the unabated deterioration of the forests has burdened the timber industry for years, substantially curtailing the production and exportation of major forest products such as log, lumber, plywood and veneer.⁶⁶ As a result, the forestry sector's contribution to the country's GNP for the past two decades has become increasingly negligible.⁶⁷ The government is faced with the problem of raising or tapping funds and investments amounting to billions of pesos that would be needed to finance nationwide reforestation, a task made no easier by the lethargic economic state of the forestry sector.

This funding aspect has especially endlessly perplexed the government, which has increasingly relied on foreign financial loans and assistance to finance its non-effective reforestation programs, especially its CBFM projects. Overdependence on foreign grants has understandably put many of the government's forestry programs on tenuous financial ground. In search of financial sustainability and continuity, the government has been turning to the money-rich private sector to provide the huge funding needed to finance reforestation programs. Thus, programs involving plantation contracts between private entities and the government, such as the IFMA, SIFMA, and Industrial Tree Plantation Lease Agreement (ITPLA) were conceptualized and implemented. The FRSS, though, appears to be the most ambitious forestry project due mainly to a bigger number of potential investors and a wider area-scope of the program which includes public forest lands, lands within ancestral domains, lands where there are existing contracts between the government and private entities, and even private lands.

However, as with most of the government's reforestation programs, it seems that the FRSS solution conceptualized by the government presents more problems than answers. From relatively simple viability issues to the more complicated questions of its harmonization, or the lack of it, with existing laws and the constitution, and its impact on the environment and indigenous and upland communities, DAO 98-01 indeed presents many difficulties.

⁶⁶ Forest Management Bureau, *Philippine Forestry Statistics (1997)* at 59.
⁶⁷ *Id.*, at 239.

6.1 Feasibility Problems

The private sector would of course ask: What is in it for us? Simply, the private sector will not involve itself in the reforestation arena out of pure good will or a sense of responsibility to care for the environment. Whatever amount of funding that it turns over to the program will be viewed as an investment, not charity. As such, the private sector has to be assured of sufficient monetary benefits and advantages it can get within a reasonable period of time and with minimal risks before they decide to participate in the program.

6.1.1 Long Payback Period

Herein lies the biggest drawback of the FRSS. Trees do not grow to maturity overnight, or for that matter, over a period of months or even a few years. Based on the history of the DENR's reforestation programs, the DENR favors fast-growing tree species such as mahogany and gmelina, which take between ten to fifteen years before they become suitable for harvesting and utilization. (Of course, this would not have been as big an issue had DAO 98-01 included protection forests in the list of forest areas that can be managed and utilized under the securitization program. But environmental necessities prevailed over the need for immediate results, as the Order prohibited the extraction of timber resources in these forest protection areas.) The long period of gestation before returns on investments come in, coupled with the enormous costs, could effectively deter potential investors from putting their money in such a program. With current industrial plantation yields of only 11% to 14%,⁶⁷ investors may be better off putting their money in other more worthwhile investments, such as Treasury Bills, which give a return of as much as 25% with a maximum waiting period of one year, or time deposits, which can give an annual yield of around 18%. In order, therefore, to make the FRSS a competitive investment alternative, the program must give a return of at least around 15% to 18%.⁶⁸ In effect, the management of the forest portfolio must surpass current efficiency and effectivity standards in order to make the investment venture feasible to investors. Much of the success of the program therefore lies in the service consortium's ability to create a mix of forest resources that is largely made up of fast growing tree species that would allow for harvesting, and to blueprint a program for their effective and efficient utilization in order to generate an acceptable investment yield.

In addition, the long payback period will surely make an aspiring service consortium or a trustee bank think twice before becoming involved in the program. After all, business ventures necessitating an extremely huge upfront and periodic capital outlay, while promising cash flows only in an all too distant future is indeed a high-risk project for any corporation.

⁶⁷ FRSS presentation by SECAL Director Romeo Acosta, *supra* note 64.
⁶⁸ *Id.*

6.1.2 Sluggish Forestry Sector

The task of enticing potential investors into the securitization strategy is made more difficult by the dismal economic performance being churned out by the forestry sector each year. The problem is as much a result of the catastrophic and unabated deterioration of the country's forests as the government's inefficiency in utilizing these fast dwindling resources. From 1975 up to 1997, the contribution of the forestry sector to the country's Gross National Product (GNP) has been on a general decline.⁶⁶ In 1997, the sector registered an all-time low of 0.12% share in the GNP (at current prices). The history and the numbers certainly don't augur well for investors thinking of putting their money into forestry, and the government will have to exert a lot of effort to convince the private sector to invest in a program such as the FRSS

6.1.3 Public Perception of the Service Consortium

As the entity tasked to package, implement, manage and promote the securitization project, the service consortium's capability to handle such critical tasks will be the one of the major considerations of investors before deciding whether to participate or not. It is not enough that the consortium appointed by the DENR is qualified and capable; it is, in addition, essential that its credibility be established in the eyes of the public and potential investors. Certainly, enjoying the trust and confidence of potential investors would make it easier for the consortium to entice them to invest in the securitization program. The problem though is how to get this trust and confidence. Given the program's obvious drawbacks, it will probably take some time, if ever, and a lot of effort on the part of the program's proponents before investors are convinced and confident enough to pool their money in a program managed by a group of associations of which they know little.

6.1.4 Sustainability and Maintenance

Given the long-term nature of the project, issues pertaining to its sustainability and maintenance are inevitable. Frequent changes in the administration and the unpredictable fluctuations in the economy can create a dent in the implementation of the program and put the business and forest development plans in disarray. For one, the securities to be issued by the trustee bank are valued at projected cash flows based on current economic rates.

6.2 A Community Problem

The problems inherent in the FRSS are not limited to its viability. As a program centered on management and utilization of forests, it inevitably has socio-cultural aspects that are not

⁶⁶ Forest Management Bureau, *supra* note 65 at 239.

clearly addressed in its implementing rules and regulations. The securitization strategy may have detrimental effects to upland communities that have for many years made the forests their home and source of livelihood.

6.2.1 Circumventing the IPRA

Communities that have come to depend on forests for their livelihood and survival are those that will likely be the most significantly affected by the implementation of the FRSS. The passage of the Indigenous Peoples' Rights Act (IPRA)²⁰ in October of 1997 gave statutory recognition of possession and ownership of ICCs/IPs over their ancestral lands and domains. Although recognition of possession and ownership of ICCs/IPs of these areas have already been long entrenched in jurisprudence,²¹ the promulgation of the IPRA stamped statutory legitimacy over such indigenous ownership and possession, as it provided for certificates of title recognizing legal ownership by the ICCs/IPs of their ancestral domains.

DAO 98-01, however, can put all this to naught. Aware of the rich forest resources available within AL/AD areas, the DENR has "wisely" included these areas within the coverage of the securitization strategy. In effect, the government has given the indigenous holders of these tenurial instruments the "unwelcome" option of giving up their possessory rights over the forests within their ancestral lands or domains in return for the probable monetary incentives that they can get in the future. In addition, they are promised jobs and other "benefits"²² of which they may have little use. The promise of financial gains may be too good to pass up for members of some communities who may be induced into giving their written consent²³ to have the forest areas within their ancestral lands and domains subjected to securitization. The incentives are in the form of a portion of the project's NOI called the Community Development Fund, which is supposed to be allocated for the direct benefit of upland communities within securitized areas.

Communities, however will not have direct or easy access to their rightful share in the NOI pie. The Community Development Fund, as with the other accounts, will be under the direct control and administration of the trustee bank. The allocation of the fund to the communities is not automatic, as communities will have to prepare a draw down schedule subject to the approval of the trustee bank. Until the program is implemented, it will be hard to determine just how financially beneficial the program will be to the communities.

If the service consortium succeeds in obtaining the consent of the community and a JVA is subsequently executed between the community and the service consortium, the usufructuary rights over the subject forest area will be assigned to the trustee

²⁰ Rep. Act No. 8371 (1997).

²¹ *Cariño v. Insular Government*, 41 Phil. 935 (1909).

²² The benefits under sec. 14 that would accrue to the communities are contained in the Forest Development Plan, which "shall define the relationship and participation of the rights holder or ancestral claimant or upland communities in the joint venture, including provisions for training livelihood, and other socio-economic benefits."

²³ Sec. 5, 2nd par. requires the written consent of the rights holder or ancestral claimant before a JVA is executed between the holder or claimant and the service consortium.

bank, possibly resulting in the displacement of the community or the loss of a major source of their basic needs. Although technically, the community retains naked ownership over the project area, they are nevertheless stripped of possessory rights. Consequently, the community can no longer freely utilize resources situated within the project area, as these would all be considered part of the forest portfolio under the securitization program.

The resulting roles of the forest community are provided in section 19 of the draft IRR, which mandates that the service consortium "shall make adequate provisions...for their (community members) active and beneficial participation in the forest securitization project." The extent of the participation of the members, however, seems to be limited to providing labor for the operations of the program. Decision-making and other administrative functions are devolved to the service consortium that manages the assets and the trustee bank which holds the usufructuary rights over the same. Ironically, from being legitimate owners or possessors of their forest lands,¹⁴ upland communities may inadvertently or unwittingly find themselves demoted to the role of laborers in their own land.

More importantly, DAO 98-01 may be in conflict with section 57 of the IPRA, which states that:

The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploration of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five years renewable for not more than twenty-five (25) years: Provided, That a formal written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision-making process, has agreed to allow such operation: Provided finally, That the NCIP may exercise visitatorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

This section uses the term "take part" in describing the extent of the utilization and development of natural resources within ancestral lands and domains a non-member of the indigenous community may carry out. Clearly, the said section does not contemplate a situation where the communities are almost completely stripped of their possessory rights over their ADs/ALs. As mentioned previously, DAO 98-01 assigns the usufructuary rights, which include the possession and the enjoyment of fruits, over the forest project area to the trustee bank. Not only will the communities be displaced of their rightful possession of their land, the natural resources, the harvesting, extraction, development or exploitation of which is accorded to ICCs/IPs as priority rights, will be utilized

¹⁴ In the case of ICCs/IPs with CADCs, CALCs, CADTs and CALTs.

management (AAR) (unpublished, on file with the author).

¹⁵ The NCIP is planning to abolish some regional offices and increase the number of its service centers due to the latter's proximity to the grassroots. This necessitates personnel transfer, particularly from the national and regional offices to service centers. A quick response division may also be established to address issues that need immediate action.

communities will have to rely mostly on themselves in dealing with the big and moneyed forestry firms.

6.3 Constitutionality Issues

The joint venture aspect of the FRSS presents many issues that affect not only the equitability of the program as far as the communities are concerned, but which also touches on the

mainly for the benefit of non-members of the ICCs/IPs concerned. Such a circumstance is not only in opposition to the provisions of section 57 but also goes against the objectives and policies of the IPRA, which are the promotion, protection and recognition of the rights and cultural integrity of ICCs/IPs.⁷⁸ Being inconsistent with the IPRA, which is a Republic Act and which therefore takes precedence over an administrative order, DAO 98-01 may be unlawful.

6.2.2 *Arbitrary Numbers*

The breakdown of the allocation and distribution of the net operating income from the securitization project may also not be in consonance with the IPRA provisions, as it has not been shown that the numbers were reached after consultations with communities. Section 16 of the IPRA under the Chapter on Right to Self-Governance and Empowerment states that:

ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

DAO 98-01 was based, as has been said, primarily on the proposal by a foreign group to pursue securitization mechanisms in raising funds for the forestry sector. Upland and rural communities, a sector that would most likely be affected by DAO 98-01, were not given sufficient opportunity to participate in the conceptualization and drafting of the Order. The draft of its IRR, which came out eight months later, has likewise not been shown to have been a product of close consultations and agreements with communities as mandated by the abovementioned section of the IPRA, since the securitization strategy can very well directly affect their "rights, lives and destinies."⁷⁹ How was the 40-20-40 NOI distribution reached then? What basis was used in allotting only twenty percent (20%) for the Community Development Fund, while allocating 40% for the service consortium? The numbers do not in any way bear the imprint of the community's participation, and more significantly, precludes them from negotiating for a higher share in the profits - a right that they veritably have as rights-holders of the project area.

6.2.3 *Non-rights-holder Communities*

For upland communities whose claims over their ancestral lands and domains have not yet been identified, delineated and recognized by the National Commission on Indigenous Peoples (NCIP), the protection accorded to them by DAO 98-01 and its

⁷⁸ Rep. Act 8371 (1997), sec. 2.

⁷⁹ Rep. Act 8371, (1997) sec. 16.

IRR is even more flimsy. In areas not covered by tenurial instruments, the DENR can enter into a JVA with a service consortium without having to secure the consent of resident communities. In addition, unlike with their tenured counterparts, non-rights-holder communities are not given an automatic share in the income that will be derived from the securitization of their forest area. The only "benefits" (if one can call them so) that the securitization strategy provides these communities are "transfer of technology, training in forestry, agroforestry and appropriate enterprises development."⁷⁷ These "benefits" will probably prove to be of little use to forest-dependent communities, since the thrust of the "information transfer" may be on commercial forestry, which as time and experience have shown, not only damages the biological diversity of forests, but also the causes the displacement of communities.

6.2.4 Ineffectual NCIP

The situation of indigenous communities is made even more perilous by the fact that the NCIP, the organization tasked to protect and promote the interest and well-being of the ICCs/IPs,⁷⁸ has been largely overlooked by Congress in terms of budgetary allocation and may, thus, find it difficult to fulfill its mandate as set forth in the IPRA. Since its inception in 1998, the NCIP has little to show for its achievements mainly due to the insufficient budgetary allocations it receives annually. A huge bulk of its operational funds goes to its scholarship programs, but the allocations management, development and delineation of ancestral lands are grossly lower than what is basically required.⁷⁹

The NCIP, despite being in existence for three years now, has not yet completely established the mechanisms for its full functioning. The agency's internal rules of procedure have not yet been finalized. The guidelines for the issuance of certificates of title are yet to be issued. Its organizational set-up is currently under modification.⁸⁰ Moreover, six of its seven commissioners were only appointed last August 2001.

The quagmire in which the NCIP is currently situated could only mean that communities will find the government's services, particularly the protection and preservation of their rights to their ancestral domains, badly wanting. This leaves the communities vulnerable to forced encroachments and deceit on the part of commercial interests. If the FRSS pushes through today, communities will have to rely mostly on themselves in dealing with the big and moneyed forestry firms.

6.3 Constitutionality Issues

The joint venture aspect of the FRSS presents many issues that affect not only the equitability of the program as far as the communities are concerned, but which also touches on the

⁷⁷ IRR, sec. 6.

⁷⁸ Rep. Act No. 8371 (1997), sec. 39.

⁷⁹ Alvin Pagayatan, *FY 2000 DENR and NCIP Budget: Trivializing Community Empowerment in Natural Resource Management (2000)* (unpublished, on file with the author).

⁸⁰ The NCIP is planning to abolish some regional offices and increase the number of its service centers due to the latter's proximity to the grassroots. This necessitates personnel transfer, particularly from the national and regional offices to service centers. A quick response division may also be established to address issues that need immediate action.

constitutionality of the program itself. As previously mentioned, the rights holder will enter into a JVA with a service consortium and form the JVC. A joint venture is very much like a partnership both having essentially the same elements.³¹ The Supreme Court has, however, distinguished between the two, holding that although a corporation cannot enter into a partnership contract, it can engage in a joint venture with others.³² Many joint ventures at present are formed by the combination of resources between two groups, such as a foreign investor, corporate or otherwise, and a Philippine group, where the latter would own at least 60% of the stocks, and the former owning at most 40%.³³ From the legal standpoint, it is more than a mere joint venture. It is a corporation with a separate judicial personality and subject to the provisions of the Corporation Code.³⁴

The FRSS is constitutionally premised on Section 2, Article XII of the Constitution, which provides that "(t)he State may directly undertake (the exploration, development, and utilization of natural resources), or it may enter into a 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 that "such agreements may be for a period not exceeding twenty-five (25) years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law."

Article XII, section 2 of the 1987 Constitution introduced a change on the system of exploration, development and utilization of the country's natural resources. The utilization of inalienable lands of the public domain through license, concession or lease are no longer allowed under the 1987 Constitution, in sharp departure from the policies enunciated in the 1935 and 1973 Constitutions. The 1987 Constitution requires that "full control and supervision by the State" must be maintained in the exploration, development and utilization of the country's natural resources. The options now open to the State are through direct undertaking, or by entering into agreement with foreign-owned corporations for large-scale exploration, development and utilization of minerals and other natural resources.³⁵ This policy gives the State a more dynamic role in the exploration, development and utilization of the natural resources in the country. The exploration, development and utilization of natural resources may be undertaken in three ways: (1) directly by the State; (2) by entering into co-production, joint venture or production-sharing agreements with Filipino citizens or corporations or associations at least 60% Filipino owned; or (3) by entering into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development and utilization of minerals, petroleum and other mineral oils according to the general terms and conditions provided by law.³⁶

³¹ See Campos, 1 *The Corporation Code*, at 13-14 (1990).

³² *Tuazon v. Bolanos*, 95 Phil. 906 (1954).

³³ Campos, *supra* note 31.

³⁴ *Id.*

³⁵ *Coxst.* (1973), art. 14, sec. 8, *Const.* (1935) art. 13, sec. 1.

³⁶ LRC-KSK has argued that these modes are applicable only to commercial exploitation of natural resources and does not govern utilization of these resources by communities. See Memorandum for Intervenors, Flavier, et. al. in *Cruz v. NCIP*, GR No. 135355, Dec. 6, 2000, in A. Ballesteros, Ed., *A Divided Court: Case Materials from the Constitutional Challenge to the Indigenous Peoples Rights Act of 1997*, at 399-447 (2001).

Clearly, section 2 of article 12 of the 1987 Constitution introduces a new rule mandating that whenever inalienable natural resources are involved, the State must always have some control over the commercial exploration, development and utilization even when the individual or corporation engaged in the operation is Filipino. The same article enumerates the ways by which the State may control the utilization of the Philippines' natural resources. One of the modes, a joint venture agreement with another entity, supposedly provides the constitutional basis for DAO 98-01.

AJVA is defined as an "agreement where a new company, which will exploit the identified resources, is organized by the government and the contractor, with both having shares in said company".⁴⁷ Along with the methods of co-production and production-sharing, joint venture agreements enable the State to develop and utilize inalienable lands in conjunction with Filipino individuals or corporations the capital of which is at least 60% owned by Filipinos. The capital requirement is a response to the concern over the concept of joint venture reflected in jurisprudence. In *Wolfgang Aurbach, et al. v. Sanitary Wares Manufacturing Corp., et al.*, it was noted that:

Quite often, Filipino entrepreneurs in their desire to develop the industrial and manufacturing capacities of a local firm are constrained to seek the technology and marketing assistance of huge multinational corporations of the developed world. Arrangements are formalized where a foreign group becomes a minority owner of a firm in exchange for its manufacturing expertise, use of its brand names, and other such assistance. However, there is always a danger from such arrangements. The foreign group may, from the start, intend to establish its own sole or monopolistic operations, and merely uses the joint venture arrangement to gain a foothold or test the Philippine waters, so to speak. Or the covetousness may come later. As the Philippine firm enlarges its operations and becomes profitable, the foreign group undermines the local majority ownership and actively tries to completely or predominantly take over the entire company. This undermining of joint ventures is not consistent with fair dealing to say the least. To the extent that such subversive actions can be lawfully prevented, the courts should extend protection especially in industries where constitutional and legal requirements reserve controlling ownership to Filipino citizens.⁴⁸

Translated to DAO 98-01, the service consortium assumes the position as the State's joint venture partner in exploration, development and utilization of forest lands, and which must therefore be at least sixty percent owned by Filipinos.

In the light of the foregoing, DAO 98-01 and its IRR may not have any constitutional basis at all.

⁴⁷ M. Leonen and F. Begonia, Eds., *Mining, Legal Notes and Materials* (1996), p. 34.

⁴⁸ G.R. No. 75875, Dec. 15, 1989, 180 SCRA 130, 142.

...c, the joint venture, in many cases, does not make the State a party to the agreement. If the forest or land area is covered by a tenurial instrument or is privately owned, the service consortium will have to reach an agreement not with the State, but with the rights holder or landowner. This would basically empower IFMA and other tenurial instrument holders to enter into joint venture contracts for the exploration, development and utilization of lands belonging to the public domain. Such devolution of authority may be unconstitutional given the stricter mandate imposed upon the State to hold full control and supervision over the exploration, development and utilization of natural resources

Second, even if it is the State, as in the case of lands not covered by tenurial instruments or those that are privately owned, that enters into a JVA with the service consortium, such contract may also be unconstitutional, since the consortium bears all the initial expenses and more importantly, carries sole responsibility in implementing the Plans. Moreover, the usufructuary rights over the securitized areas and the proceeds from the program are under the custody and control of the trustee bank. The host state is, thus, not directly involved in the most critical stage of the operations, and the "conjunction" required by the Constitution is simply non-existent.

VII. OUTLOOK AND RECOMMENDATION

As previously mentioned, the implementation of DAO 98-01 was hampered due to the non-inclusion of protection forests in areas subject to utilization. The DENR, finding no takers, had to shelve the program for some time, and thereafter conducted discussions and reviews as to changes that should be made in order to make the strategy more attractive to potential investors.

Still, it appears that the government is bent on pursuing this novel approach to reforestation. The implementation of the securitization strategy is included in the Medium Term Development Plan for 1998-2004. In addition, the DENR has been consistent in its public announcements and reports that the implementation of DAO 98-01 is very much a part of the forestry projects it has already lined up.

Preparatory to the planned implementation of the FRSS, the DENR has set aside close to six hundred eighty four thousand five hundred three (684,503) hectares of land in the Caraga region, or approximately 32% of Caraga's total land area, to serve as a "Timber Corridor."¹⁰ In line with the Timber Corridor program, the targeted pilot site for the FRSS has been relocated from Bukidnon to the Agusan area.¹¹

It appears that the only remaining obstacle in the implementation of the FRSS is the non-inclusion of the forest

¹⁰ DENR Adm. O. No. 13 (1999).

¹¹ Interviews by the author with DENR Foresters.

protection areas in the program. All the other components are in place. The DENR would not have to worry about insufficient budgetary allocations from the Department of Budget and Management (DBM) or Congress, since the money would come directly from private investors.

The critical question now thrown upon the DENR is this: Would it be willing to compromise the country's few remaining old growth forests in order to push through with the securitization project? This would entail a repeal of DENR Administrative Order No. 24 series of 1991, which prohibited logging in old-growth forests starting in January of 1992. Annulling the prohibition would also require the cooperation from Congress, which is now deliberating on the Sustainable Management of Forest Resources Bill (SMFRB). Earlier versions of the Bill prohibit logging in protection and old-growth forests, while allowing the same only in residual and plantation forest areas. The enactment of the SMFRB would preclude the DENR from including old-growth forests from the coverage of the FRSS, or revoke its act of opening up such forests for securitization.


Whatever happens to DAO 98-01, the trend is clear - the government is turning to the private sector for financial assistance in the seemingly impossible task of developing and restoring the nation's once luscious forests. Daunted and rendered powerless in the face of the massive costs and gargantuan efforts needed in carrying out nationwide reforestation, the government is slowly taking the route of privatization, passing the responsibility of restoring forests to private individuals and corporations, from whom it is hoped, sustainable funding shall come. Loans are already much harder to come by, in view of the decreasing contribution of the forestry sector in the GNP, and the continued massive depletion of remaining forests.

The government understands that it must devise a mechanism that would lure the private sector into the forestry arena. The FRSS as prescribed by DAO 98-01 may have little chance of even growing a plantling, but the securitization is surely a portent of things to come. If the government succeeds in constructing an attractive forestry investment program, private investors may soon turn to industrial reforestation as an alternative way of making money.

In the meantime, the vital role that local and indigenous communities play in the conservation and sustainable use of the country's forest resources continue to be overlooked, as the government continues to gear its forestry programs towards the principles of commerce and industry. Beneath the policy rhetoric for adopting a community-based approach to forestry, government actions and agenda continue to overlook local knowledge and innovations instead of protecting and promoting them.

It is time for the government to seriously consider genuine community led initiatives in forest management as a solution to the country's daunting reforestation problems, and stop camouflaging their commercial forestry leanings with CBFM rhetoric. The future of the country's forests lies brightest at the hands of the communities, who live most proximately to the forests and who thoroughly depend on these resources for their sustenance and, on a deeper level, their cultural identity. It is the communities who have a genuine stake in the rehabilitation of the forests because unlike commercial interests, the communities' focus is not on the profits that they can make, but on the security that a developed, biologically diverse and luscious forest brings. The government has to understand that with the currently grim state of our country's forests, there are no shortcuts to rehabilitating them. Government policies and actions must be geared towards improving land tenure and the creation of alternative livelihood systems for the communities. Mechanisms that ensure the participation of indigenous and local communities in the policy and decision making processes involving forest conservation and management must be put in place.

Commercial forestry can indeed create a thriving tree plantation out of a denuded patch of land in maybe ten years, but with a collection of tree species as diverse as chalks in a chalk box, such cannot be considered a forest in the genuine sense. Mono-cultured timber plantations cannot preserve a tropical forest ecosystem. They, in fact, render the "forest" more susceptible to fires, pests and diseases, increased use of toxic pesticides and fertilizers, erosion, and declining soil fertility.⁴¹ Replacing natural forests with singular species plantations destroys biological diversity, creating ecological impacts that threaten the subsistence of society⁴² and endanger the survival of forest-dependent communities. On the other hand, a biologically diverse forest landscape maintains the integrity of valuable watersheds and shelters various indigenous species of plants and animals that form an integral part of the food chain.

At the bottom line is the question of where the government priorities really lie - reforestation for increased profits or genuine people-oriented reforestation? 

⁴¹ WALHI and YLBHI, *Mistaking Plantations for Indonesia's Tropical Forest*, at 32.

⁴² Aside from the loss or extinction of indigenous species of plants and animals on which society is heavily dependent for consumption or other type of utilization (such as for medicine purposes), dislodgment of natural forests could severely affect the water supply of communities as plantation trees, being fast-growing organisms, consume larger amounts of water at a rate faster than genuine forest trees.

Ancestral Domain Recognition and Community Based Forest Management: Two Sides of Different Coins

André Gerard G. Ballesteros

INTRODUCTION

On October 29, 1997, the Indigenous Peoples' Rights Act (IPRA) was signed into law. To a significant number of indigenous peoples communities and rights advocates, this signaled a legal breakthrough that recognized the rights of the more than ten million indigenous peoples (approximately fifteen percent of the country's total population of around seventy million)¹ to claim their traditional lands. For more than 300 years these rights had been denied by the Philippine legal system, which historically divided the country's lands into alienable (private agricultural) or inalienable (timberlands, mineral lands, national parks and public agricultural) lands² and considered most indigenous peoples as "squatters" occupying government owned forests and uplands.³

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¹ There are varying estimates as to the number of indigenous peoples in the Philippines. The National Commission on Indigenous Peoples cites a 1998 study estimating that there were around ten million indigenous peoples in 1995.

² Const., art. XII, sec. 3.

³ Pres. Decree No. 705 (1975), secs. 79 to 81 [or the Forestry Reform Code of the Philippines]. See, however, sec. 53 of the same Code which prohibits "criminal prosecution of kangeros, squatters, cultural minorities and other occupants who entered into forest lands and grazing lands before May 19, 1975," subject to several conditions and, in any case, to eviction and resettlement when the government deems it necessary.

The IPRA, like any law, is the result of compromise among different stakeholders and is hence imperfect from the viewpoint of any given stakeholder.⁴ The law, however, does recognize the rights of indigenous peoples, not only to the land, but also to natural resources that lay on and under the land.⁵

The National Commission on Indigenous Peoples (NCIP), an autonomous body created under the administrative supervision of the Office of the President, was given the mandate to implement the IPRA.⁶

More than three years after the law's enactment, the ancestral domain provisions in the IPRA remain unimplemented, partly due to the law being challenged in the Supreme Court,⁷ and partly because the government was either too confused to implement them or did not want to implement them. Meanwhile pressure to implement the law is building from indigenous communities, and pressure to not implement the law or to implement the law in a manner consistent with their interests are building from resource extractive industries. One outcome of this stalemate may be to adopt "workable" mechanisms that are sufficiently non-threatening to industry. A logical solution might be to pattern the recognition of ancestral domains after the Community Based Forest Management (CBFM) systems already in place.

This paper seeks to compare and contrast the legal rights and responsibilities of ancestral domains as defined by the IPRA with the rights and responsibilities defined by the Community Based Forestry Management law. The paper argues against using the Community Based Forest Management system as a template for implementing the IPRA.

THE CAUSES OF NON-IMPLEMENTATION

An Administrative Mess

The recently ousted administration of Joseph "Erap" Ejercito Estrada, elected through a populist slogan of "**Erap para sa Mahirap**" (Erap for the Masses), inherited the task of full implementation of the IPRA, upon its assumption of office in June 1998. What followed was the classic rhetoric vs. reality divide.

Perhaps the only statement attributable to Estrada regarding the IPRA was made at a Human Rights Day commemoration on 10 December 1998 where he promised foreign dignitaries that he was going to fully implement the IPRA.⁸

Curiously, on that same day, he ordered the Department of Justice to create a committee to "look into and investigate the administrative complaints against certain officials of the

⁴ See, for example, M. F. Leonen, *Indigenous Peoples Rights Act of 1997 (RA 8371): Will this Legal Reality Bring Us to a More Progressive Level of Political Discourse?*, 9 PHIL. NAT. RES. L. J. 7 (1998).

⁵ There is still uncertainty as to what exactly these rights include. LRC-KSK has argued that indigenous peoples exercise "ownership" rights over the natural resources, albeit of a different species of ownership than that of the Civil Code kind of ownership. See Memorandum for Intervenors Flavies et al., in A. Ballesteros, Ed., *A Divided Court: Case Materials From The Constitutional Challenge To The Indigenous Peoples Rights Act Of 1997* at 399 - 447 (2001). [hereinafter IPRA case book]

⁶ Rep. Act 8371 (1997), sec. 40.

⁷ *Isagani Cruz and Cesar Europa v. Secretary of Environment and Natural Resources, Secretary of Budget and Management, and the Chair and Commissioners of the National Commission on Indigenous Peoples*, G.R. No. 135385, December 6, 2000. [hereinafter *Cruz v. NCIP*]

⁸ *Cruz v. NCIP - Petition for Intervention*, Commission of Human Rights, dated 16 March 1999. See IPRA case book, *supra* note 5 at 281.

(National Commission on Indigenous Peoples) NCIP,⁹ the governmental agency primarily tasked with implementing the IPRA. Cases were thereafter filed against them.

Previously, he had ordered the Department of Budget and Management to “withhold the release of funds to the NCIP except for payments of salaries of the rank and file employees” of two agencies formerly tasked with managing government’s programs to the “cultural communities.”¹⁰

Estrada then created the “Presidential Task Force on Ancestral Domains to Assist the Office of the President Through the Presidential Assistant for Poverty Alleviation, NGO and PO, in Monitoring Compliance with Existing Laws Regarding the Rights and Welfare of Indigenous Peoples to their Ancestral Domains”¹¹ and, subsequently the “Presidential Task Force on Indigenous Peoples.”¹²

The resulting confusion due to overlapping jurisdictions, plus the fact that the legally constituted agency had no money and were facing graft charges, led to a virtual administrative standstill.

And while it would be easy to point to misadministration as the main cause of IPRA’s non-implementation, certain events occurred contemporaneous to the above administrative snafus that would seem to point to reasons other than administrative incompetence.

The Challenge To The Constitutionality Of The IPRA

On September 25, 1998, a retired Supreme Court Justice and a Davao-based lawyer filed a petition for mandamus and prohibition, questioning the constitutionality of several provisions in the IPRA, including, and most notably, the provisions on ancestral domains.

The petitioners argued that said grant of ownership over ancestral domains, as defined, to include natural resources therein, violates the “*regalian doctrine*,” the cornerstone of natural resource policy, and expressed in Art. XII, Sec. 2 of the Constitution

Curiously, the Solicitor General, on behalf of the respondent Secretaries of the Departments of Environment and Natural Resources (DENR) and Budget and Management (DBM), agreed with said position and similarly asked the court to invalidate said portion of the IPRA.¹³ Respondent NCIP argued that, while the IPRA was constitutional, the intent was merely to give indigenous peoples “priority rights” and not the actual right of ownership.¹⁴ Several other parties intervened, including over 90 representatives of indigenous peoples’ communities who

⁹ Adm. Order. No. 42 (1998).

¹⁰ Memo. Order. No. 2(1998).

¹¹ Memo. Order. No. 52 (1999).

¹² Adm. Order. No. 108 (2000).

¹³ See Solicitor General’s comment, IPRA case book, *supra* note 5 at 195 to 206. However, upon the filing of the Motion for Reconsideration by Petitioners, the Solicitor General reversed its position and agreed that the questioned provisions of the IPRA were constitutional. See SC resolution re: Cruz v. NCIP Motion for reconsideration, promulgated 21 September 2001.

¹⁴ Cruz v. NCIP – Comment, NCIP in IPRA case book, *supra* note 5 at 207 - 224.

argued that the Constitution and jurisprudence supports the grant of ownership rights over ancestral domains.

The case was settled on December 6, 2000 due to a "technicality." Seven of the Supreme Court Justices voted to deny the petition, on various and different grounds. Seven voted to grant the petition, on the ground that the regalian doctrine was violated. There being no clear majority, the presumption of constitutionality prevailed.

A motion for reconsideration was filed thereafter, and was dismissed last September 21, 2001.

The effect of the Supreme Court case was to give government another reason not to implement the IPRA during the pendency of the case. As was revealed by the DENR, the government's position was to desist from implementing the IPRA, as this may lead to a "legal juggernaut involving millions of pesos to undo the claims and titles"¹⁵ if the said law is determined to be unconstitutional.

A similar challenge by a B'laan group affected by the Western Mining Corporation questioning the constitutionality of the Philippine Mining Act of 1995 has not led to the suspension of the granting of mineral agreement, despite a similar possibility of a "legal juggernaut" to undo the agreements.

The case, too, caused similar initiatives in Congress to attempt to "undo" what they had enacted only a few years previous.

Congress attempts to amend the IPRA

A resolution was filed by a member of the House of Representatives to homogenize perceived conflicting provisions in the Philippine Mining Act of 1995, the National Integrated Protected Areas System Law (NIPAS law) and the IPRA.¹⁶ The move was less of an honest attempt to settle perceived conflicts in the said laws than it was to amend both the NIPAS law and the IPRA to remove provisions which may impede the full implementation of the Mining Act.¹⁷

Thankfully, such an attempt proved unsuccessful, though the possibility of it surfacing is heightened because of how the Supreme Court resolved (or did not resolve) the constitutionality question.

At the Brink of Implementation?

With the constitutionality question resolved, and a new administration in place, the prospect of the ancestral domain provisions in the IPRA finally being implemented becomes more plausible. The legal questions, fortunately or unfortunately, do

¹⁵ DENR press release, "Issuance of ancestral domain claims and titles no longer with DENR but with NCIP", July 24, 2000, at <http://www.denr.gov.ph/072400>.

¹⁶ House Res. No. 310 (1999), sponsored by Rep. Harry Angping.

¹⁷ See J. Pasimio, "HB 310 ni Angping: Hirit na naman ng Mining Industry," 2 (1) *Tan-awan* 20, Sept. to Oct. 1999.

not help in ascertaining the correct way in which the IPRA should be interpreted. Fortunate, because there is room for the most progressive interpretation of the ancestral domain provisions (from the viewpoint of benefit to indigenous peoples). Unfortunate, because the specter of unconstitutionality may be consistently raised by IPRA's opponents and would hang like Damocles' sword over any attempt to implement the law in its most progressive manner.

LEGAL AND POLICY BACKGROUND

Article XII, Section 2 of the Philippine Constitution provides, in part:

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.

This section forms the basis of natural resources laws. The State is further mandated to directly undertake resource exploration, development and utilization or enter into production sharing, co-production or joint venture agreements with the Filipino citizens or corporations at least sixty percent (60%) of whose capital is owned by Filipino citizens.¹⁹

A notable exception, however, is provided in Section 6 of the same Article.

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.

The Congress may provide for the **applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domain.** (emphasis added).

The use of the term ancestral lands in the first sentence, and ancestral domain in the second sentence is instructive and intentional.²⁰ It is argued that the difference in terms used allows for the possibility that natural resources in ancestral domains be governed by property regimes not prescribed in Art. XII, Sec. 2.²¹

The Indigenous Peoples' Rights Act (IPRA)—Ancestral Domains and Ancestral Lands

The IPRA adopts the distinction expressly provided in the Constitution by providing for titles to both ancestral domains and ancestral lands. Ancestral domains are defined to include

¹⁹ Const., art. XII, sec. 2.

²⁰ See Cruz v. NCIP – Memorandum for intervenors Flavio et al., in IPRA case book, *supra* note 5 at 421 – 428.

²¹ *Id.*

"lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by (indigenous cultural communities/indigenous peoples), themselves or through their ancestors, communally or individually since time immemorial".²¹ This is different from the concept of ancestral lands as referring only to surface rights.²² One is not mutually exclusive of the other, as individual title to ancestral lands may be recognized within the communally owned ancestral domain, according to customary law.²³

This paper will deal only with ancestral domains, or more specifically the natural resources on or under the land held in ancestral domains. It is important to note, however, that this distinction needs to be always taken in the context of the community asserting historical rights over specific territories, as the distinction

can only be considered as artificial and intrusive, being an imposition of an outside framework alien to the Indigenous Peoples.²⁴

The distinction, in fact, is important only because of the assertion by some people that the Regalian Doctrine applies absolutely to include even natural resources in ancestral domains.

The right to ancestral domains in the IPRA is based on the concept of native title, or

pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.²⁵

These rights are recognized regardless of whether the indigenous communities concerned formalized their title through an application for, and issuance of, Certificates of Ancestral Domain Titles (CADTs).²⁶

Indigenous peoples are given the following rights over the resources in the ancestral domain subject to certain exceptions provided by law:

- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;
- The right to develop, control and use lands and territories traditionally occupied, owned, or used, and the natural resource therein;
- The right to stay in the territory and not be removed there from;
- The right to regulate the entry of migrant settlers and organizations into the domains;

²¹ Rep. Act 8371 (1997), sec. 3(a).

²² Rep. Act 8371 (1997), sec. 3(b).

²³ Rep. Act 8371 (1997), sec. 53 (a).

²⁴ A. B. Gatmaytan, *Land Rights and Land Tenure Situation of Indigenous Peoples in the Philippines*, 5 PHIL. NAT. RES. L. J. 5, 12 (1992).

²⁵ Rep. Act. 8371 (1997), sec. 3(l).

²⁶ Rep. Act. 8371 (1997), sec. 11.

- The right to safe and clean air and water, and of access to integrated systems for the management of their inland waters and air space;
- The right to resolve land conflicts in accordance with customary laws of the area where the land is located.²⁷

Finally, the indigenous concept of ownership is characterized as "private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed," and "likewise covers sustainable traditional resource rights." This concept of ownership "sustains the view that ancestral domains and all resources found therein shall serve as the material bases of (the indigenous peoples') cultural integrity".²⁸

Community Based Forest Management

In 1995 President Ramos issued an Executive Order installing community-based forest management as the "national strategy to achieve sustainable forestry and social justice".²⁹ The following year, implementing rules and regulations were promulgated,³⁰ providing for the following stages in CBFM:

- Preparatory Stage including information and education campaigns, building institutional linkages, and identifying potential areas. Areas for possible selection include uplands and coastal lands of the public domain except those covered by other forest resource use/extraction agreements, protected areas and certified ancestral land/domain areas (except when the indigenous community concerned opt to participate).
- Peoples Organization Formation and Diagnostic Stage including community appraisal, establishment of peoples organizations where not yet existing, registration, and application.
- Planning Stage including preparation of Community Resource Management Framework (CRMF), Resource Use Plans (RUPs) and Annual Work Plans (AWP). An Interim Resource Use Plan (IRUP) is granted based on the results of a community appraisal to allow the applicants to continue sustainable forest resource use practices pending the acceptance of the RUPs.
- Implementation Stage.³¹

The rules identified three types of instruments under the program, namely **Community Based Forest Management Agreement (CBFMA)** defined as "a production sharing agreement designed to ensure that participating communities enjoy the benefits of sustainable utilization, management and conservation of forestlands and the natural resources therein,"³² **Certificate of Stewardship Contract (CSC)** defined as contracts awarded to individuals or families actually occupying or tilling portions of forest lands;³³ and **Certificate of Ancestral**

²⁷ Rep. Act. 8371 (1997), sec. 7.

²⁸ Rep. Act. 8371 (1997), sec. 5.

²⁹ Exec. Order, No. 263 (1995).

³⁰ DENR Adm. O. No. 29 (1996).

³¹ DENR Adm. O. No. 29 (1996), art. III.

³² DENR Adm. O. No. 29 (1996), art. I, sec 4; art IV, sec 1(a).

³³ DENR Adm. O. No. 29 (1996), art. IV, sec 1(b).

Domain/Land Claim—Community Based Forest Management Agreement (CADC-CBFMA and CALC-CBFMA) defined as CBFM agreements for holders of CADCs or CALCs who wish to avail of the benefits of CBFM programs.¹⁴

The following **privileges** are granted to the CBFM holders:

- To occupy, possess, utilize and develop the forestlands and its resources within a designated CBFMA area and to claim ownership of introduced improvements.
- To allocate to members and to enforce rights to use and manage forestland resources within the area in a sustainable manner.
- To be exempt from paying rent and forest charges.
- To be properly informed of and to be consulted on all government projects to be implemented in the area.
- To be given preferential access to assistance in the development and implementation of the CRME, RUP and AWP.
- To receive all income and proceeds from the sustainable utilization of forest resources within the CBFMA area.
- To enter into agreement or contracts with private entities or government agencies.

ANCESTRAL DOMAINS AND COMMUNITY BASED FORESTRY MANAGEMENT

Property Rights Under Different Kinds of Ownership

Several key differences in the policy framework of Ancestral Domains and CBFM programs are inherent in their legal framework. CBFM draws its validity from the State policy of *jura regalia*, or the regalian doctrine discussed above. CBFMA are **production-sharing agreements**. The State does not yield, and in fact enforces, its ownership of forestlands and forest resources. The CBFMA holders have tenure rights, not because of any prior vested right due to long term occupation, but because of the agreement or contract between the State and the occupants (through the peoples' organization).

On the other hand, the grant of ancestral domains to indigenous peoples necessitated qualifying the application of the *jura regalia* to carve out an exception: those lands and resources held from time immemorial and deemed never to have been part of the public domain. This finds legal basis in legal history¹⁵ as well as in jurisprudence.¹⁶

Both ancestral domain recognition and CBFM, however, are similar in that they question the monolithic view of absolute State dominion over ownership, use, and management of natural resources.

¹⁴ DENR Admin. O. No. 29 (1996), art. IV, sec. 1(c).

¹⁵ See, for example, A. G. Royo, *Regalian Doctrine: Whither the Vested Rights*, 1(2) PHIL. NAT. RES. L. J. 1 (1988); O. J. Lynch, *The Legal Basis of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279 (1987); C. Benitez, *Philippine Progress Prior to 1898: The Old Philippines Industrial Development (Chapters of an Economic History) in State Of The Philippines in 1810* at 169, - 241 (1969).

¹⁶ *Mateo Carino v. Insular Government*, 41 Phil. 935, 212 U.S. 449 (1909).

Social scientists Schlager and Ostrom³⁷ propose a framework for distinguishing between different common property systems³⁸ which is useful in comparing the tenure rights given to holders of ancestral lands with those given to CBFM schemes.

Schlager and Ostrom distinguish among common property systems based on several levels of operational property rights, namely:

- Access – The right to enter a defined physical property.
- Withdrawal – The right to obtain the products of a resource.
- Management – The right to regulate internal use patterns and transform the resource by making improvements.
- Exclusion – The right to determine who will have an access right, and how that right may be transferred.
- Alienation – The right to sell or lease or both of the above collective choices rights.³⁹

Table 1 compares the rights provided under the ancestral domain provisions in the IPRA, and the rights of a holder of a CBFMA. For reference, the rights of a private property owner under the Civil Code as well as the rights of an owner of ancestral lands under the IPRA are similarly enumerated. Table 1 clarifies differences in the type of rights that are accorded each "tenured" holder. Table 1 also makes it possible to assess the limitations the State places on the rights of CBFMA holders and ancestral domain "owners" in comparison to the rights of landowners recognized by the Civil Code (private property).

Table 1: Comparing Tenure Rights under Different Legal Concepts

	CBFMA holder	Ancestral Domain	Ancestral Lands	Civil Code ownership
Access	Right of possession And occupation. ⁴⁰	Right to stay in territories, ⁴¹ access to integrated systems for the management of their inland waters and air space. ⁴²	Right of occupation / possession. ⁴³	Right of possession / occupation, ⁴⁴ (<i>jus possidendi</i>)
Withdrawal	Ownership of introduced improvements, ⁴⁵ Right to forest products if allowed by Community	Right to benefits of and profits from natural resource utilization. ⁴⁶	Presumably rights of owners in Civil Code.	Right to fruits (<i>jus fruendi</i>) which may be natural, industrial (product of cultivation) or

³⁷ E. Schlager and E. Ostrom, "Property Rights Regimes and Natural Resources: A Conceptual Analysis," 68 LAND ECONOMICS 249–262 (1992).

³⁸ *Id.* at 250–252.
³⁹ DENR Adm. O. No. 29 (1996), art. II, sec. 2(i).

⁴⁰ Rep. Act 8371 (1997), sec. 7(c).

⁴¹ Rep. Act 8371 (1997), sec. 7(f).

⁴² Rep. Act 8371 (1997), sec. 8.

⁴³ Civil Code (1950), art. 428.

⁴⁴ DENR Adm. O. No. 29 (1996), art. II, sec. 2(i).

⁴⁵ DENR Adm. O. No. 29 (2000), secs 3 and 4.

⁴⁶ Guidelines regulating the harvesting and utilization of forest products within the Community-Based Management Areas⁴⁷.

⁴⁷ Rep. Act 8371 (1997), sec. 7(b).

	CBFM holder	Ancestral Domain	Ancestral Lands	Civil Code ownership
	Resource Management Framework and Resource Use Plan. ⁴⁷			civil (product of some civil transactions). ⁴⁷
Management	Right to utilize and develop according to Community Resource Management Framework and Resource Use Plan. ⁴⁸	Right to develop lands and natural resources; ⁴⁹ BUT responsibility to maintain ecological balance, restore denuded areas. ⁵⁰	Presumably rights of owners in Civil Code	Right to use (<i>ius utendi</i>) and right to "abuse" or "consume" (<i>ius abutendi</i>) ⁵¹
Exclusion	Right to be informed and consulted in all government projects to be implemented in the area; Consent of peoples' organization required before grant or renewal of extractive contracts within area. ⁵²	Right to regulate entry of migrants; right to negotiate terms and conditions for natural resource exploration. ⁵⁴	Presumably rights of owners in Civil Code.	Right of exclusion; right to self help (use of reasonable force to exclude) ⁵⁵
Alienation Others	Stewardship certificates may be transferred, sold or conveyed, subject to certain conditions; ⁵⁶ May participate in the Forest Resource Securitization Scheme (FRSS). ⁵⁷	Ancestral domains cannot be sold, disposed or destroyed. ⁵⁴	Right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned. ⁵⁸	Right to alienate (sell, lease, etc.) and transfer. ⁵⁹
		Right to resolve conflicts in accordance with customary law. ⁶¹	Right to redemption. ⁶²	Right to recover (<i>ius vindicandi</i>) ⁶³

Note: CBFMA holders legally hold only "privileges" as explicitly provided in the CBFM Implementing Rules. But, for purposes of comparison, rights here are used in a broader sense to include privileges.

⁴⁷ Civil Code (1950), art. 422.

⁴⁸ DENR Adm. O. No. 29 (2000), sec. 4.

⁴⁹ Rep. Act 8371 (1997), sec. 7(b).

⁵⁰ Rep. Act 8371 (1997), sec. 9.

⁵¹ Included in right to dispose, Civil Code (1950), art. 428. See also, E. Paras, 2 Civil Code Of The Philippines (1978).

⁵² DENR Adm. O. No. 29 (1996), art. II, sec. 2(v).

⁵³ Rep. Act 8371 (1997), sec. 7(e).

⁵⁴ Rep. Act 8371 (1997), sec. 7(b).

⁵⁵ Civil Code (1950), art. 429.

⁵⁶ DENR Adm. O. No. 45 (1998).

⁵⁷ DENR Adm. O. No. 1 (1998), sec. 5(1).

⁵⁸ Rep. Act 8371 (1997), sec. 5.

⁵⁹ Rep. Act 8371 (1997), sec. 8(a).

⁶⁰ Civil Code (1950), art. 428.

⁶¹ Rep. Act 8371 (1997), sec. 7(h).

⁶² Rep. Act 8371 (1997), sec. 8(b).

⁶³ Civil Code (1950), art. 428.

While the source of tenure rights of the CBFMA holders are the various agreements and plans, the source of tenure rights of indigenous peoples over ancestral domains is native title as evidenced by time immemorial possession, and **not** the grant of the certificates of ancestral domain titles. It would seem therefore that there is entirely no basis, and seemingly even no danger, of confusion between the two. But law and policy, as products of competing and conflicting interests and influenced by power wielded by those interests⁴⁴ usually have ways of substituting or confusing fiction for reality.

Divergent Policy Backgrounds and Converging Implementation

Despite the several key differences between Ancestral Domains and CBFM programs inherent in their legal framework, policies for implementing these programs, often converge. Some of the factors influencing the implementation of ancestral domains recognition have been referred to briefly in the introduction but will be repeated:

- There is pressure from the indigenous peoples and advocates to finally implement the ancestral domain provision in the IPRA.
- There is the continuing threat from adverse interests to use the Constitution to stall IPRA's implementation.
- There is a warning of dire economic consequences from investor-wariness if the constitutionality question regarding ancestral domains is unresolved or resolved in any manner adverse to natural resource extractive industries.
- There are highly technical documentary requirements from CADT applicants.
- There is "working" model of community management of natural resources that has been, for the most part, accepted (or as others would think, co-opted) by commercial extractive industries.
- There are budget constraints to implementation of community-based forest management and ancestral domain development (mostly due to budget misprioritization).

The last two points are very important as they might lead to a call for the adoption of "non-threatening" mechanisms to implement ancestral domain recognition. Those calling for the adoption of these mechanisms might range from government and industry representatives to some indigenous peoples' rights advocates (for the sake of implementation) and to environmental groups (for ecological protection).

⁴⁴ M. F. Leonen, *supra* note 4 at 37-38. See also C.E. Lindblom and E.J. Woodhouse, *The Policy-Making Process* (1993).

Management Frameworks and Resource Use Plans

The implementation of CBFM requires the submission of community resource management frameworks, resource use plans, and annual work plans. These plans need "affirmation" from the Department of Environment and Natural Resources (DENR) and local government units in order to be accepted. The grant of Certificate of Ancestral Land / Domain Claims (CALCs/CADCs)⁶⁴ similarly required Ancestral Domain Management Plans (ADMPs) after the release of certificates, though the DENR was divided as to whether the plans required affirmation.⁶⁵

The current implementing rules and regulations of the IPRA similarly provide for an "Ancestral Domain Sustainable Development and Protection Plan (ADSDPP)."⁶⁶ It would appear from the text of the said rule, however, that said ADSDPP is not a mandatory requirement for the management and development of natural resources within the ancestral domain:

The ICCs/IPs shall have the right to freely pursue their economic, social, political and cultural development. In the exercise of this right, the ICCs/IPs shall formulate and pursue their own plans for the sustainable management and development of the land and natural resources as well as human resources within their ancestral domains based on their indigenous knowledge systems and practices and on the principle of self determination. Such plans **may** be consolidated into an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) which shall be the basis of the Five Year Master Plan defined under these Rules and Regulations."⁶⁷ [emphasis supplied]

Note further that the recognition of ancestral domain titles and the issuance of certificates as proofs thereto, do not require formulation or submission of these plans.⁶⁸

Management plans are feasible, even for environmental groups, if the objective of the grant of resource rights is ecological protection. But as has been pointed out:

Indigenous people's communities, however, are not inherently environmental advocates. By definition they have evolved cultural, political, social and economic systems that contribute to the preservation of their ecosystems so that future generation can survive. A significant number of them are nature conservationists. They have by themselves and without much academic debate practiced sustainable development. That, however, does not make them natural environmental advocates. Their major problem is not ecological sustainability, but rather having to deal with elite who is responsible for intrusions into their territories and the appropriation of their resources. It is self-determination

⁶⁴ DENR Adm. O. No. 2 (1993).

⁶⁵ Interview with Atty. Jose Andres Canivel of the Environmental Legal Assistance Center (ELAC), who worked in the Office of the Undersecretary for Legal Affairs Antonio G. M. La Viña from 1996 to 1998, Honolulu, Hawaii, 10 February 2001.

⁶⁶ NCIP Adm. O. No. 1 (1998), rule VIII, part II, secs. 1 - 3.

⁶⁷ NCIP Adm. O. No. 1 (1998), rule VIII, part II, sec. 1.

⁶⁸ Rep. Act 8371 (1997) secs. 11, 51, 52. Also, NCIP Adm. O. 1 (1998), Rule VIII, Part I, sec. 2.

rather than ecological sustainability that sustains their political agenda.⁵⁵

The requirement of some kind of management plan for ancestral domains might be argued for in the name of sustainability, ecological protection, State regulation, or exercise of police power. As a basis for its adoption, its proponents may argue that even the Constitution provides that the recognition of the rights of indigenous peoples should be "within the framework of national unity and development"⁵⁶ and specific to ancestral lands "subject to ... national development policies and programs".⁵⁷ Further, the Constitution provides that the "use of property bears a social function" and all economic enterprise is subject to the duty of the State to "intervene when the common good so demands".⁵⁸ It does not help that IPRA itself provides for responsibilities to maintain ecological balance and restore denuded areas.⁵⁹ These responsibilities are not expressly required of other property owners.⁶⁰

These legal arguments can be easily countered as being hortatory, or applicable only to ancestral lands (as to the national development programs clause), or alternatively, being irrelevant as ancestral domains recognition is, or should be a national development priority. As to the "use of property" provision, the burden of formulating resource use or management plans, placed on indigenous peoples alone, and not to all property owners, amounts to a violation of the equal protection clause.⁶¹

But objections to such requirement have a policy, and not just a legal, dimension. Primarily it should be pointed out that the formulation of such plans presumes a priori that the resources found in ancestral domains can be portioned into sectors or fragments. This is inconsistent to the stated indigenous concept of ancestral domains as the "total environment".⁶² Further, breaking resources into sectors has its roots in patriarchy⁶³ and in a commercial and exploitative view of natural resources,⁶⁴ which may be totally different from the indigenous appreciation or valuation of the resources.

Placing a "management plan" requirement on ancestral domains dilutes the withdrawal and management property rights of the ancestral domain owners by subjecting them to the conditions reflected in the plans. The same is true whether or not the plans need prior approval or affirmation from an external authority such as the NCIP or DENR. Note that the withdrawal rights granted over ancestral domains are limited only by the property systems exercised by the indigenous peoples and the responsibility of maintaining ecological balance. But requiring a management plan from ancestral domain holders would place them in the same position as CBFM holders as to withdrawal rights over natural resources, i.e. subject to the discretion of the an external "authority".

⁵⁵ M. F. Leonen, *NGO Influence on Environmental Policy*, in P. Utting, Ed., *Forest Policy And Politics In The Philippines: The Dynamics Of Participatory Conservation*, at 67 to 83. (2000).

⁵⁶ CONST., art. II, sec. 22.

⁵⁷ CONST. art. XII, sec. 5.

⁵⁸ CONST. art. XII, sec. 6.

⁵⁹ Rep. Act 8371 (1997), sec. 9.

⁶⁰ M. F. Leonen, *supra* note 4 at 31 - 32.

⁶¹ CONST. art. III, sec. 1.

⁶² Rep. Act. 8371 (1997), sec. 4.

⁶³ V. Shiva, "Women in Nature" in N. Visvanathan et al, Eds., *THE WOMEN, GENDER AND DEVELOPMENT READER* (1996) at 65.

⁶⁴ A. B. Gatmaytan, *supra* note 24 at 37.

This point can be emphasized by examining a CBFM agreement executed between the DENR and an indigenous community. The preamble of this agreement states:

WHEREAS, DENR completed a resource management plan, hereinafter referred to as the RMP, after conducting comprehensive resource inventory, community profiling with initial organizing activities, community mapping, consultations and validations, and management planning in _____, all within the CADC area.

WHEREAS, during the consultations with the community and RMP preparation, the most appropriate institutional arrangement and ecologically and socially viable resource management option for the forestland resources of _____ were determined using the criteria of social equity, sustainability, and efficiency.

WHEREAS, _____ was chosen to be the most appropriate institution to protect, manage, develop, and utilize the forestland resources within the barangay of _____ under the CADC tenure instrument;"

The participation of the DENR in this agreement can not be said to be empowering for the local community. If management plans need governmental approval, then the right of withdrawal and management is subject to the discretion of an external authority which is accountable to a power other than the members of the community (e.g. environmental statutes, the bureaucracy). Such management plans transplant the power to determine the wisdom or appropriateness of resource use to non-resource users. This may pave the way for further disempowerment.

A provision in the new regulations for the issuance of Resource Use Permits (or Resource Use Plans) provides an example of this disempowerment. These regulations "suggest" that the Natural Resource Development Corporation (NRDC), a government corporation, "assist in the processing, marketing and disposition of forest products through a mutually agreeable arrangement with the concerned Peoples Organizations".¹¹ An approving authority that also acts as a marketing arm is a recipe for undue influence, at the very least, and at the worst, for possible corruption. Even if we assume arms-length bargaining, a situation where the approving authority is financially interested in the activities to be approved may lead to the prioritization of only those project from which heavy profits are to be made. (Small wonder that the NRDC prides itself as being one of the biggest income earners among government corporations as it has virtual dominion over forest products (confiscated), dredge fill materials and EIA funding mechanisms.)¹²

¹¹ On file with the author. The name of the People's Organization has been intentionally deleted.

¹² DENR Admin. O. No. 29 (2000), sec. 7. The NRDC was accorded an increased role during the administration of DENR Secretary Antonio Cerilles and should be a subject of a separate inquiry. See, for example, A. Ballesteros, *Seven Sins of Cerilles* (unpublished) (2001).

¹³ Department of Environment and Natural Resources (DENR) press release, "DENR Corporate Arm now in the black," July 28, 2000 at <http://www.denr.gov.ph/072800>

A lawyer-anthropologist argues that while documentation of rules and practices is not, by itself, a necessarily objectionable activity, its adoption as authoritative text, such as resource use or management plans, is problematic.⁵¹

First, the "technical provisions or aspects of any body of knowledge have limited importance when divorced from existing, local contexts."⁵² Indeed, the written document, no matter how extensive or well written, could not possibly capture the nuances and context of how (or why) such practices and rules are observed.

Second, such documentation would "freeze" practices in place and time.⁵³ For example, an anthropological study of the agricultural practices of the Buhid (Mangyan) in Batangan, Oriental Mindoro, showed a shift from what may be termed "bolo agriculture" to "plough agriculture," and a change of land tenure from usufruct rights to permanent ownership.⁵⁴ Both systems can be described as traditional, though they were admittedly influenced by exogenous events. A management plan may stifle development and render irrelevant the property regimes to changes, both within and outside the community.

Finally, the use of a management plan to resolve conflict would displace existing traditional processes (which are part of the property system) and would take the power to adjudicate (and hence its corresponding accountability) away from the user group to the written document.⁵⁵ The impact of a management plan would be to prejudge the substance through an exogenous basis and process.

It is not the intent of this paper to cast doubts on the value of documentation of processes and rules in particular communities. In truth a lot of perspectives and lessons in the preparation of this paper were culled from case studies of actual community property rights. But the use of such documentation as a bureaucratic device for monitoring or prescription is clearly not justified.

Funding Mechanisms

The IPRA provided an initial fund of Pesos One Hundred Thirty Million (P 130 million) for implementing ancestral domains, and subsequent allocations of the same amount through the annual appropriations act.⁵⁶ The IPRA intended these funds to cover compensation for expropriated lands, delineation and development of ancestral domains. The law itself has identified sources for the initial fund including the Philippine Charity Sweepstakes Office (PCSO), travel taxes, and funds from the Social Reform Council.⁵⁷ This funding is apart from the regular appropriations for the National Commission on Indigenous Peoples. This provision, however, has never been implemented.⁵⁸

⁵¹ A. B. Gatmaytan, "Change and the Divided Community: Issues and Problems in the Documentation of Customary Laws," 10 PHIL. NAT. RES. L. J. 45, 66 (2000).

⁵² *Id.*

⁵³ *Id.* at 66 - 67.

⁵⁴ V. Lopez-Gonzaga, *Peasants in the Hills* (1983).

⁵⁵ A. B. Gatmaytan, *supra* note 83 at 66-67.

⁵⁶ Rep. Act 8371 (1997), sec. 71.

⁵⁷ Rep. Act 8371 (1997), sec. 71.

⁵⁸ See Rep. Acts 8745 (1998) [General Appropriations Act 1999] and 8760 (1999) [General Appropriations Act 2000]. See also LRC KSK, FY 2000 DENR and NCIP Budget: Trivializing Community Empowerment in Natural Resource Management (unpublished).

The funding mechanism is very important to ensure not only full implementation, but implementation in a manner consistent with the ideals of ancestral domain recognition. That the IPRA explicitly provides for sources of the funds is not an accident. The budget process is a very partisan and parochial process as the power to initiate revenue bills is lodged in the House of Representatives. House members argue over whose territory gets more of each resource to ensure their clan's perpetuation in power. Thus, identified fund sources should partly insulate the implementation of IPRA from political whims.

Unlike the IPRA, the rules implementing CBFM do not specify the amount and source of CBFM funds. Instead a CBFM special fund is provided, to be included in budget proposals to Congress and to be sourced partly from local and foreign donor agencies.¹¹ In actual practice, however, the funds from donors have been more than just supplementary. The government has continuously funded CBFM through foreign assisted projects (FAPs) and only minimally through general appropriations.¹² This has caused the program to become dependent on the availability of foreign funds for its continued implementation and expansion.

More importantly, however, Official Development Aid (ODA) admittedly is not free from other agenda. A lot of money for sustainable forest management in the Philippines, while advocating for more community participation, simultaneously pushed for industrial tree plantations and the cultivation of non-endemic fast growing species. And even assuming that aid can be purely altruistic, the "technocratic mindset" that values "haste and scale" more than actual on-the-ground impacts expects "program and project design and implementation to take place within relatively short time frames".¹³

Resource securitization

The importance of adequate funding for ancestral domain delineation is highlighted by a recent development in the Country's reforestation efforts, that of resource securitization which attempts to address the perennial problem of lack of funding for reforestation projects, including some CBFM projects.

In 1998, the Department of Environment and Natural Resources issued an order to implement a Forest Resources Securitization Strategy (FRSS). The order sought to encourage tenure holders to transfer their tenure instruments (e.g. CBFMAs, CALCs and CADTs) to a "service consortium" that would manage and use the areas and assure investors (through a bank) of a fair return on investment. The tenured holders would also receive part of the profits from this venture and would get priority employment in the forest management activities.¹⁴

¹¹ DENR Admin. O. No. 29 (1996), art. VII, secs. 1 - 2.

¹² See, for example, LRC-KSK, *Tinted Tiger: Some Truths About the DENR's 1998 Budget Proposal*, 8 Phil. Nat. Res. L. J. 29, 34-38 (1997).

¹³ P. Utting, *An Overview of the Potential and Pitfalls of Participatory Conservation*, in P. Utting, Ed., *Forest Policy And Politics In The Philippines: The Dynamics Of Participatory Conservation*, *supra* note 68 at 171 - 215 (2000)

¹⁴ See A. T. Pagayatan, *The Forest Resource Securitization Strategy: Selling the Security of Philippine Forests*, *infra*.

This funding mechanism is totally inconsistent with the concept of traditional property systems as the holders give up their rights over the resources, albeit temporarily (twenty-five years), as well as the right to determine the processes that should govern resource use and management. Further, this action signals the return to natural resource use and management through a centralized agency—though this time, a bank and a service consortium replace the State agencies. The grant of tenure could be seen as merely transitory as the holders are forced, through lack of support and financial resources, to “return” the use of the land to a centralized agency. While the scheme remains unimplemented, largely due to the exclusion of natural forests in the scope of the order (which was the original intent of the scheme’s proponents), according to the Medium Term Philippine Development Program for 1998 – 2004, it will eventually be piloted.

CADT holders would be prime targets for the securitization program, especially if the government fails to make funds available for implementation of the CADT program. Worse, the government may make the granting of CADTs contingent on the willingness of the owners to be subjected to this scheme.

The government might propose a set-up similar to the Forest Resources Securitization Strategy in order to achieve a “win-win” situation. The “win-win” schemes seek a way for all parties of interest to gain something from a resolution of the conflict. In the case of ancestral domain owners, they might be promised economic benefits in the form of dividends and employment opportunities, while those with commercial forestry interests would be assured of continued profits though exclusive exploitation of the forests.

In such a case, ancestral domain holders would retain only access rights, including the right to peaceful occupation, and perhaps withdrawal rights over certain specified resources. A service consortium will exercise management and withdrawal rights. Arguably, ancestral domain owners, as do CBFMA holders in the Forest Resources Securitization Strategy, would still retain the right to benefit from the fruits of the resources, albeit in this case, the fruits are civil rather than natural. The Forest Resources Securitization Strategy would ensure that ancestral domain holders who assert the exercise of all property rights guaranteed under the IPRA would be marginalized and de-prioritized in the process of recognition.

MAPPING OUT POWER RELATIONS

As noted earlier, both ancestral domain recognition under the IPRA and community based forestry management break the State’s monolithic control over natural resources. Thus, to a certain extent, both initiatives involve decentralization of functions and

devolution of powers. This is consistent with the popular call for participation and to the constitutional directive of self-reliant development.

Agrawal and Ribot propose a framework for analyzing decentralization.⁶ This framework focuses on three elements: actors, powers and accountability. In discussing the IPRA three “actors” can be identified: the community (indigenous community members and their leaders or their governance structure), the State (acting through the government), and the private commercial sector. The paper deliberately excludes a fourth group, non-governmental organizations, because they primarily facilitate communication among community, government, and private commercial sector actors and can thus be subsumed under any of the three.

Agrawal and Ribot observe that the powers that are devolved through decentralization usually fall into four general types: rule making, decision-making, implementation and monitoring/enforcement, and adjudication.⁷

The rulemaking power, or power to create new rules, is akin to the “legislative” power usually delegated to a collegial body such as congress. Through rule making the actors wielding power can actually “legislate principles that structure decisions and action” including criteria for who uses and who benefits, and to what extent.⁸

The decision-making power and the implementation and monitoring power are akin to “executive” powers. The decision-making powers allow the use of discretion to determine how structures and objectives in the rules are best implemented. The implementation and monitoring power, on the other hand, “implies the power to execute, and to meter and monitor whether the actors are carrying out the roles they are supposed to perform.”⁹

Finally, the power to adjudicate, akin to “judicial” power, allows actors to settle actual controversies that arise from the exercise of rule making, decision making, and implementation and monitoring.¹⁰

All four types of power contribute in different ways to influencing actual behavior patterns or activities in a particular group and area.

Agrawal and Ribot argue that the most important element to consider is the degree of accountability to the community as it is “only when constituents come to **exercise accountability as a countervailing power** that decentralization is likely to be effective.”¹¹ (emphasis added) Separating policy rhetoric from reality, however, makes it difficult to pinpoint accountability

⁶ Agrawal, A. and J. C. Ribot. *Accountability in Decentralization: A Framework with South Asian and West African Cases*, 33(4) *THE JOURNAL OF DEVELOPING AREAS* 473 (1999). (The author's version of the paper is as a separate looseleaf and therefore has a different pagination.)

⁷ *Id.*, at 4.

⁸ *Id.*

⁹ *Id.* at 4-5.

¹⁰ *Id.*, at 5.

¹¹ *Id.*

in policy analyses. Also, accountability is not easy to distinguish even in reality (though Argawal and Ribot do propose some tools of analysis), as it is subject to differences in perception and to subjectivity. In order to determine accountability, a transitory category is herein proposed: "power base" or the source of any given actor's authority to exercise power. Table 2 compares actors using these definitions of power base and accountability.

Table 2 *Comparative matrix of power bases and accountability of different actors*

		Accountability
Community or traditional leaders or governance structures	Legally and collectively, as the sovereign. ¹⁰² Realistically, traditional use of resources and their proximity to the resources make them difficult for government and commercial interests to ignore. ¹⁰³	Ideally exercise of power at the most participatory level should ensure genuine empowerment and accountability of representatives and structures to each member of the community. But realistically, subject to traditional hierarchies and divides such as class, gender and ethnicity. ¹⁰⁴
Government	As repository of delegated powers (legislative, executive, and judicial) ¹⁰⁵ and the State's inherent powers including police power, eminent domain ¹⁰⁶ and taxation.	In theory, to the people, ¹⁰⁷ in reality: <u>As to political (elected) bodies and offices:</u> To an amorphous aggregation called the electorate, which does not necessarily mean an egalitarian distribution of accountability but is subject to hierarchies usually based on several factors which can assure continued popular election and support (e.g. money, access to media, etc.) <u>As to non-political (civil service) bodies and offices:</u> To the political bodies who exercise the powers of legislation and administrative rule making, and the power of the purse (governmental appropriation).
Private Commercial Sector	Capital (money, assets)	To stockholders and investors. Stockholders invest capital to a corporation or a business venture expecting a fair return on investment. ¹⁰⁸

Power base and accountability are important variables as these determine how, and for whose benefit, power is utilized. Table 3 compares the powers granted under the various tenure schemes for the three identified actors.

¹⁰² Const., art. II, sec. 1.

¹⁰³ As was observed regarding community based resource management in general: "In essence, the recognition of tenure under these programs is an accommodation of the presence of peoples in the uplands. Whereas previous regimes, following the models of colonial legislation simply branded forest occupants as forest destroyers, the compromise has been to allow peoples continued occupation of these lands in the form of a lease." D.B. Gatmaytan, *Economic Motives and Environmental Assessment: The Conflict in Community-Based Resource Management Programs*, paper delivered during the Fourth Annual Common Property Conference sponsored by the International Association for the Study of Common Property, June 19, 1993, Manila.

¹⁰⁴ See, for example, A.B. Gatmaytan, *supra* note 83 at 53, citing L. Fortmann and J. Bruce, *Whose Trees? Proprietary Dimensions of Forestry* (1988); J. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (1985); E. Brumfiel, *Breaking and Entering the Ecosystem: Gender, Class and Faction Steal the Show*, in 94(3) *AMERICAN ANTHROPOLOGIST* 551 - 567 (1992); A. Cohen, *Segmentary Knowledge: A Whalsay Sketch*, in M. Hobart, Ed., *An Anthropological Critique of Development* (1993); and F. von Benda Beckmann, *Scapegoat and Magic Charm: Law in Development Theory and Practice*, in M. Hobart, Ed., *id.*

¹⁰⁵ Const., art. II, sec. 1.

¹⁰⁶ Const., art. III, sec. 9.

¹⁰⁷ Const., art. II, sec. 1. Also, art. XI, sec. 1, to wit: "A public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

¹⁰⁸ This applies to stock corporations, which are "authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held." Corp. Code (1976), sec. 3.

Table 3: Comparative matrix of power devolved under different schemes

	IPRA	Resource Use Plans/Permits ¹⁰⁴	Resource Securitization ¹⁰⁵	CRFM
Community	The community has the power to determine resource use and act according to traditional resource use systems, including the applicability of customary law to settle conflicts. ¹⁰⁶ (RM/DM/IM/AD)	The community drafts the management frameworks and resource use plans. (RM/DM) The community implements the plans. (IM) The plan may provide that customary law would apply in case of conflict. (AD)	The community chooses to enter into the agreement, and for the duration of the project, waives powers over resource use.	The community is consulted in the formulation of the management framework and the resource use plans, and implements the same. ¹⁰⁷ (RM/IM)
Government	The State retains regulatory powers over resource use and management (RM/IM) and may exercise appellate jurisdiction, vested in the NCIP and subsequently to the Court of Appeals and Supreme Court. ¹⁰⁸ (AD)	The government approves, affirms or, in the most progressive case, merely records the plan. (DM) The State retains regulatory powers over resource use and management (RM/IM) and may exercise appellate jurisdiction, vested in the NCIP and subsequently to the Court of Appeals and Supreme Court. ¹⁰⁹ (AD)	Government can act as tenure rights holders over public lands and, in that capacity, is similarly situated as the community. But, it does have adjudicative powers over contracts (AD) as well as regulatory powers over resource use. (RM/IM)	The government approves or affirms the management frameworks and resource plans and sees that the community implements the same faithfully, under pains of revocation or non-renewal of the resource permit. (RM/DM/IM) The State also has the power to decide conflicts. ¹¹⁰ (AD)
Private Commercial Sector	The private commercial sector has to seek the approval of the community before it can participate in resource use or management. ¹¹¹	The private commercial sector has to seek the approval of the community and/or the relevant government agency before it can participate in resource use or management. ¹¹²	The trustee bank and the service consortium have full discretion, subject to existing laws and the terms of the agreements, to maximize profit through the use of the resources in the securitized areas. (DM/IM)	The private commercial sector has to seek the approval of the community and/or the relevant government agency before it can participate in resource use or management.

Note: The initials refer to the type of power: RM - rule making; DM - decision making; IM - implementation and monitoring; AD - adjudication.

¹⁰⁴ Hypothetical scenario using provisions of Rep. Act 8371 and DENR Adm. O. No. 29 (1996).

¹⁰⁵ See A. T. Pagayatan, *The Forest Resource Securitization Strategy: Selling the Security of Philippine Forests*, *infra*.

¹⁰⁶ While this is precisely the contentious aspect of the IPRA, as seen in the Constitutionality case, a textual analysis of secs. 3(o) and 7(b) of the IPRA supports this interpretation.

¹⁰⁷ DENR Adm. O. No. 29 (1996), art. III, secs. 9 - 13.

¹⁰⁸ Rep. Act 8371 (1997), sec. 67.

¹⁰⁹ DENR Adm. O. No. 29 (1996), art. VIII, secs. 1.

¹¹⁰ Rep. Act 8371 (1997), sec. 59.

¹¹¹ Rep. Act 8371 (1997), sec. 59.

While the IPRA provides for a substantial devolution of powers to the community-owners of ancestral domains, the same cannot be said for CBFMAs. CBFMA holders only have the power to make recommendation on what rules and decision should be made. This can be contrasted with the wide range of powers available to ancestral domain owners through the recognition of traditional resource use systems and the applicability of customary law.

If ancestral domains were to adopt the management framework and resource use planning mechanisms of CBFM, this would make them more like CBFMA than ancestral domains as proscribed in the IPRA. Note that the two programs are different as to objective: IPRA is a social justice constitutional directive, albeit with ecological implications, and the CBFM is an ecological protection method, albeit with a social justice dimension.

Yet even the limited power available to communities under Resource Use Plans and CBFMAs are substantial compared to the powers of communities under resource securitization where the community exercises virtually no powers.

It may be argued that the waiver of such powers is voluntary on the part of the holders. Further, such an arrangement is merely temporary, and the holder will get its original powers back after the term of the agreements. Whether an informed and voluntary participation is achievable given the power relations between the marginalized and the State—private commercial sector diadem remains an important but unanswered question. It should not be forgotten that during the period of the securitization contract, approximately equal to a generation, resource rights and use will be determined based on achieving the highest rate of return on investment, as required by the accountability of the private commercial sector to its stockholders.

CONCLUSION

This paper makes clear how mechanisms to implement the letter of the law sometimes contravene its spirit. The long wait for the passage of an ancestral domains law was realized, if imperfectly, through the passage of the IPRA in 1997. The administrative and judicial gymnastics that stalled its implementation will hopefully soon be untangled. IPRA's ancestral domains provisions may finally be implemented.

But the same interests and fears that caused the delay of the IPRA's enactment and implementation will continue to attempt to quash it for being inoperable, unrealistic, or unjust provisions. The Filipino government might be too accommodating to commercial and political interests and forget that the IPRA is first and foremost a law of redress and social justice. IPRA seeks


to correct historical injustices done to indigenous peoples, and to provide security of tenure in order that indigenous peoples may, through their own decisions and initiative, be rid of the abject poverty afflicting most of its communities.

IPRA is primarily a law that should empower, but it can only do so if the interpretation that is most biased for the indigenous peoples are adopted. Any attempt to adopt politically acceptable and non-threatening measures should be analyzed as to the actual property rights granted and the powers devolved to the indigenous people's communities. The tendency to adopt implementing mechanisms "for the sake of implementation" must be arrested. A good start would be to admit and accept that the recognition of ancestral domains would mean a reduction of what the State used to consider, albeit erroneously, as public domain and that as a consequence, it may not earn as much as it would if the resource was granted to private commercial entities.

The recognition of ancestral domains must be done not because it would bring in more revenue or even, because it would mean greater ecological sustainability. The right to ancestral domains must be recognized because it is the only way by which the State can empower a sector it has marginalized for centuries.

Two specific recommendations are hereinafter offered.

First, State intervention must be kept at a minimum, except when it is sought by the indigenous community, or it is necessary to stop other parties who threaten to usurp the indigenous community's rights to the ancestral domains. Science has broken the myth that only through State guidance or market forces can resource sustainability be achieved. Recognition of ancestral domains must be coupled with the recognition of traditional (though dynamic and evolving) systems of resource use existing in indigenous communities.

Second, sufficient funds for delineating and titling ancestral domains must be provided free from contingencies and conditions. Access to credit and non-commercial fund-raising facilities must be similarly provided to ensure that indigenous communities can use their domains according to their own developmental desires and intentions. Programs that provide funds in exchange for a diminution of powers and rights must be opposed. 

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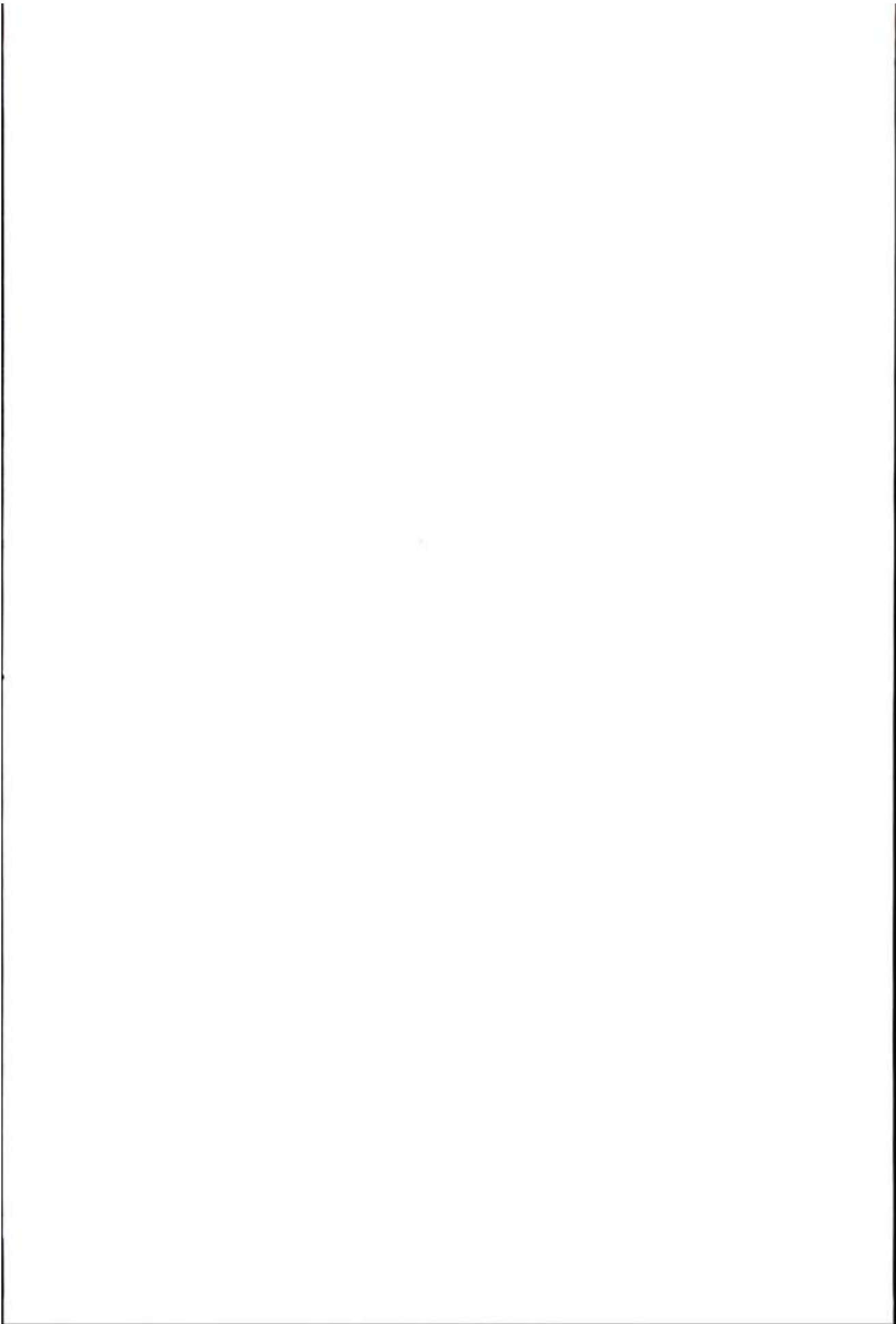
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Note: The format of the references listed herein retains the format system for social science papers of the original paper.



*Matrix of Selected
provisions of the DENR
Administrative Orders
Implementing
the Integrated Forest
Management Program*

COMPILED BY YASMIN O. HATTA

The following matrix compares the three consecutive DENR Administrative Orders issued under different administrations to implement the Integrated Forest Management Program. Only the Provisions which the editors believe have the most significant changes and may be used in community intervention have been included. The full text of the latest order, DAO 99-53 is included in this edition.

<p>DENR ADMINISTRATIVE ORDER NO. 99-53 Regulations Governing the Integrated Forest Management Program (IFMP)</p>	<p>DENR ADMINISTRATIVE ORDER NO. 04-97 Rules and Regulations Governing the Industrial Forest Management Program</p>	<p>DENR ADMINISTRATIVE ORDER NO. 60-93 Revised Regulations and Guidelines Governing the Establishment and Management of Industrial Forest Plantations (IFPs) and Management of Residual Natural Forests for Production Purposes</p>
<p>December 23, 1999 (SGD.) ANTONIO H. CERILLES, Secretary</p>	<p>March 4, 1997 (SGD.) VICTOR O. RAMOS, Secretary</p>	<p>October 4, 1993 (SGD.) ANGEL C. ALCALA, Secretary</p>
	<p>CHAPTER I Policies, Objectives and Definition of Terms</p> <p>SECTION 2. Priority to Ancestral Domain Recognition, Community-Based Forest Management Strategies and Socialized Industrial Forest Management Program.</p> <p>Consistent with Executive Order No. 263 (1995), the DENR adopts community-based forest management as the national strategy for sustainable forest management and as such, the Department shall prioritize community-based forest management over other DENR programs. The recognition of ancestral domain/land claims, the protection of the integrity of IPAS sites, programs/projects such as Community Forestry Program (CFP), Integrated Social Forestry Program (ISFP), Socialized Industrial Forest Management Program (SIFMA), Integrated Protected Areas System (IPAS), and indigenous cultural community (ICC) claims in accordance with DAO No. 2, series of 1993, and pertinent laws, rules and regulations, and similar projects shall be pursued pro-actively by the Department and shall be prioritized in case of conflict with the IFMA program.</p>	

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>CHAPTER II IFMP Areas</p>	<p>CHAPTER II IFMA Areas</p>	<p>CHAPTER II IFMA Areas</p> <p>SECTION 4. Types of IFMA Area. IFMA Areas may be of two (2) types:</p> <p>4.1 Type I IFMA Areas - IFMA Areas that do not contain any Residual Production Forest and are for IFP establishment and management and protection of Protection Forest, if any; and</p> <p>4.2 Type II IFMA Areas - IFMA Areas that contain Residual Production Forest and are for IFP establishment, sustainable management of the Residual Production Forest and protection of Protection Forest.</p>
<p>SECTION 4. Areas Available for IFMP. - Except areas enumerated in Sec. 5 herein, IFMAs may cover all lands of the public domain under the jurisdiction of the DENR, such as:</p> <p>(a) Open and denuded lands, brushlands, degraded residual natural forests;</p> <p>(b) Areas covered by cancelled/expired Forest Land Grazing Agreement or pasture permits or leases;</p> <p>(c) Government reforestation projects or portions thereof found to be more suitable or can be better developed as IFP in terms of public interest and benefits to surrounding communities;</p>	<p>SECTION 4. Areas Available for IFMA. IFMAs may cover</p> <p>all grasslands, brushlands, and open and denuded forestlands under the jurisdiction of the DENR;</p> <p>provided, that areas subject of vested rights, licenses, permits or management agreements may be made available for IFMA by prior express and written agreement of the holder thereof;</p>	<p>SECTION 5. Areas Available for IFMA. IFMAs may cover all lands under the jurisdiction of the DENR that are not otherwise classified under the National Integrated Protected Area System or are to vested rights, licenses, permits, or other concessions, and which are:</p> <p>5.1 Open and Denuded Lands, Brushlands and Degraded Residual Forests;</p> <p>5.2 areas covered by grazing or pasture leases; PROVIDED, that such areas shall be excluded from existing leases; PROVIDED FURTHER, that the lessee in each case agrees to waive rights to the areas;</p> <p>5.3 government reforestation projects or portions thereof found to be more suitable for IFP in terms of the public interest and benefits to the surrounding communities; PROVIDED, that allocation</p>

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>(d) Production residual natural forest that may be best included in any of the aforementioned areas and be a part of the managed forest under the IFMA;</p> <p>(e) Areas under cancelled and expired TLAs; provided, areas under existing TLAs may be allowed for conversion to IFMA by the holder thereof pursuant to Sections 6, 9 and 12 herein.</p>	<p>provided further, that areas enumerated in Sec. 6 hereof shall not be available for IFMA.</p> <p>Patches of residual natural forests within the IFMA Area that are too small to be managed separately shall be maintained and enhanced as protection forests, the management of which shall be the responsibility of the IFMA Holder.</p>	<p>shall be through public bidding on the value of plantations and other permanent improvements; and</p> <p>5.4 areas presently or previously covered by Timber License Agreement (TLA).</p>
<p>SECTION 5. Areas Prohibited for IFMA. - In no case shall IFMAs be awarded in the following:</p> <p>(a) Areas or lands of the public domain established under the NIPAS within the classification of national park as provided for in the Constitution and/or those proclaimed, designated or set aside pursuant to a law, presidential decree, presidential proclamation or executive order as well as those the Secretary shall propose for inclusion in the initial component of the System except when such areas fall within the buffer zone;</p> <p>(b) Areas or lands subject of Certificates of Ancestral</p>	<p>SECTION 6. Prohibited Areas. In no case shall IFMAs be awarded in areas</p> <p>classified or to be classified under the National Integrated Protected Areas System (NIPAS) except when they fall within buffer zones,</p> <p>or subject of Certificates of Ancestral Domain/Land</p>	

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>Domain/Certificate of Land Claims (CADC/CALC) or of any other tenurial instruments issued by the DENR under the Integrated Social Forestry Program, Community Forest Program, and other people-oriented forestry programs and other licenses, permits or lease unless with prior informed consent of the holder.</p> <p>(c) Those areas with pending applications CADC/CALC or those areas verified by the DENR to be actually occupied by indigenous cultural communities under a claim of immemorial possession unless after due notice and hearing in accordance with existing rules and regulations same shall be denied or rejected.</p>	<p>Claims (CADC/CALC) or of any other tenurial instrument issued by the DENR under the Integrated Social Forestry Program, Community Forestry Program, and other people-oriented forestry programs.</p> <p>Areas covered by pending applications for Certificate of Ancestral Domain/Land Claim shall not be open to applications for IFMA until the DENR, after due notice and hearing in accordance with DAO No. 2, series of 1993, or other pertinent rules and regulations, shall have denied or rejected with prejudice such application for CADC/CALC. Those areas verified by the appropriate office of the DENR to be actually occupied by indigenous cultural communities under a claim of time immemorial possession shall likewise not be open to applications for IFMA without the prior informed consent and express and written agreement of the occupants, which shall be obtained in accordance with customary law where appropriate, or until the claim shall have been resolved.</p>	
<p>SECTION 6. Size of IFMA Area. - The minimum size of the area that may be covered by an IFMA shall be five hundred (500) hectares and the maximum size may depend upon the capability of the applicant to develop and manage into productive condition as well as the</p>	<p>SECTION 5. Size of the Area. The minimum area that may be covered by an IFMA is not less than 500 hectares and the maximum area is 20,000 hectares; provided, that an IFMA Holder may hold more than one IFMA simultaneously but the aggregate total size of the IFMA Areas held by any</p>	<p>SECTION 6. Size of the Area. The Minimum are that may be covered by an IFMA is 500 hectares and the maximum area shall not exceed 40,000 hectares; PROVIDED, that suitable areas of less than 500 hectares shall be governed by the regulations for Tree Farm Leases under MNR</p>

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>requirements of his processing plant(s) existing or to be installed in the area/region; provided, that it shall not exceed forty thousand (40,000) hectares, preferably but not necessarily of one single block of an area;</p> <p>provided, however, that where a TLA is converted into IFMA, the size of the IFMA area may extend up to the size of the TLA area at the time of the conversion.</p> <p>For purposes of effective management, economic scale or economies of scale, holders of adjoining or economically-distanced small-sized IFMA areas may be allowed to integrate into cooperative, a federation of cooperatives, or corporation the aggregate area of which shall not exceed 40,000 hectares.</p>	<p>one Holder shall not exceed 40,000 hectares; provided, further, that the principle of social equity shall always be considered in the granting of an IFMA.</p>	<p>Administrative Order No. 4 (Series of 1980);</p> <p>PROVIDED FURTHER, that the foregoing limitations shall not preclude increasing any area on a case-to-case basis;</p> <p>PROVIDED FURTHER, that additional areas in excess of the foregoing limitations shall not include Residual Production Forest;</p> <p>PROVIDED FINALLY, that where a current TLA is converted to IFMA, the size of the IFMA Area, inclusive of Residual Production Forest, may extend up to the size of the TLA area at the time of conversion.</p>
<p>SECTION 7. Evaluation, Delineation and Approval of Potential IFMA Areas. - The DENR shall determine the land use and vegetative cover of the identified areas for forest plantation development taking into consideration major watershed divide as boundaries, if possible with the application of the latest forest resource and other baseline data as well as modern methods such as aerial photography and remote sensing techniques.</p>	<p>CHAPTER III Identification and Preparation of Areas for IFMA</p> <p>SECTION 9. Identification, Evaluation, and Delimitation of Potential IFMA Areas. The CENROs shall identify potential IFMA Areas with the aid of the latest forest resource information and other baseline data.</p>	<p>CHAPTER III Identification and Preparation of Areas for IFMA</p> <p>SECTION 7. Identification, Validation and Delimitation of Potential IFMA Areas. In each region, the RED shall identify, with the aid of the latest forest resource information, potential IFMA areas and shall,</p>

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>7.1 Areas so delineated shall be validated on the ground, particularly the extent of each of the forest cover types, such as open/denuded lands, brushlands, residual natural forest</p> <p>and with the assistance of the LGU, dependent communities shall be consulted about the delineation of the area for IFMA purposes; and</p>	<p>They shall also evaluate on the ground the availability and suitability thereof with respect to site and forest conditions, environmental limitations, conflicting land and resource claims and legal encumbrances. The PENROs shall maintain a data base of all potential IFMA Areas within their jurisdiction, as well as the following information:</p> <p>9.1 Description of the rain conditions by elevation and slope class;</p> <p>9.2. Community demographic profile including information on ethnic groupings, areas actually cultivated, and others.</p> <p>SECTION 10. Approval of IFMA Areas. Upon verification of the availability and suitability of the potential IFMA Areas, the PENRO shall conduct information dissemination, through print and broadcast media, in English and in the language in common use in the region. Information dissemination shall identify and describe areas designated as suitable for IFMA and shall describe the objectives of IFMA as a land management instrument. The PENRO shall then inform, in writing, the concerned LGUs and, together with their representatives, shall validate on the ground the feasibility of the proposed IFMA areas. The validated areas, endorsed by the concerned LGUs, shall then be indicated in a map of appropriate scale which map, together with all pertinent data and information, shall be forwarded through channels to the DENR Secretary for approval.</p>	<p>in accordance with guidelines that shall be issued ninety (90) days from publication of this Order evaluate on the ground the suitability and availability of identified areas with respect to site and forest conditions environmental limitations, conflicting land and resource claims and legal encumbrances.</p>

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<p>7.2 The delineated areas for IFMA purposes shall be prepared either through the conventional and/or geographic information system (GIS) in scale 1:50 000 or an appropriate scale indicating thereon the extent in hectares of each forest cover types and such other relevant information. Same shall be duly indorsed by the LGU concerned through Board/Council Resolution, and approved by the Regional Executive Director concerned, the original copy of which, together with all pertinent documents shall be forwarded to the FMB Director for safekeeping, updating and reference.</p>	<p>Within fifteen (15) days from notice of the approval by the Secretary of an IFMA Area or set of areas, the RED shall inform the concerned LGUs thereof and shall cause the publication of the said approval. The approved map and all other documents shall be furnished the Director of the FMB for data base management and monitoring purposes.</p>	<p>Each RED shall demarcate on maps of convenient scale all identified areas in their respective region found through such evaluation to be suitable and available for IFMA.</p>
<p>CHAPTER III Application for and Approval of the IFMA</p> <p>12.5 Consultation and discussion with upland communities and indigenous peoples within the IFMA area about the socio-economic, political and cultural impacts of the project;</p> <p>12.6 Documentation of the consultative process undertaken and agreements that shall be followed;</p>		<p>SECTION 8. Notification of Dependent Communities of IFMA Areas. Upon verification of the suitability of each proposed IFMA Area, the RED concerned, with the assistance of Local Government Units, shall ensure that communities dependent on the area receive notice of the extent of the proposed area and the key provisions of an IFMA, and have the opportunity to register objections to an IFMA covering the proposed area.</p> <p>8.1 Contents of Notice. The notice shall be in English and the language in common use in the region and shall include:</p> <p>8.1.1 a sketch map of the area;</p> <p>8.1.2 the objectives of IFMA as a land management instrument and the procedures of awarding IMFA's;</p> <p>8.1.3 the rights and responsibilities of IFMA Holders;</p>

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<p>12.7 Discussion on gender issues with significant impact on women, including their roles/participation in project implementation;</p>		<p>8.1.4 the rights and responsibilities of individuals and communities dependent on IFMA Areas; and</p> <p>8.1.5 provision for individuals or communities to submit objections with respect to the proposed IFMA Area or portions of it.</p> <p>8.2 Action on Objections. Within thirty (30) day of receiving objections from concerned individuals or communities with regard to the proposed IFMA Area, the RED shall meet with individuals or representatives of communities to discuss their objections. On the basis of such discussion, the RED may modify the boundaries of the proposed IFMA Area or prescribe special conditions to be included in an IFMA covering the area. In cases where the objections arise from claims in respect of Ancestral Domain or Ancestral Land, the RED shall initiate procedures to certify such claims in accordance with DENR Administrative Order No. 02 (Series of 1993). The RED shall notify in writing the concerned individuals or communities of his/her decision regarding the action to be taken within thirty (30) days of meeting with them.</p>
<p>CHAPTER III Application for and Approval of the IFMA</p>	<p>CHAPTER IV Qualification of Applicants</p>	<p>CHAPTER IV Qualifications of Applicants, Assignment of IFMAs and Setting of Performance Bonds</p>

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<p>SECTION 9. Qualifications of Applicants. - The applicants for IFMA shall be:</p> <p>(a) A Filipino citizen of legal age; or,</p> <p>(b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws.</p> <p>However, in the case of application for conversion of TLA into IFMA, an automatic conversion after proper evaluation shall be allowed, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, PROVIDED further, that the TLA holder has showed satisfactory performance and have complied in the terms of condition of the TLA and pertinent rules and regulations.</p>	<p>SECTION 12. Qualified Applicants. Qualified applicants for IFMA are the following:</p> <p>12.1. Filipino citizens of legal age; and</p> <p>12.2. Corporations, partnerships, associations or cooperatives duly registered under Philippine laws, at least sixty percent (60%) of the capital of which is owned and controlled by Filipino citizens.</p> <p>SECTION 8. Applications for Conversion or Expansion. All applications for conversion of Timber License Agreements into IFMAs and/or for expansion of IFMA Areas shall be deemed as new applications for IFMA and shall be subject to the pertinent requirements and procedures contained in these regulations.</p> <p>SECTION 13. Eligibility Requirements. In addition to the qualification requirements set forth in the preceding section, applicants shall be required to satisfy the following eligibility requirements:</p> <p>13.1. Environmental Management Record - The applicant must present proof of its present technical and financial capability to undertake resource protection and conservation, rehabilitation of degraded areas, and</p>	<p>SECTION 12. Qualified Applicants. Qualified applicants for an IFMA include:</p> <p>12.1 Filipino citizens of legal age; and</p> <p>12.2 corporations, partnerships, associations or cooperatives registered under Philippine laws, at least sixty percent (60%) of the capital of which is owned or controlled by Filipino citizens;</p> <p>PROVIDED, that if an applicant is a current or former TLA holder and/or a current or former holder of any other permit, lease or license concerning the utilization of forest land or resources; or is owned, affiliated, connected or related directly or indirectly with any holder of such TLA, permit, lease or license; the applicant shall provide, in the prescribed format shown in Annex "B" of these Regulations, proof of satisfactory performance of the obligations assumed by entering into these agreements.</p>

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	<p>similar activities. An applicant with previous experiences in natural resource use ventures must have demonstrated an exemplary regard for the environment in its past natural resource use ventures.</p> <p>13.2. Community Relations Record - If an applicant is a current or former holder of TLA and/or any other permit, lease, license or agreement issued by the DENR, the applicant must submit proof of its community relations record. This record may consist of, but is not limited to, proof of its socio-cultural sensitivity, the character of its past relations with local communities cultural appropriateness and social acceptability of its resource management strategies. The Regional Office concerned shall ensure that the qualification and eligibility requirements are met by the applicants in considering such applications. The evaluation of evidences of the environmental management and community relations records of the applicant shall be subject to review by the Environmental Management Bureau (EMB), the Forest Management Bureau (EMB), and other appropriate DENR offices.</p>	

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<p>SECTION 10. Requirements for Application. - Applicants shall submit through the CENRO concerned, the following documents, together with the duly accomplished application form shown in Annex "A" and the sketch map of the area applied for:</p> <p>10.1 Certified copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) and/or Cooperative Development Authority (CDA) or Articles of Incorporation and By-Laws and list of the current officers and stockholders duly certified by the Board Secretary;</p> <p>10.2 Audited financial statements for the last two (2) preceding years, if the applicant was already in existence;</p> <p>10.3 Proof of financial and technical capability to undertake initial activities in forest plantation establishment and development such as credit lines from financial institutions, collateralable properties, or good past performance or track records in forest development and management as TLA or IFMA Holder and other DENR tenorial instruments;</p>	<p>SECTION 14. Other Requirements for Application. Applicants for IFMA shall submit to the DENR, through the concerned CENRO, the following documentation, together with an application as shown in Annex "A" and an application fee in the amount set forth below:</p> <p>14.2. If the applicant is a corporation, partnership, association or cooperative:</p> <p>14.2.1. Certified copy of Certificate of Registration with the Securities and Exchange Commission (SEC) and/or the Cooperative Development Authority (CDA);</p> <p>14.2.2. Articles of Incorporation and By-laws and a list of present Officers and Stockholders, duly certified by the Board Secretary;</p> <p>14.2.3. Audited financial statements for the two (2) preceding years if the applicant was already in existence; and</p> <p>14.5. Proof of financial capability to undertake initial activities such as perimeter survey and preparation of a comprehensive development and management plan, as well as evidence of access to financial resources to plant at least 50% of the plantable area;</p> <p>14.6. Proof of technical competence to comply with the terms and conditions specified in the Standard IFMA, or proof of ability to hire the</p>	

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<p>10.4 Application fee in the amount of P0.50 per hectare or fraction thereof and survey fee of P50.00/ha plus the actual transport cost of the survey team from the official station to the site in consonance with the provisions of DAO 93-18 subject for adjustment upon review by the DENR.</p> <p>10.5 Board resolution authorizing any of the officers to file the application in behalf of the corporation, cooperative and/or partnership, duly certified by the Board Secretary.</p>	<p>services of technically competent personnel supported, as appropriate, by a statement of relevant background and experience, the biodata of qualified personnel, and/or an agreement with a qualified organization; and</p> <p>An application fee shall be paid to the DENR in the following amounts: (1) P12,000.00 for areas larger than 500 hectares up to 2,000 hectares; (2) P14,000.00 for areas larger than 2,000 hectares up to 5,000 hectares; (3) P15,000.00 for areas larger than 5,000 hectares up to 10,000 hectares; (4) P20,000.00 for areas larger than 10,000 hectares up to 15,000 hectares; and (5) P25,000.00 for areas larger than 15,000 hectares up to 20,000 hectares. Application fees may be adjusted upon review by the DENR.</p> <p>14.2.4. A resolution authorizing the officers to file the application in behalf of the corporation, partnership, association or cooperative, duly certified by the Board Secretary;</p> <p>14.1. Project Description in accordance with DAO No. 21, series of 1992, and other pertinent rules and regulations;</p> <p>14.3. Receipt of income tax payments for the preceding two (2) years;</p> <p>14.4. If the applicant is a TLA holder and/or holder of any other permit, lease or license covering utilization of forestland, forest resources or other natural resources, or is owned,</p>	

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	<p>affiliated, connected or related directly or indirectly with holders of such permit, lease or license, proof of satisfactory performance of such permit, lease or license set out in the prescribed format shown in Annex "B";</p>	
<p>SECTION 11. Procedures in Processing of Applications and Approval of IFMA. - The following procedures shall be observed in the processing of IFMA applications:</p> <p>11.1 At the CENRO - Except in the case of conversion of TLA into IFMA as provided for in Section 9 herein, the CENRO concerned shall accept and process the IFMA application on a first-come-first-served basis taking into consideration, the qualifications of the applicant, the completeness of the documents submitted, and if the area applied for is included in the approved IFMA site and still available for application per the Registry. Thereafter, the area applied for shall be inspected on the ground based on the form as shown in "Annex B", after which the CENRO shall within 10 working days after the completion of the field inspection, prepare the IFMA in the form shown in Annex "C" hereof.</p>	<p>CHAPTER V Awarding of IFMAs and Approval of CDMPs</p> <p>SECTION 15. Processing of Applications.</p> <p>15.1. In the CENRO - The CENRO shall accept and process IFMA applications on a first come-first served basis. Upon receipt of the application, the CENRO shall verify whether the area is available and whether it is within the approved areas for IFMA. Likewise, the CENRO shall evaluate the qualifications of the applicant and the completeness of the documents submitted. If all are found in order, the CENRO shall determine on the ground the physical conditions of the area, the presence of actual occupants, soil condition, vegetation, topography and other ecological factors that will ensure success of the plantation, and other pertinent information.</p>	

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<p>The CENRO shall then endorse the application documents to the PENRO with his recommendation for approval; otherwise, same shall be returned by him to the applicant concerned with his comments.</p> <p>11.2 At the PENRO - Upon receipt of the application documents, the PENRO concerned shall within five (5) working days from the receipt thereof evaluate/review the same. If all are found in order, the PENRO shall endorse the application documents to the RED concerned with his recommendations for approval; otherwise, same shall be returned with his comments to the CENRO concerned for further action.</p> <p>11.3 At the RENRO - The RED concerned shall evaluate/review within five (5) working days from the receipt thereof</p>	<p>The CENRO shall then process the documents and forward all papers to the PENRO with comments and recommendations within thirty (30) days from receipt of the application.</p> <p>15.2. In the PENRO - Upon receipt of the application and all pertinent documents, the PENRO shall review and evaluate the same. If all are found in order, the PENRO shall, within one (1) month from receipt thereof, schedule and conduct consultative meetings with the affected community residents, in consonance with the guidelines provided in Annex "C" of this Order, for the purpose of ascertaining the acceptability of the project. This consultative meetings shall be duly documented and the documentation shall include the nature and extent of community participation, the benefits that would accrue to the community and the sketch of the potential IFMA Area covered by the consultation. Within ten (10) days after the final consultative meeting, the PENRO shall prepare and endorse the application to the concerned RED with comments and recommendation and the documentation on the consultative meetings.</p> <p>15.3 In the DENR Regional Office - In the Regional Office, the Regional Technical Director for Forestry (RTD) shall have</p>	

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<p>the application documents. If all are found in order, the RED shall forward the IFMA, together with all application documents and his recommendation for approval to the Secretary; through the FMB Director; otherwise, same shall be returned by the RED with his comments to the CENRO concerned through the PENRO for further action.</p> <p>11.4 At the FMB - Upon receipt of the IFMA together with all application documents, the FMB Director shall evaluate and review within five (5) working days thereof. If all are found in order, the Director shall recommend to the Secretary the approval of the IFMA; otherwise, same shall be returned by the FMB Director with his comments to the concerned RED, copy furnished the Secretary.</p> <p>11.5 At the OSEC - The Secretary may approve or disapprove the IFMA after</p>	<p>the documents evaluated. If all are found in order, the RTD shall prepare the agreement in the form shown in Annex "D" of this Order and, within ten (10) days from receipt of the PENRO's recommendation, shall forward the agreement and all other pertinent documents to the RED with corresponding recommendation. The RED shall review the IFMA application and other documents and, within ten (10) days from receipt of the RTD's recommendation, shall either deny the application or forward the same with recommendation to the DENR Central Office for consideration and approval. Within fifteen (15) days from receipt of an order of denial, the IFMA applicant may appeal the same to the Undersecretary for Field Operations or to the Secretary, as the case may be.</p> <p>15.4 In the DENR Central Office - The IFMA shall be approved, or a notice denying the application shall be issued, within thirty (30) days from receipt by the DENR Central Office of the application and documents. Such approval or denial shall be final, without prejudice to the right of the IFMA Holder or other interested party to file an appeal from the decision of the Undersecretary for Field Operations or a motion for reconsideration of the decision of the Secretary,</p>	

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<p>which the notice of approval shall be sent to applicant, copy furnished the FMB, RENRO, PENRO, CENRO and the LGUs concerned.</p>	<p>within fifteen (15) days from receipt of the decision. Copies of the IFMA or of the notice of denial, as the case may be, shall be furnished the FMB, the PENRO, the CENRO, and the concerned LGUs.</p>	
<p>SECTION 12. Initial Environmental Examination (IEE) and Environmental Clearance Certificate (ECC). After an IFMA has been awarded, and in order to identify the environmental impacts that have to be addressed in the development of the industrial forest plantation, the holder thereof shall submit an Initial Environmental Examination (IEE) in a checklist to be prepared therefor which shall at least include the following:</p> <p>12.1 A brief description of the project and its process of operations;</p> <p>12.2 Description of the environmental setting and receiving environment including the primary and secondary impact areas;</p> <p>12.3 Description of the environmental and socio-economic impacts of the project;</p> <p>12.4 Matrix of the mitigation/enhancement measures;</p> <p>12.5 Consultation and discussion with upland communities and indigenous peoples within the IFMA area about the socio-economic,</p>	<p>SECTION 7. Environmental Impact Assessment. No IFMA shall be awarded without the submission by the IFMA applicant of a Project Description (PD) or Initial Environmental Examination (IEE) and the issuance of an Environmental Compliance Certificate (ECC) by the Regional Office concerned. After an IFMA has been awarded, the submission of an Environmental Impact Statement (EIS) by the IFMA Holder and the issuance of an ECC by the Secretary shall be conditions precedent to the approval of the Comprehensive Development and Management Plan (CDMP).</p> <p>14.1. Project Description in accordance with DAO No. 21, series of 1992, and other pertinent rules and regulations;</p>	

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<p>political and cultural impacts of the project;</p> <p>12.6 Documentation of the consultative process undertaken and agreements that shall be followed;</p> <p>12.7 Discussion on gender issues with significant impact on women, including their roles/participation in project implementation; and</p> <p>12.8 Accountability statements of the proponents and preparers.</p> <p>Pursuant to the provision of DAO 96-37, the RED may either grant or deny the issuance of the ECC or decide that an EIS be further required taking into account the social and environmental cost implication relative to the judicious utilization, development and conservation of the country's natural resources.</p>		
<p>CHAPTER IV Terms and Conditions of the IFMA</p> <p>SECTION 13. Duration of the IFMA. - An IFMA shall have a duration of twenty five (25) years and may be renewed for another twenty five (25) years, provided, that all the conditions of the IFMA, pertinent laws, rules and regulations have been complied by the holder thereof.</p>	<p>CHAPTER VI Terms and Conditions of Industrial Forest Management Agreements</p> <p>* SECTION 18. Duration of an IFMA. An IFMA shall have a duration of twenty-five (25) years and shall be renewable for another twenty-five (25) years; provided, that all the conditions of the IFMA and other pertinent laws and regulations have been complied with.</p> <p><i>(* duplicity of Section 18 in original A.O. copy)</i></p>	<p>CHAPTER VI Terms and Conditions of Industrial Forest Management Agreements</p> <p>SECTION 19. Duration of an IFMA. An IFMA shall have a duration of twenty five (25) years and shall be renewable for another twenty five (25) years; PROVIDED, that all the conditions of the IFMA and other pertinent laws and regulations have been complied with ; PROVIDED FURTHER, that any portion of an IFMA Area certified as an Ancestral Domain or Ancestral Land claim, pursuant to Article IV of DENR Administrative Order No. 02 (Series of 1993) shall remain</p>

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		part of the IFMA Area only after consultation with and concurrence of the certified claimant in accordance with Article IV, Section 4 of the same Administrative Order.
<p>SECTION 14. Responsibilities of the IFMA Holders. - All IFMAs shall include the following conditions and/or responsibilities the holders thereof shall comply with:</p> <p>14.1 Under the supervision of the DENR, reckoned from the date the IFMA was awarded, conduct the delineation and marking on the ground of the perimeter boundaries of the IFMA area based on the land classification standard and establish control points on the ground following the Universal Transverse Mercator (UTM) including the conduct of timber inventory at 5% intensity to determine the extent of the natural forest cover and the forest plantation as TLA reforestation compliance therein, if applicable.</p> <p>14.2 Submit within one (1) year from the date the IFMA was awarded, a Comprehensive Development and Management Plan (CDMP) in the form shown in Annex "D" and an Initial Environmental Examination (IEE) as basis for approval by the Secretary on the former and the issuance by the RED of an Environmental Compliance Certificate (ECC) on the latter;</p>	<p>SECTION 19. Responsibilities of All IFMA Holders. The following are the responsibilities of all IFMA Holders:</p> <p>19.3. Within six (6) months from the date an IFMA is entered into, the IFMA Holder shall delineate and mark on the ground the boundaries of the IFMA Area and the boundaries of the natural forest and protection forest contained therein.</p> <p>19.1 Within six (6) months from the date an IFMA is entered into, the IFMA Holder shall submit a Comprehensive Development and Management Plan (CDMP) in the form shown in Annex "E" of this Order, which shall be subject to the approval of the Secretary or the Undersecretary for Field Operations, as the case may be. The submission of an Environmental Impact</p>	<p>SECTION 20. Responsibilities of all IFMA Holders. All IFMAs shall include the following conditions:</p> <p>20.1 within six (6) months from the date an IFMA is entered into, the IFMA Holder shall;</p> <p>20.1.1 under the supervision of the DENR delineate and mark on the ground the boundaries of the IFMA Area, and the boundaries of Residual Production Forest and Protection Forest contained therein, and shall preserve the monuments and other landmarks indicating corners and outlines along the boundaries and within the confines of the area covered by the IFMA.</p> <p>20.1.2 submit to the DENR, in the prescribed form shown in Annex "G" of these Regulations, a Comprehensive Development and Management Plan covering the IFMA Area. The plan shall comply with all guidelines and restrictions given in the Resource Management Plan for the area, as provided for in Section 9.5 of these Regulations, and shall be evaluated</p>

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	<p>Statement (EIS) by the IFMA Holder and the issuance of an Environmental Compliance Certificate (ECC) by the Secretary are conditions precedent to the approval of the CDMP:</p>	<p>and approved by the DENR. Upon approval the Comprehensive Development and Management Plan shall form an integral part of the IFMA and shall not be amended without the mutual consent of the IFMA Holder and the DENR; PROVIDED, that not more than every five (5) years thereafter, the IFMA Holder shall, based on progress in development and management of the IFMA Area, revise the plan and submit the revised plan for the review and approval of the DENR. The Comprehensive Development and Management Plan shall contain schedules describing the timing and nature of the following activities:</p> <p>20.1.2.1 IFP establishment, management and harvesting;</p> <p>20.1.2.2 protection, improvement and harvesting within Residual Production Forest and Degraded Residual Forests, including both timber species and non-timber forest products;</p> <p>20.1.2.3 development of infrastructure, including plans in sufficient detail to assess the environmental impact of such development;</p> <p>20.1.2.4 entering into and implementing benefit-sharing agreements with individuals and/or communities</p>

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<p>14.3 Submit within one (1) year from the date of the award of the IFMA and every five years thereafter to the FMB up-to-date aerial photos or landsat imageries including their interpretation map covering the entire IFMA area in consonance with DAO No. 92-17; provided, that this condition shall be waived if such airphotos and/or imageries were procured by the DENR, or if the IFMA area has no natural forest, or if the area regardless of vegetative cover is less than 5,000 hectares;</p>		<p>dependent on the IFMA Area; and</p> <p>20.1.2.5 environmental protection including mitigating measures against adverse impacts and, where required by DENR, and Environmental Impact Statement.</p> <p>20.2 If an IFMA Area contains any natural forest, including Residual Production Forest, Degraded Residual Forest and/or Protection Forest, the IFMA Holder shall, not more than 10 years after the IFMA was entered into and every ten (10) years thereafter, carry out a resource inventory according to a design and intensity approved by the DENR and submit the results to the DENR.</p> <p>20.3 If an IFMA area is greater than 1,000 hectares and contains any Residual Production Forest, Degraded Residual Forest and/or Protection Forest, the IFMA Holder shall, within twelve (12) months from the date the IFMA is entered into, in accordance with DENR Administrative Order No. 17 (Series of 1992), procure and submit to the DENR up-to-date aerial photography and/or satellite imagery which covers the entire IFMA Area and shows clearly the current forest cover status; PROVIDED, that this condition shall be waived if such imagery was produced by the DENR when preparing the Resource Management</p>

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<p>14.4 Implement the mitigation/enhancement measures stipulated in the IEE and comply with the conditionalities of the ECC;</p> <p>14.5 Plant principally timber-producing species compatible with the ecological and biophysical characteristics of the area, but not excluding rubber, durian and/or non-timber species like rattan and bamboo; provided, that a suitable area of at most ten percent (10%) therein may be used for agricultural purposes;</p>	<p>19.4. IFMA Holders shall plant principally timber-producing species compatible with the ecological and biophysical characteristics of the area, but not excluding rubber and/or non-timber species such as rattan and bamboo, to support wood-processing and manufacturing facilities and/or to supply water, wood and energy requirements. They shall plant on open and denuded land and brushland portions of their IFMA Areas, as indicated and in accordance with the schedules set out in the approved Comprehensive Development and Management Plan (CDMP); provided, that at least five percent (5%) of the area available for plantation shall be planted within twelve (12) months, at least fifty percent (50%) within three (3) years, and the total are within five (5) years from the date the CDMP was approved; provided, further, that in IFMA Areas larger than 500 hectares up to 6,000</p>	<p>Plan. Each such IFMA Holder shall further procure and submit to the DENR a new set of such imagery every five (5) years from the date was entered into for the duration of the IFMA.</p> <p>20.4 All IFMA shall plant forest tree species which may include rubber and/or non-timber species such as rattan, bamboo, buri, etc. for the production of timber, pulpwood, fuelwood and non-timber forest products, on Open and Denuded Land and Brushland portions of their IFMA Areas as indicated, and according to the schedules set out, in the approved Comprehensive Development and Management Plan; APPROVED, that at least five per cent (5%) of the area available for plantation shall be planted within twelve (12) months, thirty per cent (30%) within five (5) years and the total area within twelve (12) years from the date the IFMA was entered into.</p>

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<p>provided, further that these endeavors are included and scheduled in the approved CDMP; provided, finally that the total plantable area shall be planted based on the rotation period of the plantation species but not exceeding 12 years;</p> <p>14.6 If included in the CDMP, convert the degraded residual natural forest within the IFMA area into a productive state by one or more of the following methods:</p> <p>14.6.1 enrichment planting, timber stand improvement and assisted natural regeneration;</p> <p>14.6.2 establishing plantations of rattan or other suitable non-timber species; and/or</p> <p>14.6.3 clearing natural vegetation from degraded residual natural forest and establishing industrial forest plantation (IFP); provided, that:</p>	<p>hectares, at least 300 hectares must be planted within the first twelve (12) months; provided, finally, that the survival rate shall be at least 80% of the required stocking density per species.</p> <p>19.5. IFMA Holders may plant up to ten percent (10%) of suitable portions of open and denuded areas and brushlands within their IFMA Areas for permanent agricultural use; provided, that such development is included in the approved Comprehensive Development and Management Plan.</p>	<p>20.5 IFMA Holders may plant up to ten per cent (10%) of suitable portions of Open and Denuded Areas within their IFMA Areas permanent agricultural crops; PROVIDED, that such development is included in the approved Comprehensive Development and Management Plan and that the benefits resulting from such development accrue to communities of families dependent on the IFMA area.</p> <p>20.6 All IFMA Holders shall convert the Degraded Residual Forest within their IFMA Areas to a productive state by one or more of the following methods:</p> <p>20.6.1 enrichment planting, timber stand improvement and assisted natural regeneration;</p> <p>20.6.2 establishing plantations of rattan or other, suitable non-timber species; and/or</p> <p>20.6.3 if included in the Resource Management Plan, clearing natural vegetation from degraded areas and establishing Industrial Forest Plantation (IFP); PROVIDED, that:</p>

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<p>14.6.3.1 the timing, location, extent, methods of harvest, expected volume and value of salvaged wood and the environmental impact of any clearing carried out for such conversion shall be stated in the approved CDMP, OP, and IEE;</p>		<p>20.6.3.1 the timing, locations, extent, methods, expected volumes and value of salvaged wood and the environmental impact of any clearing of natural vegetation carried out for such conversion shall be stated in the approved Comprehensive Development and Management Plan;</p>
<p>14.6.3.2 buffer strips of natural vegetation at least 50 meters in width, following to the extent possible natural boundaries, between compartments which shall not exceed 100 hectares each, and at least 20 meters on both sides of major rivers or streams shall be retained and shall be subject of enrichment planting or shall be used for rattan or bamboo plantation;</p>		<p>20.6.3.2 buffer strips of natural vegetation at least 100 meters in width, following natural boundaries to the extent possible, between compartments which shall not exceed 100 hectares, and at least 20 meters either side of all rivers, streams and public roads shall be retained and these strips shall be subject to enrichment planting or used for rattan or bamboo plantation;</p>
<p>14.6.3.3 all extraction of commercial timber carried out in connection with conversion of degraded natural residual forest to IFP shall be indicated in the operations plan approved by the RED and shall be subject to forest charges provided for in RA 7161; and</p>		<p>20.6.3.3 all extraction of commercial timber carried out in connection with conversion of Degraded Residual Forest to IFP shall be subject to an annual operations plan approved and monitored by the RED and to forest charges as provided for in RA 7161; and</p>
<p>14.6.3.4 planting the entire area cleared shall be undertaken within six (6) months of clearing.</p>		<p>20.6.3.4 planting the entire area cleared shall be undertaken within six (6) months of clearing.</p>

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<p>14.7 Manage and protect production residual natural forest in accordance with laws and regulations governing thereto and if authorized in the approved CDMP, harvest and utilize naturally grown trees therein on a sustainable basis and in accordance with the Operations Plans (OP) duly approved by the concerned RED, PROVIDED that should there be old growth (virgin) and protection forest within the IFMA area, same shall be protected and no cutting shall be allowed therein.</p>	<p>19.10. IFMA Holders shall ensure the adequate protection of any natural forests that may be found within the IFMA Area. Cutting shall not be allowed unless absolutely necessary; provided that, before any cutting is conducted, permit shall be required of the IFMA holder.</p>	<p>20.7 All IFMA Holders shall assume responsibility for the operation and control of all current licenses and permits for harvesting of non-timber forest products within their IFMA Areas and, upon expiration or termination of such licenses or permits, shall take all reasonable action to ensure that new permits are issued only to individuals or communities dependent on the IFMA Area and that harvest plans correspond to the sustainable yield of the non-timber forest product concerned in accordance with the resource Management Plan.</p>
<p>14.8 Reforest open/denuded lands found within areas classified as protection forestlands and within twenty (20)-meter strips from both sides of river banks which shall be kept permanently under forest cover;</p>	<p>19.8. IFMA Holders shall reforest all areas within their IFMA Areas that are open and denuded land or brushland, or along banks of streams with channels less than five (5) meters in width.</p>	<p>20.14 All IFMA Holders shall reforest all areas of Open and Denuded Land, Brushland and Degraded Residual Forest along the banks of streams with channels less than five (5) meters in width within their IFMA Area and may harvest and utilize any trees planted in accordance with the approved Comprehensive Development and Management Plan.</p>
<p>14.9 Protect and conserve unique, rare and endangered flora and fauna found within the IFMA area;</p>	<p>19.9. IFMA Holders shall protect and conserve unique, rare and endangered trees, palms and wildlife, identified as such under existing laws, rules and regulations, that are found within their IFMA Areas.</p>	<p>20.15 All IFMA Holders shall protect and conserve unique, rare and endangered trees, palms and wildlife identified as such under existing rules, laws and regulations within their IFMA Areas.</p>
<p>14.10 Not cut trees found in protection forestlands, in all areas with 50% and over in slope and</p>	<p>19.7. IFMA Holders shall not cut any tree, regardless of species, in their IFMA Areas growing in areas</p>	<p>20.13 IFMA Holders shall not cut any trees, regardless of species, growing in their IFMA Area within twenty</p>

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<p>with elevation above 1000 meters above sea level, or within twenty (20) meters strips from both sides of river/stream banks;</p> <p>14.11 Construct permanent structures and roads within the IFMA Area only in accordance with the approved CDMP and OP;</p> <p>14.12 Employ as many experienced registered foresters as may be required in major aspects of forest management, development, protection, etc. including the appointment of one of them as Forest Operations Manager or in any top level management position; otherwise, hire a DENR-accredited Forest Services Organization such as a forestry consulting firm to undertake similar activities on a continuing basis; and</p> <p>14.13 Submit to the DENR Annual Accomplishment Report in the form prescribed in Annex "E" of this Order.</p>	<p>with slopes of 50% or over, or within strips of land at least twenty (20) meters in width bordering rivers and streams, or within twenty (20) meters from either side of public roads, nor trees growing within protection forest. Any such areas found within the IFMA Area that are bereft of trees shall be reforested by the IFMA Holder and shall be kept permanently under tree cover.</p> <p>19.16. IFMA Holders shall construct permanent structures or roads within their IFMA Areas only in accordance with the approved Comprehensive Development and Management Plan.</p> <p>19.13. To ensure effective forest management, IFMA Holders shall employ a registered forester at least as forest operations manager or at any top level management position.</p> <p>19.17. IFMA Holders shall submit to the DENR Annual Accomplishment Reports in the form prescribed in Annex "F" of these regulations.</p>	<p>(20) meters of banks of rivers or streams of five (5) meters in width or more, within twenty (20) meters of public roads or within Protection Forest. Any such areas bereft of trees within an IFMA Area shall be reforested by the IFMA Holder.</p> <p>20.12 IFMA Holders shall construct permanent structures or roads within their IFMA Areas only in accordance with the approved Comprehensive Development and Management Plan.</p> <p>20.9 All IFMA holders shall submit to the DENR Annual Reports of activities in the form prescribed in Annex "H" of these Regulations.</p>

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	<p>19.6. IFMA Holders shall protect their IFMA Areas from forest fires and other forms of forest destruction and shall place their employees or workers under the direction of government foresters or other authorized agents of the Secretary whenever required for the purpose of controlling such destruction</p> <p>19.14. IFMA Holders shall not unreasonably impede, obstruct or in any manner prevent the passage through their IFMA Areas of authorized licensees, lessees, permittees and/or other persons.</p> <p>19.15. IFMA Holders shall prepare, maintain and periodically update a register of all families and communities residing within their IFMA Areas and shall furnish the concerned CENRO a copy of the register, including periodic updates.</p>	<p>20.8 All IFMA Holders shall protect their IFMA areas from forest fires and other forms of forest destruction and shall place their employees or workers under the direction of government foresters or other authorized agents of the Secretary whenever required for the purpose of controlling such destruction.</p> <p>20.10 IFMA holders shall not unreasonably impede, obstruct or in any manner prevent the passage through their IFMA Areas authorized licensees, lessees, permittees, and/or other persons.</p> <p>20.11 All IFMA Holders shall:</p> <p>20.11.1 give notice of their IFMAs to all families and communities dependent on their IFMA Areas;</p> <p>20.11.2 Prepare, maintain and periodically update a register of all families and communities residing within their IFMA Areas furnish the concerned CENRO a copy of the register, including the periodic updates; and</p> <p>20.11.3 in conformity with Article IV, Section 4 of DENR Administrative Order No. 02 (Series of 1993), consult with and obtain the concurrence, in respect of relevant aspects of the Comprehensive Development and Management Plan, of all concerned certified Ancestral Domain or</p>

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	<p>19.2 IFMA Holders shall comply with all the conditions of the ECC.</p> <p>19.11. IFMA Holders shall immediately prevent or arrest gully erosions within the IFMA Area</p> <p>19.12. IFMA Holders shall not introduce exotic species that are untested under Philippine conditions into the IFMA Area without prior written clearance from the DENR Secretary in accordance with existing rules and regulations.</p> <p>19.18. IFMA Holders shall at all times recognize and respect the rights of indigenous cultural communities to their ancestral domains.</p> <p>19.19. IFMA Holders shall comply with all laws, rules and regulations protecting workers' rights and promoting community development.</p> <p>19.20. In developing the CDMP, IFMA Holders shall integrate gender concerns including the equitable participation of women in implementing the CDMP and enjoying the fruits thereof.</p>	<p>Ancestral Land claimants:</p> <p>20.11.4 abide by any special conditions prescribed by DENR as determined by actions specified in Section 8.2.</p>
<p>SECTION 16. Compensation. -</p> <p>16.1 Compensation to the IFMA Holder. The IFMA Holder shall be entitled to receive</p>	<p>SECTION 23. Compensation to the IFMA Holder.</p> <p>After due consideration of the agreed government share, IFMA Holders shall be entitled</p>	<p>SECTION 23. Compensation</p> <p>23.1 Compensation to the IFMA Holder. IFMA Holders shall be entitled</p>

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<p>from the Government compensation for the fair market value of permanent improvements introduced, including plantation forest crops remaining in his IFMA area under the following circumstances:</p> <p>16.1.1 expiration of the IFMA;</p> <p>16.1.2 termination of the IFMA when public interest demands; or</p> <p>16.1.3 reduction of the IFMA area for right-of-way or when the public interest demands.</p> <p>16.2 If the Government retracts, for reasons other than cause, an IFMA holder's rights to carry out harvests, in accordance with the approved CDMF, in residual natural forest or in any portion thereof, the Government shall compensate the IFMA holder for cost incurred in maintaining, improving and protecting said forest up to the time such rights were retracted.</p> <p>16.3 Appraisal for Improvements for Compensation. The fair market value of permanent improvements shall be decided upon by a committee comprising of representatives of the DENR, the IFMA holder</p>	<p>to receive compensation from the government for the fair market value of the remaining permanent improvements, including plantation crops, introduced by the IFMA Holders into the IFMA Areas, under the following circumstances:</p> <p>23.1. Termination of the IFMA without just cause; or</p> <p>23.2. Reduction of the IFMA Area without just cause.</p> <p>The fair market value of permanent improvements shall be decided upon by a committee composed of one representative each from the DENR and the affected IFMA Holder, and a qualified independent appraiser whose appointment shall be mutually agreed upon by both the DENR</p>	<p>to receive from the Government compensation for the fair market value of permanent improvements, including plantation forest crops, introduced into and remaining in their IFMA Areas under the following circumstances:</p> <p>23.1.1 expiration of the IFMA;</p> <p>23.1.2 termination's of the IFMA when public interest demands; or</p> <p>23.1.3 reduction of the IFMA Area for right-of-way or when the public interest demands.</p> <p>23.2 If the Government retracts, for reasons other than cause, an IFMA Holder's rights to carry out harvests, in accordance with approved Comprehensive Development and Management Plan as provided for in Section 21.4, in Residual Production Forest, or any portion thereof, that is covered by a performance bond, the Government shall compensate the IFMA Holder for costs incurred in maintaining the performance bond and of improving and protecting the Residual Production Forest up to the time such rights were retracted.</p> <p>23.3 Appraisal of Improvements for Compensation. The fair market of permanent improvements, required as compensation either to the IFMA Holder or the Government, shall be decided upon by a committee comprising representatives of the</p>

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<p>and a qualified independent appraiser whose appointment shall be mutually agreed upon by the DENR and the IFMA holder. The DENR and the IFMA holder shall bear equally the cost of such appraisal.</p>	<p>and the IFMA Holder. The DENR and the IFMA Holder shall bear equally the costs of such appraisal. The decision of the appraisal committee shall be binding on the parties.</p>	<p>DENR, the IFMA Holder and a qualified independent appraiser whose appointment shall be mutually agreed upon by the DENR and the IFMA Holder. The DENR and the IFMA Holder shall bear equally the cost of such appraisal, the decision arising from which shall be binding.</p>
<p>SECTION 18. Transfers. - An IFMA Holder may transfer, exchange, sell or convey the IFMA or any rights therein or any assets used in connection therewith, if authorized by the Secretary, and if:</p> <p>18.1 The IFMA has been in existence for at least three (3) years;</p> <p>18.2 The IFMA Holder has been faithfully complying with the terms and conditions of the IFMA, including implementation of the Comprehensive Development and Management Plan;</p> <p>18.3 The transferee is qualified to hold an IFMA;</p> <p>18.4 There is no evidence that such transfer or conveyance is being made for purposes of speculation;</p> <p>18.5 The transferee shall assume all the obligations of the transferor specified in the IFMA, CDMP, and ECC;</p> <p>18.6 For IFMA Areas in which development is being financed by loan funds, the consent of involved financing institutions has been obtained; and</p> <p>18.7 Consultation has been held and agreement has been</p>	<p>SECTION 21. Transfers. No transfer, exchange, sale or any conveyance of rights and privileges acquired by virtue of an IFMA shall be effective without the prior express approval of the DENR Secretary.</p> <p>The IFMA Holder shall submit a Letter of Intent to execute such conveyance to the DENR Secretary. The IFMA Holder shall likewise furnish a copy of the Letter of Intent to the concerned Regional Office and to local stakeholders within five (5) working days from the execution thereof.</p> <p>The concerned Regional Offices and local stakeholders shall have the right to transmit their written positions on the proposed conveyance within fifteen (15) working days from receipt of the Letter of Intent. The Secretary shall endeavor to consider these positions in deciding the matter.</p> <p>The Secretary shall render a decision on the matter within thirty (30) working days from date of actual receipt of the Letter of Intent. The decision of the Secretary on the matter shall be final and executory, without prejudice to the right of the IFMA Holder to file a written motion for reconsideration within fifteen</p>	<p>SECTION 25. Transfers. An IFMA Holder may transfer, exchange, sell or convey the IFMA or any rights therein or any assets used in connection therewith, if authorized by the Secretary, and if:</p> <p>25.1 the IFMA has been in existence for at least three (3) years;</p> <p>25.2 the IFMA Holder has been faithfully complying with the terms and conditions of the IFMA, including implementation of the Comprehensive Development and Management Plan;</p> <p>25.3 the transferee is qualified to hold an IFMA;</p> <p>25.4 there is no evidence that such transfer or conveyance is being made for purpose of speculation;</p> <p>25.5 the transferee shall assume all the obligations of the transferor, including maintenance of the performance bond, if any;</p> <p>25.6 for IFMA Areas in which development is being financed by loan funds, the consent of involved financing institutions has been obtained; and</p> <p>25.7 consultation has been held and agreement has</p>

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reached with all certified Ancestral Domain or Ancestral Land Claimants; if applicable.	(15) days from receipt of the decision.	been reached with all certified Ancestral Domain or Ancestral Claimants.
	<p>SECTION 22. Conditions of Transfer. Subject to the aforesaid procedure, the transfer of an IFMA may be authorized by the Secretary under all of the following conditions:</p> <p>22.1. The IFMA has been in existence for at least three (3) years;</p> <p>22.2. The IFMA Holder has been faithfully complying with the terms and conditions of the IFMA, including implementation of the Comprehensive Development and Management Plan;</p> <p>22.3. The transferee is qualified to hold an IFMA;</p> <p>22.4. There is no evidence that such transfer or conveyance is being made for purposes of speculation;</p> <p>22.5. The transferee shall assume all the obligations of the transferor; and</p> <p>22.6. For IFMA Areas in which development is being financed by loan funds, the consent of the financing institution(s) has been obtained.</p>	
SECTION 19. Encumbrances. - An IFMA Holder shall not offer as security, mortgage or otherwise encumber the IFMA or any rights therein or any assets used in connection therewith, unless authorized by the Secretary.	22.5. There shall be no restriction on the use of the IFMA and the improvements in the IFMA Area as collateral for obtaining loans for the improvement of the IFMA Area; provided, that there is prior approval by the issuing authority of the IFMA.	SECTION 26. Encumbrances. An IFMA Holder may not offer as security, mortgage or otherwise encumber the IFMA or any rights therein or any assets used in connection therewith, unless authorized by the Secretary.

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<p>SECTION 21. Profit Sharing: - The sharing of the profit arising from an IFMA between the holder thereof and the Government shall be negotiated between the said holder and the DENR immediately following the approval of the CDMIP and the grant of ECC, taking into consideration, among others, the following cost factors:</p> <p>21.1 Plantation establishment, protection, management, infrastructure and harvesting cost as well as mitigating measures;</p> <p>21.2 Fixed assets, equipment and machineries directly related to the plantation development and harvest;</p> <p>21.3 Kind and volume of products that shall be harvested and prevailing fair market prices thereof;</p> <p>21.4 Variation in rates of interest and foreign exchange of financial investment;</p> <p>21.5 Expenses incurred in indirect activities such as community development, etc;</p> <p>21.6 Forest charges and taxes paid; and</p> <p>21.7 Reasonable margin for profit and risks.</p> <p>The profit sharing agreed upon shall form part of the IFMA.</p>	<p>SECTION 28. Government Share. The government share in the IFMA shall be negotiated between the IFMA applicant and the DENR based on the following factors:</p> <p>28.1 Plantation establishment and maintenance costs;</p> <p>28.2 Harvesting schedule;</p> <p>28.3 Kind of products to be harvested;</p> <p>28.4 Projected volume of harvest;</p> <p>28.5 Market price of timber products; and</p> <p>28.6 Variation in applicable rate of interest of financial investment.</p> <p>The amount of the government share shall remain unchanged for the duration of the IFMA, unless renegotiated and mutually agreed upon by the DENR and the IFMA Holder.</p>	
<p>CHAPTER VI Monitoring and Control</p>	<p>CHAPTER VIII Monitoring and Control</p> <p>SECTION 29. Monitoring and Evaluation.</p> <p>29.1. Reporting System - The FMB shall prepare a simplified reporting format to be accomplished by the CENRO. The PENRO shall analyze and consolidate the report and</p>	<p>CHAPTER VIII Monitoring and Controlling</p> <p>SECTION 28. Monitoring. The following procedures shall be adopted to provide an effective monitoring system for the development and operation of IFMAs, details of which shall be published</p>

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	<p>submit the same to the FMB through the RED with comments and recommendations on policy and program implementation. The FMB shall prepare and submit regular national consolidated reports to the Secretary.</p> <p>29.2. Site Monitoring and Evaluation - A team composed of representatives of the concerned LGU, an NGO, and the CENRO, with the latter as team leader, shall regularly monitor and evaluate the progress of the IFMA within the CENRO jurisdiction. The status indicators shall include, among others, the following:</p> <p>29.2.1. Seedling production by species;</p> <p>29.2.2. Area and date planted by species;</p> <p>29.2.3. Environmental protection and mitigating measures;</p> <p>29.2.4. Progress maps showing the area planted by year, including the species planted;</p> <p>29.2.5. Pictures and other visual documentation;</p> <p>29.2.6. Issues and problems in the implementation and recommendation to improve the project implementation.</p>	<p>within ninety (90) days from the issuance of this Order:</p> <p>28.1 The concerned RED offices, PENROs and CENROs shall maintain identical sets of complete documents including maps of each IFMA area less than 2,000 ha; PROVIDED, that the FMB may request copies of complete sets of documents covering IFMAs of less than 2,000 ha.</p> <p>28.2 Each IFMA Holder shall submit to the CENRO Annual Accomplishment Reports on the development of the IFMA in the format shown in Annex "H" of these Regulations. Copies of Accomplishment Reports covering IFMA Areas of 2,000 ha and more shall be furnished to the PENRO and RED concerned and to the Undersecretary. Copies of reports covering IFMA Areas of less than 2,000 ha shall be furnished to the PENRO and RED concerned and summaries shall be furnished to the Undersecretary.</p> <p>28.3 All activities described in Accomplishment Reports shall be subject to audit through verification on the ground by officers of the CENRO of other DENR office and shall be compared with the activities stated in Comprehensive Development and Management Plans. These activities shall include, but may not be limited to:</p> <p>28.3.1 area of ITP established;</p> <p>28.3.2 maintenance of boundaries of the IFMA Area;</p>

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		<p>28.3.3 effective protection and management of the IFMA Area</p> <p>28.3.4 compliance with agreements entered into with communities and/or individuals dependent on the IFMA Area pursuant to Section 20.1.2.4 of these Regulations.</p>
<p>SECTION 22. Program Management. - The program shall be managed and implemented through the various DENR Offices as follows:</p> <p>22.1 FMB shall be the National Program Coordinating Office tasked to formulate policies, rules and regulations pertinent to forest plantation development and management, establish linkages with concerned agencies both government and non-government to ensure the success of the program implementation, continuously monitor and assist the Secretary in the supervision of the program, provide the Secretary and other concerned authority with periodic reports on program accomplishments and other relevant information and keep updated and orderly files of all issued IFMAs including relevant documents of the program.</p>	<p>SECTION 30. Program Management. The Program shall be managed and implemented through the following DENR Offices:</p> <p>30.1. The FMB shall be the National Coordinating Office of the Program and it shall have the following functions and responsibilities:</p> <p>30.1.1. To develop, formulate and recommend policies, rules and regulations related to program development and implementation;</p> <p>30.1.2. To review and evaluate potential IFMA sites and submit a report thereon to the Secretary for approval;</p> <p>30.1.3. To coordinate the implementation and execution of the IFMA;</p> <p>30.1.4. To evaluate program implementation and update the DENR by providing periodic reports on activities and accomplishments of the program;</p> <p>30.1.5. To establish institutional linkages with other government and non-government agencies as appropriate at the national level to improve program implementation; and</p>	

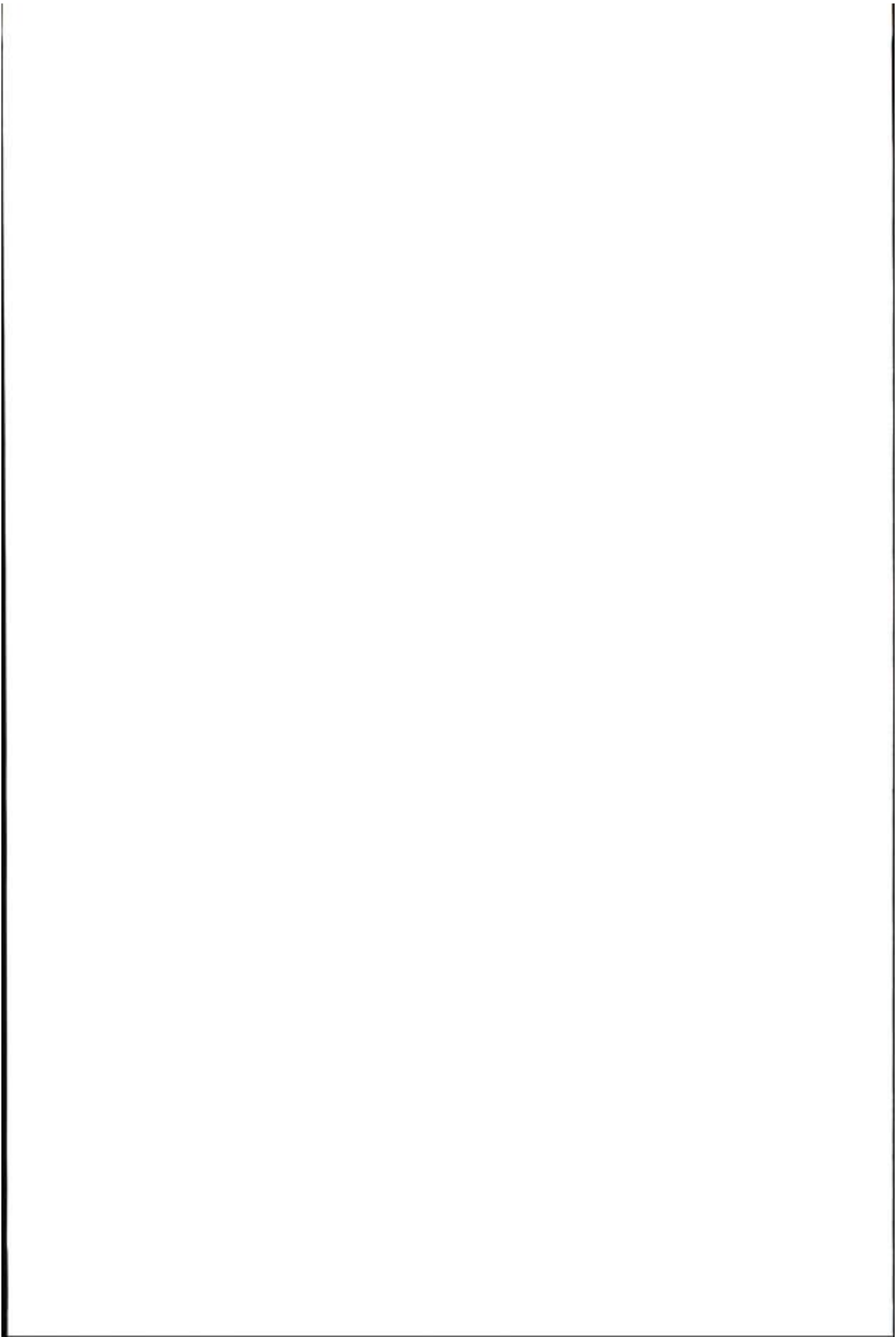
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<p>22.2 RENRO - The RED, assisted by the ARED concerned shall be responsible for the efficient and effective implementation of the program in the region. The RENRO shall keep copy of the records of all IFMAs within the jurisdiction of the region. The RED shall submit to the Secretary thru the FMB periodic reports on the accomplishments, issues and problems with recommendation regarding the implementation of the program.</p> <p>22.3 PENRO AND CENRO - The PENRO and the CENRO shall be directly responsible in the implementation of the program. The PENRO shall maintain a database of all IFMAs in the province, while the CENRO shall likewise maintain information of all IFMAs under its jurisdiction, including periodic monitoring and evaluation of IFMA holder's accomplishments for submission to the DENR authority.</p>	<p>30.1.6. To keep complete and systematic files of, and updated information on, all IFMAs issued and other pertinent documents related to the program.</p> <p>30.2. The RED, assisted by the RTD, shall be responsible for the effective implementation of the program in the region. The Forest Resources Development Division shall act as the regional repository of all data and information. The RED shall submit periodic reports to the Secretary, through the FMB, on program implementation including IFMA monitoring and evaluation.</p> <p>30.3. The PENRO shall be responsible for the effective implementation of the program in the province and shall evaluate periodic reports submitted by the CENRO and forward the same, together with the findings and recommendations, to the RED. The PENRO shall maintain a data base for all IFMAs within the province.</p> <p>30.4. The CENRO shall be directly responsible for implementing the program within its jurisdiction, in coordination with other concerned government and non-government units. The CENRO shall be</p>	

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	<p>further responsible for site identification, processing of IFMA applications, and monitoring and evaluation of the program implementation. The CENRO shall submit periodic reports thereon to the PENRO for evaluation.</p>	
<p>SECTION 23. Suspension of an IFMA. - In the event of any alleged violation committed by the IFMA holder against any of the provisions of the IFMA, the RED concerned or the Secretary himself shall initiate an investigation into the violation in accordance with the warranties provided herein and, depending on the gravity of the violation, may either issue a Notice of Breach or Notice of Suspension of Operations. The notice of suspension shall indicate the actions/activities that shall be done by the IFMA holder in order to facilitate the lifting of the suspension including the admonition that non-compliance thereto shall result to the cancellation of the IFMA. If any development activity pursuant to the IFMA is being financed by loan funds or if any improvement within the IFMA Area is encumbered by a third party, the DENR shall notify the bank or the other party involved about any of the preceding notices. The IFMA Holder shall within thirty (30) days from receipt of any of such notices, file an answer, a motion for reconsideration, or an appeal, as the case may be, with the Office of the Secretary.</p>	<p>SECTION 25. Suspension of IFMA. If any violation by the IFMA Holder of the provisions of the IFMA is reported, the Secretary, depending on the gravity of the violation or any adverse effect arising therefrom on the forest land and resources, may either give Notice of Breach or suspend and give Notice to Cancel the IFMA. Within fifteen (15) days from receipt of a Notice of Suspension or Cancellation, the IFMA Holder may file a motion for reconsideration with the Office of the Secretary.</p>	<p>SECTION 29. Suspension of an IFMA. In the event any violation against any provision of an IFMA has been committed by the IFMA Holder, the Secretary, or the concerned RED shall initiate and investigation into the violation in accordance with the warranties provided herein and, depending on the gravity of the violation or any adverse effect arising from it on the condition of forest land and resources, may either give Notice of Breach, as provided for in Section 24.2, or suspend and give notice to cancel the IFMA. If any development activity pursuant to the IFMA is being financed by loan funds or if any improvement within the IFMA Area is encumbered by a third party, the DENR shall notify the bank or other party involved of the suspension. Upon receipt of such notice the IFMA Holder shall have thirty (30) days to file a motion for reconsideration or an appeal, as the case may be, with the Office of the Secretary.</p>
<p>SECTION 24. Grounds for Cancellation of IFMA. - The following violations shall be sufficient grounds for</p>	<p>SECTION 26. Grounds for Cancellation of IFMA. Any of the following violations shall be sufficient grounds for</p>	<p>SECTION 30. Grounds for Cancellation of IFMA. The following violations shall be sufficient grounds for</p>

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>cancellation of the IFMA:</p> <p>24.1 If the IFMA was obtained through fraud, misrepresentation or omission of material facts existing at the time of the filing of the application;</p> <p>24.2 Failure of an IFMA Holder to settle any forestry account, such as forest charges, when they become due and upon prior notice to the IFMA Holder.</p> <p>24.3 Violation of any of the terms and conditions of, or failure to comply with, or perform the obligations imposed in, the IFMA, and of other pertinent laws, or policies affecting the exercise of the IFMA;</p> <p>24.4 Failure to submit a CDMP and IEF within one (1) year from the date the IFMA is entered into;</p> <p>24.5 Failure to submit aerial photographs or satellite</p>	<p>cancellation of an IFMA:</p> <p>26.1. If the IFMA was obtained through fraud, misrepresentation or omission of material facts existing at the time of filing of the application. For purposes of this provision, fraud shall include exerting direct or indirect intervention or influence in the procurement of a community's consent to an IFMA project;</p> <p>26.4. Violation of any of the terms and conditions of the IFMA, failure to comply with or perform the obligations imposed in the IFMA, or violation of other pertinent laws, rules regulations or policies affecting the exercise of the IFMA;</p> <p>26.5. Failure to submit a Comprehensive Development and Management Plan within six (6) months from the date the IFMA is entered into, failure to implement the approved Comprehensive Development and Management Plan, or conducting any operation in violation of the said plan;</p>	<p>cancellation of an IFMA:</p> <p>30.1 If the IFMA was obtained through fraud, misrepresentation or omission of material facts existing at the time of the filling of the application;</p> <p>30.2 Failure of an IFMA Holder to settle any forestry account, such as rental or forest charges when they become due and upon prior notice to the IFMA Holder.</p> <p>30.3 Violation of any of the terms and conditions of, or failure to comply with or perform the obligations imposed in the IFMA, or violation of other pertinent laws, or policies affecting the exercise of the IFMA;</p> <p>30.4 Failure, within six (6) months from the date the IFMA is entered into, to submit a Comprehensive Development and Management Plan;</p> <p>30.5 Failure to submit aerial photographs for IFMA</p>

DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
<p>imageries for the IFMA Area, when required and every five years thereafter;</p> <p>24.6 Failure to carry out a[n] inventory resource inventory for areas containing any natural forest, in case such inventory has not been undertaken prior to the issuance of the IFMA;</p> <p>24.7 Failure to implement, without due and reasonable cause explained in writing, the approved CDMP, OP and/or the conditions of IEE and ECC;</p> <p>24.8 Conducting any operations in violation of the approved CDMP or OP, or engaging in activities outside the IFMA Area without the expressed consent or authority of the Secretary;</p> <p>24.9 Failure to protect the IFMA Area except as a result(s) of force majeure, where the IFMA Holder has no control over; and</p> <p>24.10 Abandonment of the IFMA Area as evidenced by absence of the IFMA Holder, whether actual or constructive, for any given period of one (1) year.</p>	<p>26.2 Violation of any of the conditions of the ECC;</p> <p>26.6 Failure to protect the IFMA area; provided, that an IFMA shall not be subject to cancellation if the damage to the IFMA area or to its improvements results from force majeure;</p> <p>26.7 Abandonment of the area as evidenced by absence of the IFMA Holder, whether actual or constructive, for a period of six (6) months or more; and</p> <p>26.3 Fraudulent warranties of environmental management or community relations record or absence of showing thereof;</p>	<p>Areas when required for areas greater than 1,000 hectares and containing natural forest;</p> <p>30.6 Failure to carry out a resource where required for areas containing any natural forest;</p> <p>30.7 Failure to implement the approved Comprehensive Development and Management Plan;</p> <p>30.8 Conducting any operation in violation of the approved Comprehensive Development and Management Plan, or illegally engaging in activities outside the IFMA Area;</p> <p>30.9 Failure to protect the IFMA Area; PROVIDED, that an IFMA shall not be subject to cancellation if damage to the IFMA Area or the improvements are the result of force majeure;</p> <p>30.12 Abandonment of the area as evidenced by absence of the IFMA Holder, whether actual or constructive, for a period of six (6) months.</p>

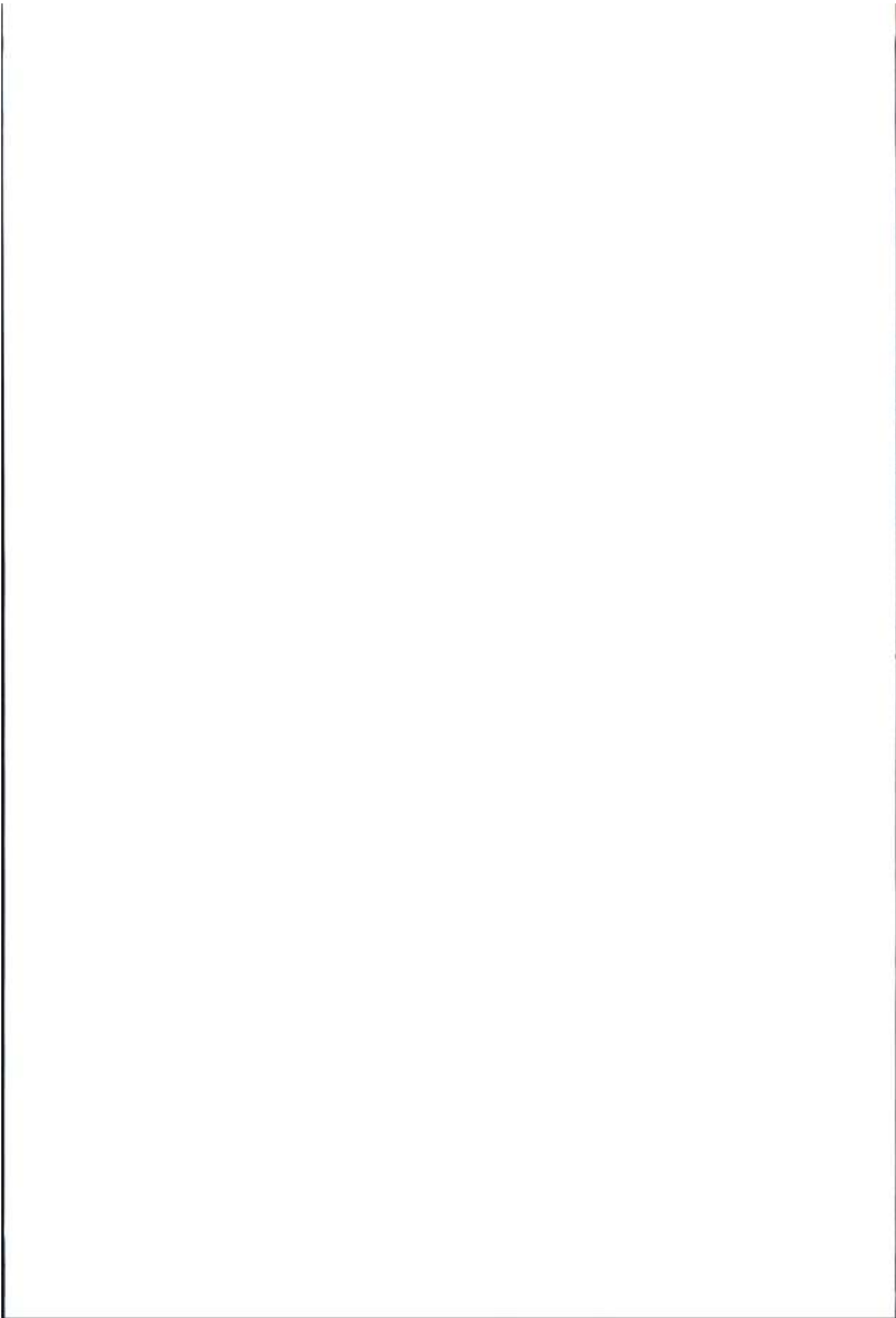
DENR ADMINISTRATIVE ORDER NO. 99-53	DENR ADMINISTRATIVE ORDER NO. 04-97	DENR ADMINISTRATIVE ORDER NO. 60-93
	<p>26.8. Failure by the IFMA Holder to implement or adopt agreements made with communities and other relevant sectors.</p> <p>When an IFMA has been awarded in violation of Sections 4, 5, 6, 7, 8 and 13 of these rules and regulations, the IFMA concerned shall be automatically canceled.</p>	<p>30.10 Any illegal logging in the natural forest within the IFMA Area, whether by the IFMA Holder or any other party;</p> <p>30.11 Failure to post and maintain the validity of the Performance Bond as stipulated in Section 14 of these Regulations;</p>
<p>CHAPTER VII Miscellaneous Provisions.</p> <p>SECTION 27. Previously Issued IFMAs. - The terms and conditions of any IFMA entered into prior to this Order remain valid unless modifications are agreed to by the DENR and the IFMA Holder in accordance with the provisions hereof, without prejudice to whatever action that the office may take after a performance evaluation thereof has been undertaken in the area.</p>	<p>* CHAPTER X Miscellaneous Provisions (No Chapter IX in the original copy of the DAO)</p>	<p>CHAPTER IX Miscellaneous Provisions</p> <p>SECTION 55. Previously Issued IFMAs. The terms and conditions of any IFMA entered into prior to this Order remain valid unless modifications are agreed to by the DENR and the IFMA Holder in accordance with Section 24.1.</p>



The Legal Update section seeks to provide readers with recent legal information on issues of the CENTER'S concerns.

LEGAL UPDATE

EDITOR'S NOTE: All materials herein were copied word-for-word from the original manuscripts.



DENR ADMINISTRATIVE ORDER
No. 53 (1999)

SUBJECT: REGULATIONS GOVERNING THE
INTEGRATED FOREST MANAGEMENT PROGRAM
(IFMP)

Pursuant to PD 705 of 1975, as amended, EO 725 dated September 9, 1981, EO 278 dated July 25, 1987, EO 192 dated June 10, 1987 and EO 292 dated July 25, 1987 and Sec. 2, Art. XII of the 1987 Constitution, the following regulations governing the Integrated Forest Management Program (IFMP), are hereby promulgated:

CHAPTER I
TITLE, POLICIES, OBJECTIVES AND DEFINITION OF TERMS

Section 1. Title. - This Administrative Order shall be known as the "Regulation on the Integrated Forest Management Program".

Sec. 2. Policies and Objectives. These regulations are in the pursuance of the policies of the State which are:

- (a) The protection and advancement of the right of people to a balanced and healthful environment;

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- (b) The equitable distribution of opportunities, income and wealth, sustained increase in the amount of goods and services produced by the nation for the benefit of the people, and an expanding productivity from natural resources as keys to uplift the quality of life; and
- (c) The promotion of industrialization and creation of employment opportunities based on sound resource development through industries that make full and efficient use of human and natural resources.

The objectives of these regulations are:

- (a) To attain a balanced, productive, and efficiently functioning forest ecosystem through the sustainable management of forests and the rehabilitation of degraded forestlands;
- (b) To ensure a continuous supply of wood and non-wood products for the country by encouraging all sectors to engage in the development of industrial forest plantations;
- (c) To improve the economic well-being of upland people and communities dependent on forest resources by ensuring equitable opportunities and access to forest resources.

Sec. 3. Definition of Terms. - The following terms are to be understood and interpreted, as follows:

- (a) **Ancestral Domain** - subject to property rights existing and/or vested upon effectivity of the Indigenous Peoples Rights Act of 1997, refers to areas generally belonging to indigenous cultural communities/indigenous peoples comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by them, by themselves or through their ancestors, communally or individually, since time immemorial, continuously to the present except when interrupted by war, force majeure, or displaced by force, deceit or stealth or as a consequence of government and private individuals/corporations.
- (b) **Annual Allowable Harvest** - refers to the amount or volume of materials, whether of timber, non-timber or other forest products, authorized by the government to be harvested within each year from the forest.
- (c) **Basal Area** - the sum of the outside bark cross-sectional area at breast height or above buttress, as the case may be, of all trees in a given forest area.
- (d) **Brush lands** - refers to areas characterized by discontinuous cover of shrubby and non-wood vegetation including grasses usually as a result of repeated clearing and burning of the then forest cover.
- (e) **Buffer Strips** - refer to areas with a specified width usually of natural vegetation serving as protective borders of stream or bodies of water or as boundaries between management units (blocks or compartments) of the forest plantations.

- (f) **CENRO** refers to Community Environment and Natural Resources Office.
- (g) **Commercial Species** - refers to all tree species in the categories of Premium, Common, Construction and Furniture and Light Hardwoods, and Softwoods.
- (h) **Comprehensive Development and Management Plan (CDMP)** - a long term-plan prepared and submitted by an IFMA holder to, and for the approval by, the DENR which, among others, indicates the series of sequential or simultaneous undertakings and their schedules, in developing and managing the IFMA area, including the harvesting and utilization of the products thereof.
- (i) **Degraded Residual Natural Forest** - refers to a severely disturbed natural forest of whatever cause with a basal area less than five (5) square meters per hectare of all commercial tree species, with dbh/dab of less than 65 centimeters.
- (j) **DENR** - refers to the Department of Environment and Natural Resources.
- (k) **Ecosystem or Ecological system** - refers to the community of living organisms and non-living environment dynamically and harmoniously functioning together in a given area.
- (l) **Environmental Compliance Certificate (ECC)** - refers to the document issued by the Department certifying that a proposed project or undertaking in an environmentally critical or non-critical area, as evaluated through the processes of an EIA or IEE, will not bring about an unacceptable environmental impact and that the proponent has complied with the requirements of the environmental impact statement (EIS) system.
- (m) **Environmental Impact Assessment (EIA)** - refers to the process of predicting the likely environmental consequences of implementing a project or undertaking and designing the appropriate preventive, mitigating or enhancement measures.
- (n) **FMB** - refers to Forest Management Bureau.
- (o) **Forest** - refers to either natural vegetation or plantation of crops mainly of trees, or both, occupying a definable, uninterrupted or contiguous area exceeding but not less than one hectare with tree crown covering at least ten percent (10%) of the area, exclusive of the associate seedlings, saplings, palms, bamboos and other undercover vegetation. A natural forest is a stand dominated by trees whose structure, functions and dynamics have been largely the result of natural succession process. A natural forest is classified as either 1) primary or virgin forest which has not never been subjected to a significant human disturbance, or has not been significantly affected by the gathering of forest products such that its natural structure, functions and dynamics have not undergone any major ecological change; or 2) secondary or residual forest that may be classified into either degraded or productive type.
- (p) **Forestlands** - refers to lands of the public domain which have been classified as such and all unclassified lands of public domain.
- (q) **IFMA Area** - refers to a specified and delineated area of forestland subject of or covered by an IFMA.

- (r) **Indigenous Cultural Communities (ICC)/Indigenous People (IP)** - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as an organized community or communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from majority of the Filipinos. Indigenous cultural community (ICC) is synonymous with indigenous people (IP).
- (s) **Industrial Forest Plantation (IFP)** - refers to any tract of land planted mainly to timber producing tree species, including rubber, and/or non-timber species such as rattan and bamboo, primarily to supply the raw material requirements of forest-based industries, among others.
- (t) **Initial Environment Examination (IEE)** - refers to the document required of a proponent describing the environmental impact of, and mitigation and enhancement measures for, a project or undertaking located in an Environmentally Critical Area.
- (u) **Integrated Forest Management Agreement (IFMA)** - a production-sharing contract entered into by and between the DENR and a qualified applicant wherein the DENR grants to the latter the exclusive right to develop, manage, protect and utilize a specified area of forestland and forest resource therein for a period of 25 years and may be renewed for another 25-year period, consistent with the principle of sustainable development and in accordance with an approved CDMP, and under which both parties share in its produce.
- (v) **LGU** - refers to the local government unit, such as a province, city, municipality and barangay.
- (w) **Managed Forest** - refers to a forest under a deliberate system of protection, rehabilitation and development which may include utilization of resources, to ensure the sustainable production of desired products and services, and the conservation of soil, water, wildlife and other natural resources therein for the benefit of present and future generations.
- (x) **National Integrated Protected Area System (NIPAS)** - refer to the classification and administration of all designated protected areas to maintain essential ecological process and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein and to maintain their natural conditions to the greatest extent possible.
- (y) **Open and Denuded Land** - refers to the lands that has been depleted of its natural forest cover and is predominantly covered by grasses, herbs, or otherwise bare of any soil cover.
- (z) **Operations Plan** - In accordance with the approved CDMP, a one year written plan detailing the activities in the natural productive residual forest, if any, or a five (5) year written plan detailing the developmental activities in the open, denuded, brushed and degraded residual natural forest.

- (aa) **PENRO** - refers to Provincial Environment and Natural Resources Office.
- (bb) **Production Forest** - refers to forestlands designated as such for the sustainable production of timber and/or non-wood forest products
- (cc) **Production Residual Natural Forest** - refers to a natural forest with a basal area of five (5) square meters per hectare or more and to be properly managed as a sustainable and economic source of natural-grown timber.
- (dd) **Protection Forest** - refers to forestlands not the subject of commercial or industrial activities that include all areas under NIPAS and such other areas Secretary may designate.
- (ee) **RED** - refers to Regional Executive Director.
- (ff) **RENRO** - refers to the Regional Environment and Natural resources Officer.
- (gg) **Rotation** - refers to the number of years between the initial establishment of a plantation and the time when it is considered ready for harvesting.
- (hh) **Secretary** - refers to the Secretary of the department of Environment and Natural Resources.
- (ii) **Sustainable Development** - means meeting the needs of the present generation without compromising the ability of the future generation to meet their own needs.
- (jj) **Timber License Agreement (TLA)** - refers to a privilege granted by the State to a person to utilize forest resources within a forestland with the right of possession and occupation thereof, to the exclusion of others, except the Government, but with the corresponding obligation to develop, protect and rehabilitate the same in accordance with the terms and conditions set forth in the said agreement.

CHAPTER II IFMP AREAS

Sec. 4. Areas Available for IFMP. - Except areas enumerated in Sec. 5 herein, IFMAs may cover all lands of the public domain under the jurisdiction of the DENR, such as:

- (a) Open and denuded lands, brush lands, degraded residual natural forests;
- (b) Areas covered by cancelled/expired Forest Land Grazing Agreement or pasture permits or leases;
- (c) Government reforestation projects or portions thereof found to be more suitable or can be better developed as IFP in terms of public interest and benefits to surrounding communities;
- (d) Production residual natural forest that may be best included in any of the aforementioned areas and be a part of the managed forest under the IFMA.

- (e) Areas under cancelled and expired TLAs; provided, areas under existing TLAs may be allowed for conversion to IFMA by the holder thereof pursuant to Sections 6, 9 and 12 herein.

Sec. 5. Areas Prohibited for IFMA. - In no case shall IFMAs be awarded in the following:

- (a) Areas or lands of the public domain established under the NIPAS within the classification of national park as provided for in the Constitution and / or those proclaimed, designated or set aside pursuant to a law, presidential decree, presidential proclamation or executive order as well as those the Secretary shall propose for inclusion in the initial component of the System except when such areas fall within the buffer zone;
- (b) Areas or lands subject of Certificates of Ancestral Domain / Certificate of Land Claims (CADC/CALC) or of any other tenurial instruments issued by the DENR under the Integrated Social Forestry Program, Community Forest Program, and other people-oriented forestry programs and other license, permits or lease unless with prior informed consent of the holder.
- (c) Those areas with pending applications CADC/CALC or those areas verified by the DENR to be actually occupied by indigenous cultural communities under a claim of immemorial possession unless after due notice and hearing in accordance with existing rules and regulations same shall be denied or rejected.

Sec. 6. Size of IFMA Area. - The **minimum** size of the area that may be covered by an IFMA shall be five hundred (500) hectares and the **maximum** size may depend upon the capability of the applicant to develop and manage into productive condition as well as the requirements of his processing plant(s) existing or to be installed in the area/region; provided; that it shall not exceed forty thousand (40,000) hectares, preferably but not necessarily of one single block of an area; provided, however, that where a TLA is converted into IFMA, the size of the IFMA area may extend up to the size of the TLA area at the time of the conversion.

For purposes of effective management, economic scale or economies of scale, holders of adjoining or economically-distanced small-sized IFMA areas may be allowed to integrate into cooperative, a federation of cooperatives, or corporations the aggregate area of which shall not exceed 40,000 hectares.

Sec. 7. Evaluation, Delineation and Approval of Potential IFMA Areas. - The DENR shall determine the land use and vegetative cover if the identified areas for forest plantation development taking into consideration major watershed divide as boundaries, if possible with the application of the latest forest resource and other baseline data as well as modern methods such as aerial photography and remote sensing techniques.

- 7.1 Areas so delineated shall be validated on the ground, particularly the extent of each of the forest cover types, such as open/denuded lands, brush lands, residual natural forest and with the assistance of the LGU, dependent communities shall be consulted about the delineation of the area for the IFMA purposes; and
- 7.2 The delineated areas for IFMA purposes shall be prepared either through the conventional and/or geographic information system (GIS) in scale 1:50,000 or an appropriate scale indicating thereon the extent in hectares of each forest cover

types and such other relevant information. Same shall be duly indorsed by the LGU concerned through BOARD/Council Resolution, and approved by the Regional Executive Director concerned, the original copy of which, together with all pertinent documents shall be forwarded to the FMB Director for safekeeping, updating and reference.

Sec. 8. Registry of Available IFMA Areas. - The FMB, RED, PENRO, and CENRO shall maintain a Registry containing the location, description and status of all delineated IFMP areas and approved IFMAs which shall be made accessible to local communities, LGUs and other stakeholders as a matter of their rights which shall not be impaired.

CHAPTER III APPLICATION FOR AND APPROVAL OF THE IFMA

Sec. 9. Qualifications of Applicants. - The applicants for IFMA shall be:

- (a) A Filipino citizen of legal age; or
- (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws.

However, in the case of application for conversion of TLA into IFMA, an automatic conversion after proper evaluation shall be allowed, **provided** the TLA holder shall have signified such intention prior to the expiry of the TLA; **PROVIDED** further, that the TLA holder has showed satisfactory performance and have complied in the terms of condition of the TLA and the pertinent rules and regulations.

Sec. 10. Requirements for Application. - Applicants shall submit through the CENRO concerned, the following documents, together with the duly accomplished application form shown in Annex "A" and the sketch map of the area applied for:

- 10.1 Certified copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) and/or Cooperative Development Authority (CDA) or Articles of Incorporation and By-Laws and list of the current officers and stockholders duly certified by the Board Secretary;
- 10.2 Audited financial statements for the last two (2) preceding years, if the applicant was already in existence;
- 10.3 Proof of financial and technical capability to undertake initial activities in forest plantation establishment and development such as credit lines from financial institutions, collateralable properties, or good past performance or track records in forest development and management as TLA or IFMA Holder and other DENR tenurial instruments;
- 10.4 Application fee in the amount of P0.50 per hectare or fraction thereof and survey fee of P50.00/ha plus the actual transport cost of the survey team from the official station to the site in consonance with the provisions of DAO 93 - 18 subject for adjustment upon review by the DENR.

- 10.5 Board resolution authorizing any of the officers to file the application in behalf of the corporation, cooperative and/or partnership, duly certified by the Board Secretary.

Sec. 11. *Procedures in Processing of Applications and Approval of IFMA.* - The following procedures shall be observed in the processing of IFMA applications:

- 11.1 **At the CENRO** - Except in the case of conversion of TLA into IFMA as provided for in Section 9 herein, the CENRO concerned shall accept and process the IFMA application on a first-come-first-served basis taking into consideration, the qualifications of the applicant, the completeness of the documents submitted, and if the area applied for is included in the approved IFMA site and still available for application per the Registry. Thereafter, the area applied for shall be inspected on the ground based on the form as shown in "Annex B", after which the CENRO shall within 10 working days after the completion of the field inspection, prepare the IFMA in the form shown in Annex "C" hereof. The CENRO shall then endorse the application documents to the PENRO with his recommendation for approval; otherwise, same shall be returned by him to the applicant concerned for further action.
- 11.2 **At the PENRO** - Upon receipt of the application documents, the PENRO concerned shall within five (5) working days from the receipt thereof evaluate/review the same. If all are found in order, the PENRO shall endorse the application documents to the RED concerned with his recommendation for approval; otherwise same shall be returned with his comments to the CENRO concerned for further action.
- 11.3 **At the RENRO** - The RED concerned shall evaluate/review within five (5) working days from the receipt thereof the application documents. If all are found in order, the RED shall forward the IFMA, together with all the application documents and his recommendation for approval to the Secretary; through the FMB director; otherwise, same shall be returned by the RED with his comments to the CENRO concerned through the PENRO for further action.
- 11.4 **At the FMB** - Upon receipt of the IFMA together with all application documents, the FMB Director shall evaluate and review within five (5) working days thereof. If all are found in order, the Director shall recommend to the Secretary the approval of the IFMA; otherwise, same shall be returned by the FMB Director with his comments to the concerned RED, copy furnished the Secretary.
- 11.5 **At the OSEC** - The Secretary may approve or disapprove the IFMA after which the notice of approval shall be sent to applicant, copy furnished the FMB, RENRO, PENRO, CENRO and the LGUs concerned.

Sec. 12. *Initial Environmental Examination (IEE) and Environmental Clearance Certificate (ECC).* - After an IFMA has been awarded, and in order to identify the environmental impacts that have to be addressed in the development of the industrial forest plantation, the holder thereof shall submit Initial Environmental Examination (IEE) in a checklist to be prepared thereof which shall at least include the following:

- 12.1 A brief description of the project and its process of operations;
- 12.2 Description of the environmental setting and receiving environment including the primary and secondary impact areas;
- 12.3 Description of the environmental and socio-economic impacts of the project;
- 12.4 Matrix of the mitigation/enhancement measures;
- 12.5 Consultation and discussion with upland communities and indigenous people within the IFMA area about the socio-economic, political and cultural impacts of the project;
- 12.6 Documentation of the consultative process undertaken and agreements that shall be followed;
- 12.7 Discussion on gender issues with significant impact on women, including their roles/participation in project implementation; and
- 12.8 Accountability statements of the proponents and preparers.

Pursuant to the provision of DAO 96 - 37, the RED may either grant or deny the issuance of the ECC or decide that an EIS be further required taking into account the social and environmental cost implication relative to the judicious utilization, development and conservation of the country's natural resources.

CHAPTER IV TERMS AND CONDITIONS OF THE IFMA

Sec. 13. *Duration of the IFMA Holders.* - An IFMA shall have a duration of twenty five (25) years and may be renewed for another twenty five (25) years, provided, that all the conditions of the IFMA, pertinent laws, rules and regulations have been complied by the holder thereof.

Sec. 14. *Responsibilities of the IFMA Holders.* - All IFMAs shall include the following conditions and/or responsibilities the holders thereof shall comply with:

- 14.1 Under the supervision of the DENR, reckoned from the date the IFMA was awarded, conduct the delineation and marking on the ground of the perimeter boundaries of the IFMA area based on the land classification standard and establish control points on the ground following the Universal Transverse Mercator (UTM) including the conduct of timber inventory at 5% intensity to determine the extent of the natural forest cover and the forest plantation as TLA reforestation compliance therein, if applicable.
- 14.2 Submit within one (1) year from the date the IFMA was awarded, a Comprehensive Development and Management Plan (CDMP) in the form shown in Annex "D" and an Initial Environmental Examination (IEE) as basis for approval by the Secretary on the former and the issuance by the RED of an Environmental Compliance Certificate (ECC) on the latter;

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- 14.3 Submit within one (1) year from the date of the award of the IFMA and every five years thereafter to the FMB up-to-date aerial photos or landsat imageries including their interpretation map covering the entire IFMA area in consonance with DAO 92-17; provided, that this condition shall be waived if such air photos and/or imageries were procured by the DENR, or if the IFMA area has no natural forest, or if the area regardless of vegetative cover is less than 5,000 hectares;
- 14.4 Implement the mitigation/enhancement measures stipulated in the IEE and comply with the conditionalities of the ECC;
- 14.5 Plant principally timber-producing species compatible with the ecological and biophysical characteristics of the area, but not excluding rubber, durian and/or non-timber species like rattan and bamboo; **provided**, that a suitable area of at most ten percent (10%) therein may be used for agricultural purposes; **provided, further**, that these endeavors are included and scheduled in the approved CDMP; **provided, finally**, that the total plantable area shall be planted based on the rotation period of the plantation species but not exceeding 12 years.
- 14.6 If included in the CDMP, convert the degraded residual natural forest within the IFMA area into a productive state by one or more of the following methods:
- 14.6.1 enrichment planting, timber stand improvement and assisted natural regeneration;
- 14.6.2 establishing plantations of rattan or other suitable non-timber species; and/or
- 14.6.3 clearing natural vegetation from degraded residual natural forest and establishing industrial forest plantation (IFP); **provided**, that:
- 14.6.3.1 the timing, location, extent, methods of harvest, expected volume and value of salvaged wood and the environmental impact of any clearing carried out for such conversion shall be stated in the approved CDMP, OP, and IEE;
- 14.6.3.2 buffer strips of natural vegetation at least 50 meters in width, following to the extent possible natural boundaries, between compartments which shall not exceed 100 hectares each, and at least 20 meters on both sides of major rivers or streams shall be retained and shall be subject of enrichment planting or shall be used for rattan or bamboo plantation;
- 14.6.3.3 all extraction of commercial timber carried out in connection with conversion of degraded natural residual forest to IFP shall be indicated in the operations plan approved by the RED and shall be subject to forest charges provided for in RA 7161; and
- 14.6.3.4 planting the entire area cleared shall be undertaken within six (6) months of clearing.

- 14.7 Manage and protect production residual natural forest in accordance with laws and regulations governing thereto and if authorized in the approved CDMP, harvest and utilize naturally grown trees therein on a sustainable basis and in accordance with the Operations Plans (OP) duly approved by the concerned RED, PROVIDED that should there be old growth (virgin) and protection forest within the IFMA area, same shall be protected and no cutting shall be allowed therein.
- 14.8 Reforest open/denuded lands found within areas classified as protection forestlands and within twenty (20)-meter strips from both sides of river banks which shall be kept permanently under forest cover;
- 14.9 Protect and conserve unique, rare and endangered flora and fauna found within the IFMA area;
- 14.10 Not cut trees found in protection forestlands, in all areas within 50% and over in slope and with elevation above 1000 meters above sea level, or within twenty (20) meters strip from both sides of river/stream; banks;
- 14.11 Construct permanent structures and roads within the IFMA Area only in accordance with the approved CDMP and OP;
- 14.12 Employ as many experienced forester as may be required in major aspects of forest management, development, protection, etc. including the appointment of one of them as Forest Operations Manager or in any top level management position; otherwise, hire a DENR-accredited Forest Services Organization such as a forestry consulting firm to undertake similar activities on a continuing basis; and
- 14.13 Submit to DENR annual Accomplishment Report in the form prescribed in Annex "E" of this Order.

Sec. 15. Responsibilities of the DENR. - The DENR shall undertake and/or observe the following conditions in respect of all IFMAs:

- 15.1 Make available upon request to the IFMA holder existing information on the status of the land, resources thereon and dependent communities within or adjacent to the IFMA areas;
- 15.2 Ensure that the activities indicated in the approved CDMP, mitigation/enhancement measures stated in the IEE, conditionalities prescribed in the ECC, pertinent provisions stipulated in this Order and other applicable laws, rules and regulation are complied with by the IFMA holder;
- 15.3 Assist the IFMA holder and host communities in the development and implementation of mutually beneficial agreements;
- 15.4 Not alter or modify the boundaries or legal status of any IFMA Area, once established; provided, that amicable settlement shall be undertaken by the DENR in the event of boundary conflict with adjacent IFMA area(s), or with licensed, leased and vested rights areas as well as Ancestral Land/Domain areas; and

- 15.5 Promote and/or approve joint venture, financing and/or securitization schemes recommended by the IFMA Holder designed to support the development of the IFMA Area in an orderly and expeditious manner.

Sec. 16. Compensation.

- 16.1 **Compensation to the IFMA Holder.** The IFMA Holder shall be entitled to receive from the Government compensation for the fair market value of permanent improvements introduced, including plantation forest crops remaining in his IFMA area under following circumstances:
- 16.1.1 expiration of the IFMA;
 - 16.1.2 termination of the IFMA when public interest demands; or
 - 16.1.3 reduction of the IFMA area for right-of-way or when the public interest demands.
- 16.2 If the Government retracts, for reasons other than cause, an IFMA holder's rights to carry out harvests, in accordance with the approved CDMP, in residual natural forest or in any portion thereof, the Government shall compensate the IFMA holder for cost incurred in maintaining, improving and protecting said forest up to the time such rights were retracted.
- 16.3 **Appraisal for Improvements for Compensation.** The fair market value of permanent improvements shall be decided upon by a committee comprising of the representatives of the DENR, the IFMA holder and a qualified independent appraiser whose appointment shall be mutually agreed upon by the DENR and the IFMA holder. The DENR and IFMA holder shall bear equally the cost of such appraisal.

Sec. 17. Warranties.

- 17.1 **Modifications.** No IFMA shall be amended in any way except by written instrument signed and agreed to by the duly authorized representatives of the DENR and the IFMA Holder.
- 17.2 **Notice of Breach.** In the event of any default or breach of any of the provisions of an IFMA by either party, the other party may, by notice to the party in default of breach, specify such default or breach and require the same to be remedied within thirty (30) days after service of the notice.
- 17.3 **Arbitration.** In the event of dispute between the DENR and an IFMA Holder that cannot be settled by mutual accord, the dispute shall be referred to by arbitration which shall be held in accordance with the rules provided in RA No. 876 and the decision arising from which shall be binding to both DENR and the IFMA Holder.

Sec. 18. Transfers. - An IFMA Holder may transfer, exchange, sell or convey the IFMA or any rights therein or any assets used in connection therewith, if authorized by the Secretary, and if:

- 18.1 The IFMA has been in existence for at least three (3) years;

- 18.2 The IFMA Holder has been faithfully complying with the terms and conditions of the IFMA, including implementation of the Comprehensive Development and Management Plan;
- 18.3 The transferee is qualified to hold an IFMA;
- 18.4 There is no evidence that such transfer or conveyance is being made for the purposes of speculation;
- 18.5 The transferee shall assume all the obligations of the transferor specified in the IFMA, CDMP, and ECC;
- 18.6 For IFMA Areas in which development is being financed by loan funds, the consent of involved financing institutions has been obtained; and
- 18.7 Consultation has been held and agreement has been reached with all certified Ancestral Land Claimants; if applicable.

Sec. 19. Encumbrances. - An IFMA Holder shall not offer as security, mortgage or otherwise encumber the IFMA or any rights therein or any assets used in connection therewith, unless authorized by the Secretary.

CHAPTER V INCENTIVES AND PROFIT SHARING

Sec. 20. Incentives. - The IFMA Holder shall be entitled to the following incentives:

- 20.1 Interplant secondary crops between trees within areas designated for IFP.
- 20.2 All planted trees and other crops established pursuant to an IFMA belong to the IFMA Holder who shall have the right to harvest, sell and utilize such trees and crops in whatever marketable form(s) and in whatever legal manners(s).
- 20.3 Allow without restriction the IFMA Holder to exports logs, lumber and other forest products derived from IFMA Area; **provided**, that logs harvested or obtained from naturally growing trees (not planted) in the IFMA Area and the lumber manufactured from such logs will not be exported.
- 20.4 All plantation products derived from an IFMA Area shall be exempted from forest charges; provided, that logs harvested or obtained from naturally growing trees (not planted) and/or other forest products naturally growing trees (not planted also) in an IFMA Area as well as logs from trees planted in compliance with TLA reforestation obligations of TLAs shall be subject to forest charges stipulated in RA 7161.
- 20.5 Entitlement to all relevant incentives provided for under the Omnibus Investment Code and to all applicable incentives enumerated under Section 36 of PD 705, as amended.
- 20.6 Transfer developed plantation that are at least three (3) years old to a cooperative upon fair compensation or payment thereof by the cooperative itself or through a financing institution or to open up public investment in accordance with Section 15.5 herein.

- 20.7 Use stable plantation crops that are at least three (3) years old as collateral or security for loans offered by government development-owned and controlled corporations.
- 20.8 An IFMA Holder who has satisfactorily complied with the terms and conditions of this IFMA based on performance evaluation by the DENR may be allowed either a) an additional area to the existing IFMA Area, provided, that the resulting aggregated size of the IFMA Area shall not exceed 40,000 hectares; or b) a new or another IFMA the maximum area of which shall not exceed 40,000 hectares.

Sec. 21. Profit Sharing. The sharing of the profit arising from an IFMA between the holder thereof and the Government shall be negotiated between the said holder and the DENR immediately following the approval of the CDMP and the grant of ECC, taking into consideration, among others, the following cost factors;

- 21.1 Plantation establishment, protection, management, infrastructure and harvesting cost as well as mitigating measures;
- 21.2 Fixed assets, equipment and machineries directly related to the plantation development and harvest;
- 21.3 Kind and volume of products that shall be harvested and prevailing fair market prices thereof;
- 21.4 Variation in rates of interest and foreign exchange of financial investment;
- 21.5 Expenses incurred in indirect activities such as community development, etc.;
- 21.6 Forest charges and taxes paid; and
- 21.7 Reasonable margin for profit and risks.

The Profit sharing agreed upon shall form part of the IFMA.

CHAPTER VI MONITORING AND CONTROL

Sec. 22. Program Management - The program shall be managed and implemented through the various DENR Offices as follows:

- 22.1 FMB shall be the National Program Coordinating Office tasked to formulate policies, rules and regulation pertinent to forest plantation development and management, establish linkages with concerned agencies both government and non-government to ensure the success of the program implementation, continuously monitor and assist the Secretary in the Supervision of the program, provide the Secretary and other concerned authority with periodic reports on program accomplishments and other relevant information and keep updated and orderly files of all issued IFMAs including relevant documents of the program.
- 22.2 RENRO – The RED, assisted by the ARED concerned shall be responsible for the efficient and effective implementation of the program in the region. The

RENRO shall keep copy of the records of all IFMAs within the jurisdiction of the region. The RED shall submit to the Secretary thru the FMB periodic reports on the accomplishments, issues and problems with recommendation regarding the implementation of the program.

22.3 PENRO AND CENRO – The PENRO and the CENRO shall be directly responsible in the implementation of the program. The PENRO shall maintain a database of all IFMAs in the province, while the CENRO shall likewise maintain information of all IFMAs under its jurisdiction, including periodic monitoring and evaluation of IFMA holder's accomplishments for submission to the DENR authority

Sec. 23. Suspension of an IFMA – In the event of any alleged violation committed by the IFMA, the RED concerned or the Secretary himself shall initiate an investigation into the violation in accordance with the warranties provided herein and, depending on the gravity of the violation, may either issue a Notice of Breach or Notice of Suspension of Operations. The notice of suspension shall indicate the actions/activities that shall be done by the IFMA holder in order to facilitate the lifting of the suspension including the admonition that non-compliance thereto shall result to the cancellation of the IFMA. If any development activity pursuant to the IFMA is being financed by loan funds or if any improvement within the IFMA Area is encumbered by a third party, the DENR shall notify the bank or the other party involved about any of the preceding notices. The IFMA Holder shall within thirty (30) days from the receipt of any of such notices, file an answer, a motion for reconsideration, or an appeal, as the case may be, with the Office of the Secretary.

Sec. 24. Grounds for cancellation of IFMA – The following violations shall be sufficient grounds for cancellation of the IFMA:

- 24.1 If the IFMA was obtained through fraud, misrepresentation or omission of material facts existing at the time of the filing of the application;
- 24.2 Failure of an IFMA Holder to settle any forestry account, such as forest charges, when they become due and upon prior notice to the IFMA Holder;
- 24.3 Violation of any of the terms and conditions of, or failure to comply with, or perform the obligations imposed in, the IFMA, and of other pertinent laws, or policies affecting the exercise of the IFMA;
- 24.4 Failure to submit a CDMP and IEE within one (1) year from the date the IFMA is entered into;
- 24.5 Failure to submit aerial photographs or satellite imageries for the IFMA Area, when required and every five years thereafter;
- 24.6 Failure to carry out an inventory resource inventory for areas containing any natural forest, in case such inventory has not been undertaken prior to the issuance of the IFMA;
- 24.7 Failure to implement without due and reasonable cause explained in writing, the approved CDMP, OP and/or the conditions of IEE and ECC;

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- 24.8 Conducting any operations in violation of the approved CDMP or OP, or engaging in activities outside the IFMA Area without the expressed consent or authority of the Secretary,
- 24.9 Failure to protect the IFMA Area except as a result(s) of force majeure, where the IFMA Holder has no control over; and
- 24.10 Abandonment of the IFMA Area as evidenced by absence of the IFMA Holder, whether actual or constructive, for any given period of one (1) year.

Sec. 25. Finality and Execution of Orders of Cancellation. – Any decision by the Secretary to cancel an IFMA shall become final and executory after thirty (30) days from receipt thereof by the IFMA Holder, unless the latter, prior to the expiry of said thirty-day period, files a motion for reconsideration or an appeal with the Office of the Secretary.

Sec. 26. Forfeiture of Rights to Compensation. – Upon cancellation of an IFMA for any of the reasons specified herein, all permanent improvement introduced into the IFMA Area, including forest plantations, shall become the property of the Government without there being any obligation to compensate the IFMA Holder.

CHAPTER VII MISCELLANEOUS PROVISIONS

Sec. 27. Previously Issued IFMAs. – The terms and conditions of any IFMA entered into prior to this Order remain valid unless modifications are agreed to by the DENR and the IFMA Holder in accordance with the provisions hereof, without prejudice to whatever action that the office may take after performance evaluation thereof has been undertaken in the area.

Sec. 28. Repealing Clause. – This Order repeals DAO 91 - 42, DAO 93 – 60 and DAO 97 – 04 and Orders, Memoranda, Circulars, and other issuance which are inconsistent herewith.

Sec. 29. Effectivity. – This Order shall take effect fifteen (15) days after its publication in the Official gazette or in a newspaper of general circulation and upon acknowledgement by the UP Law Center.

ANTONIO H. CERILLES
Secretary

Published at:
MALAYA — December 30, 1999

DENR ADMINISTRATIVE ORDER
No. 29 (2000)

**SUBJECT: GUIDELINES REGULATING THE HARVESTING AND
UTILIZATION OF FOREST PRODUCTS WITHIN COMMUNITY-BASED
FOREST MANAGEMENT AREAS.**

Pursuant to the provisions of Executive Order No. 263, and Department Administrative Order No. 96-29, and in order to rationalize the utilization of forest products within areas covered by Community-Based Forest Management Program (CBFM), the following guidelines are hereby promulgated:

Section 1. Basic Principle. The CBFM aims to promote the socio-economic upliftment of forest communities and at the same time, achieving sustainable development/management of forest resources. It recognizes that responsible and efficient resource utilization by organized and empowered local communities based on sound ecological and economic principles can result to sustainable management of forest lands and resources. This recognition is manifested in the granting of resource-use rights to peoples' organization under the CBFM program otherwise known as Resource Use Permit (RUP).

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Section 2. Objectives. The granting of resource use permit to peoples' organization shall have the following objectives:

- a. To provide the basis for the community to access and benefit from forest resources in a sustainable manner.
- b. To help the community generate start-up capital needed to finance and establish livelihood and other development activities in the area.
- c. To empower people's organizations under the CBFM program as effective partners in the protection, conservation, development and rehabilitation alongside the concept of sustainable development.

Section 3. Scope and Coverage. Utilization of naturally grown and/or planted forests resources shall be covered by Resource Use Permit (RUP). RUP may be issued to holders of tenurial instruments under the CBFM program of DENR who intend to harvest/utilize forest products for commercial use, provided that they have an affirmed Community Resources Management Framework (CRMF) and Annual Work Plan (AWP).

Section 4. Requirements for the Utilization of Forest Resources. The requirements for forests resource utilization are the following:

- a. Affirmed CRMF
- b. Affirmed AEP
- c. ECC
- d. RUP

In the case of timber resource extraction, the following additional conditions shall govern:

- 4.1 **Area of natural forest.** Harvesting of timber within the natural forest should be confined only in areas identified as production forest in accordance with the CRMF. Extraction of forest products outside of the identified zone shall be strictly prohibited. Cutting will not be allowed along gullies, steep slopes, river channels and other identified critical areas.
- 4.2 **Stand volume after harvesting.** Where cutting is allowed in the residual forest, the average stand volume after harvesting these areas should not be less than eighty (80) cubic meter per hectare.

Section 5. Procedures.

- a. The PO with the assistance of a registered professional forester and the PMO/site coordinator concerned shall prepare and submit the AWP to the CENRO at least three (3) months prior to the commencement of planned annual operations.
- b. The CENRO shall cause the validation of the AWP, particularly the information on inventories of areas where harvesting of forest products shall be undertaken, following existing guidelines.

- c. The CENRO shall affirm the AWP and issue the RUP within sixty (60) calendar days from the submission of the AWP.
- d. In case where the CENRO functions are assumed by higher authorities, the authority concerned shall issue the RUP accordingly.

Section 6. Safeguards. In order to ensure that the harvesting of forest products will be done in the most economical and ecological manner, the following safeguards shall be observed.

A. Responsibilities of DENR

A nationwide scheme establishing the Forest Stock Monitoring System (FSMS) in tandem with local Multi-sectoral Forest Protection Council (MFPC) shall be operationalized in coordination with the field offices to facilitate the monitoring of harvesting activities.

1. **Region.** The Regional office shall maintain an updated list of peoples' organization with RUPs within their jurisdiction. They shall, on a semi-annual basis, monitor, in coordination with the PENRO, CENRO, and/or LGUS and MFPCs, the progress of the activities by the community particularly the extraction of forest products, the marketing strategies, the intended use of the proceeds particularly in livelihood activities.
2. **PENRO.** The PENRO shall likewise maintain an updated records of all peoples' organization granted with RUP in its jurisdiction. They shall monitor on a regular basis and in coordination with the CENRO, the community, LGU and other concerned groups the status of the implementation of the RUP and the intended activities as stipulated in the annual work plan.
3. **CENRO.** The CENRO shall maintain an updated records of all communities with affirmed RUP within its jurisdiction. Through a project management officer, whom the CENRO shall designate as the link between the DENR and the community, activities of the community pertaining to the implementation of the AWP and the RUP shall be closely monitored and supervised. The PMO shall, as much as possible immerse with the community and maintain a record of daily harvest and balances. He/She shall likewise monitor the establishment and development of the livelihood component of the AWP. As PMO he/she shall be accountable to the CENRO. Furthermore, other units of the CENRO shall provide the needed assistance to the community.

B. Responsibilities of the Community. Apart from the responsibilities of the peoples' organization as stipulated in the CBFM agreement, POs granted with RUP shall have the following specific responsibilities.

1. Develop and implement equitable benefit-sharing arrangements among its members.
2. Refrain from the use of heavy equipment such as bulldozers and the like and as much as possible must be employ labor intensive methods of harvesting.
3. Be transparent and promote participatory management particularly in the handling of records of transactions and finances.

4. Develop and implement mechanisms for the rehabilitation and development of areas subjected to harvesting operations.
6. Pay forest charges on timber other than those harvested in plantations as well as other fees and charges required by the DENR.
7. Submit monthly report to the CENRO, through the assigned PMO, as to the progress of the activities and cooperate with the monitoring team that the DENR may send from time to time to determine compliance of the POs to the agreement.

Section 7. *Marketing of Products.* The RUP shall serve as the permit to sell the logs, lumber and other forest products.

The Natural Resources Development Corporation (NRDC) shall assist in the processing, marketing and disposition of forest products through a mutually agreeable arrangement with the concerned POs.

In order to maximize the profit that could be generated and to increase the value added, the community shall be encouraged and assisted to further develop and upgrade their materials into higher value finished products.

Section 8. *Penal Provision.* Violations of any of the provisions of this Order shall be penalized in accordance with existing laws and regulations.

Section 9. *Separability Clause.* Should any of the provisions of this Order be subsequently or otherwise revised, modified or repealed accordingly the same shall not affect the validity or legality of the other provisions so far as they could stand independently of the provisions so revised, modified or repealed.

Section 10. *Effectivity.* This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

ANTONIO H. CERILLES
Secretary

Published at:
MALAYA - March 29, 2000

DENR ADMINISTRATIVE ORDER
No. 44 (2000)

**SUBJECT: AMENDING CERTAIN PROVISIONS OF DAO 96 – 29 AND
PROVIDING SPECIFIC GUIDELINES FOR THE ESTABLISHMENT AND
MANAGEMENT OF COMMUNITY-BASED PROJECTS WITHIN
PROTECTED AREAS.**

Pursuant to the action agenda of consolidating all forestry programs into an overarching Sustainable Forest Management Program, DAO 96 – 29, the Rules and Regulations for the implementation of executive Order No. 263, otherwise known as the Community-based Forest Management Strategy, is hereby amended to align it with the provisions of Republic Act 7586, otherwise known as the National Integrated Protected Areas System (NIPAS) Act of 1992, and specifically to provide the following guidelines on the establishment and management of Community-Based Projects (CBP) within protected areas, to include and to read as follows:

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Article I. Title, Basic Policy, Objectives, Definition of Terms and Scope.

In order to sustain the conservation objectives of protected areas, it shall be the basic policy of the Department to allow sustainable use inside multiple-use and buffer zones, except any form of logging, or timber cutting involving the natural forest.

Section 5. *Scope and Coverage.* Subject to private rights, CBP shall apply to all areas designated as multiple-use and buffer zones of protected areas.

Article II. Key Program Participants.

Section 1. *Qualifications of participants.* Only qualified tenured migrant communities as defined under the NIPAS Law, who are duly organized may participate in the CBP.

Section 2. *Incentives to the Participants.*

- i. To develop allocated areas within the multiple-use and buffer zones of protected areas and claim ownership of all introduced improvements.
- ii. To receive income and proceeds from the development of areas covered by CBPs, subject to the sharing scheme that shall be developed as mentioned in Article VII Sec. 4 of this Order and other relevant provisions of the NIPAS Law.
- iii. Other incentives, where applicable, as enumerated in DAO 96 – 29.

Article III. Stages of CBP Implementation.

CBP implementation shall have four stages : the Preparatory Stage, the People's Organization (PO) Formation and Diagnostic Stage, the Planning stage and the Implementation Stage.

The Protected Area Management Board (PAMB) and the Protected Area Superintendent (PASu) shall take an active role in all stages of CBP implementation as provided in Article III of DAO 96 – 29 . All activities related thereto, such as but not limited to, the formulation of Community Resource Management Framework (CRMF), Resource Use Plan (RUP) and Annual Work Plan (AWP) must be consistent with the Initial Protected Area Plan, subject to revision upon approval of the final Protected Area Management Plan, and other relevant policies, rules and regulations.

Affirmation of the CRMF, RUP, AWP and other requirements shall be by the PAMB upon joint recommendation of the PASu and the CENROs. The organized tenured migrant communities potentially eligible for CBP shall be afforded all the necessary assistance by the DENR, specifically the Community-Based Forest Management Office (CBFMO) and Protected Areas and Wildlife Bureau (PAWB) in the implementation of the CBP.

Article IV. Tenure.

Section 1. *Tenurial Instrument.*

The appropriate tenurial instrument to be issued within multiple use and buffer zones of protected areas is the Community Based Forest Management Agreement (CBFMA). The PAWB shall develop an appropriate pro-forma agreement for CBFM within protected areas in consultation with the Regional Offices, PAMB and other stakeholders.

The PO which holds a CBFMA within protected areas, if it deems appropriate, may enter into an agreement or execute an assignment, designation or allocation, only among its individual members, families or groups, thereof, who are likewise qualified tenured migrants under Republic Act No. 7586, subject to concurrence of the PAMB. All such agreements, assignments, designation or allocation shall, however, be subject to these guidelines, and the condition that succession to the area allocated would only be to the next kin and only for the unexpired portion of the tenure, and consistent with all pertinent environment laws, rules and regulations.

Article VII. Financial and other Mechanisms.

Section 4. Part of the income derived from the CBFMA within the protected area shall accrue to the Integrated Protected Area Fund (IPAF), pursuant to DOA 96-22 and developed by PAWB. This amount shall be reinvested in the community-based project areas for the improvement, rehabilitation and protection of the natural resources, community development activities and other projects of the protected area.

Section 5. The CBFMA holder may enter into an agreement or a contract with the Natural Resources Development Corporation (NRDC) in the processing, marketing and disposition of their products.

Article X. Final Provisions.

Section 1. *Effectivity.* This order shall take effect fifteen (15) days after its publication in a general newspaper of national circulation.

ANTONIO H. CERILLES
Secretary

Published at:
MALAYA - July 15, 2000

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DENR ADMINISTRATIVE ORDER
No. 51 (2000)

**SUBJECT: GUIDELINES AND PRINCIPLES IN DETERMINING FEES
FOR ACCESS TO AND SUSTAINABLE USE OF RESOURCES IN
PROTECTED AREAS.**

Pursuant to the provisions of Republic Act 7586 otherwise known as the National Integrated Protected Areas System (NIPAS) Act of 1992 and its Implementing Rules and Regulations, and in order to provide guidelines and principles in accessing and sustainability using resources in protected areas, this Order is hereby issued for the guidance of all concerned.

**SECTION 1
TITLE**

This Order shall be known as "Guidelines and Principles in Determining Fees for Access to and Sustainable Use of Resources in Protected Areas"

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SECTION 2 OVERRIDING PRINCIPLES IN THE UTILIZATION OF RESOURCES IN PROTECTED AREAS

- 2.1 Sustainability is the overriding consideration in determining all types and rates of use of all resources in protected areas. Sustainable use shall be operationalized as follows:
- 2.1.1 For the extraction of renewable resources such as forest flora and fauna and other forest products, surface and ground water, fisheries, geothermal energy and similar resources, sustainable use shall be the rate of extraction that is lower than either the rate of regeneration or the rate that shall endanger life forms inside the protected area. The rate of use shall be within the carrying capacity of the protected area and its immediate surroundings when taken individually or collectively or in relation to other uses of the area and that any form of use shall maintain the socio-economic and cultural aspect of the area.
 - 2.1.2 Any development of land and other resources in a protected area shall not alter the landscape and shall not significantly disrupt normal ecological functions and processes.
 - 2.1.3 The recreational use of resources for tourism, for filming or photography, shall preserve the natural landscape and not put significant stress on living resources by considering the carrying capacity of the area.
 - 2.1.4 In the process of resources utilization, the introduction of substances or chemicals harmful to the environment shall not be allowed.
- 2.2 Subsistence use of resources by indigenous peoples and tenured migrants shall be exempt from the payment of user fees.

SECTION 3 OBJECTIVES

It shall be the objective of this Order to set forth the procedure which DENR through the Protected Areas and Wildlife Bureau (PAWB) and the Protected Area Management Boards (PAMBs) shall follow in determining fees for access to and sustainable use of resources located in protected areas for subsistence, recreational, extractive, commercial, and all other purposes. Revenues generated shall accrue to the Integrated Protected Area Fund (IPAF) which will be managed by the IPAF Governing Board and the concerned PAMB. The revenue generated shall be disbursed solely for the protection, maintenance, administration and management of NIPAS, and duly approved projects endorsed by the PAMBs, in the amounts authorized by the DENR.

SECTION 4 SCOPE

This Order shall cover identified major uses of all resources and facilities in areas comprising the National Integrated Protected Areas System (NIPAS)

SECTION 5
DEFINITIONS OF TERMS

- 5.1 **Carrying capacity** - refers to the ability of the natural or environmental resource to absorb stress without experiencing unacceptable instability and degradation.
- 5.2 **Commercial Use** - is the use of resources in excess of subsistence use.
- 5.3 **Cottage-Scale Development** - any development that requires an investment of PhP 150,000 to 1.5 million.
- 5.4 **Development of Land and Other Resources** - involves all forms of improvement or enhancement of land and other resources within the protected area for any purpose.
- 5.5 **Extractive Use** - is the use of resources involving gathering, tapping, diverting, or any form of removal of resources within the designated multiple use zone, sustainable use zone and buffer zone.
- 5.6 **Final Consumption** - refers to use of where the resources is no longer used as input to production of other goods or services.
- 5.7 **Fishing** - is the taking of fishery species from their wild state or habitat, with or without the use of fishing vessels.
- 5.8 **Indigenous Cultural Communities/Indigenous People (ICCs/IPs)** - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains (Sections 3(h), RA 8371).
- 5.9 **Medium-Scale Development** - any development that requires an investment of above PhP 1.5 million to 60 million.
- 5.10 **Marketed Resources** - are resources which use entails voluntary exchange involving monetary transaction or non-monetary transaction as in the case of barter.
- 5.11 **Micro-Scale Development** - any development that requires an investment of PhP 150,000 and below.
- 5.12 **Non-marketed Resources** - are resources which use does not entail market transaction.

- 5.13 **Recreational Use** - is the use of resources for the primary purpose of personal enjoyment but which does not entail any form of extraction, except, for example, in recreational or sports fishing where a regulated number of fish may be taken.
- 5.14 **Resources** - refer to all living and non-living, renewable or non-renewable, including but not limited to terrestrial, aquatic or both, surface or subsoil resources found within protected areas.
- 5.15 **Small-Scale Development** - any development that requires an investment of above PhP 1.5 million to 15 million.
- 5.16 **Subsistence Use** - is the use of resources to satisfy the minimum basic requirements of households of indigenous cultural communities and tenured migrants including but not limited to food, dwelling, clothing, medical assistance and recreation.
- 5.17 **Sustainable Use** - is the use of components of biological diversity in a way and at a rate that does not lead to the decline in the species used, thus, maintaining its potential to meet the needs and aspirations of the present and future Filipino generations.
- 5.18 **Tenured Migrant** - or communities within protected areas are those who have actually and continuously occupied area five (5) years before the designation of such as protected area in accordance with the NIPAS Act and are solely dependent on the resource for subsistence (Sec. 4(1), RA 7586).

SECTION 6 TYPES OF USES

The following are the types of uses of resources in protected areas on which fees shall be assessed or may be applied:

- 6.1 Subsistence use shall include but not limited to hunting of wildlife for household consumption, gathering of forests products for house construction, agriculture or fish culture to raise crops or fish for household consumption. Subsistence use shall be for the benefit of indigenous cultural communities and tenured migrants only.
- 6.2 Recreational use shall include but not limited to land, water-based activities such as snorkeling, SCUBA diving, swimming, boating, mountain climbing, fishing, filming and photography and all other similar activities as may be determined and allowed by the Protect Area Management Board (PAMB)
- 6.3 Extractive use shall include but not limited to: a) extraction or diversion of water for irrigation or domestic uses; b) collection or gathering of forest products such as vines, rattan, bamboo, resin, ornamental plants, bird's nest, guano, honey; c) collection of wildlife such as monkeys, wild pigs, butterfly; d) extraction of flora and fauna and its by-products, parts and derivatives, including, but not limited to leaves, blood and samples; e) fishing either in small or commercial scale.
- 6.4 Commercial use shall refer to the development of land and other resources such as construction of kiosks for vending food and souvenir items; construction of tourists and lodging facilities; shops for rental of recreational equipment such as boats, and

such other activities as may be allowed by the Management Plan and in accordance with Department of Trade and Industry (DTI) guidelines.

Further, it shall also include existing activities relating to the use of geothermal energy, water resources for electric power generation, use of fish pens and fish cages, use of highways, relay stations and similar communication or transportation structure.

SECTION 7 TYPES OF FEES

- 7.1 **Protected Area Entrance Fee** – is a fee paid to enter a protected area.
- 7.2 **Facilities User Fee** - is a fee paid for the privilege of using man-made facilities inside a protected area.
- 7.3 **Resource User Fee** - is a fee paid for the sustainable commercial use of a specified quantity of resources within protected area over a specified period of time.
- 7.4 **Concession Fee** - is a fee paid for the use of land or other resources for the privilege of undertaking micro and cottage-scale development for a specified nature of development.
- 7.5 **Development Fee** - is a fee paid for the use of land or other resources for the privilege of undertaking small, medium and other bigger scale development in protected areas to the extent as may be allowed by PAMB and in accordance with the Management Plan for a specified period of time and for a specific nature of development.
- 7.6 **Royalty** - may be defined as a fee paid on the gross output value or gross sales from products out of resources derived from a protected area.

SECTION 8 SPECIFIC GUIDELINES AND PRINCIPLE IN DETERMINING FEES

One or more guidelines and/or principles may be employed in determining fees based on the following: a) capability to approximate closely the correct fee; b) availability of data as basis for computations; and c) costs to be incurred in estimating the fee.

8.1 Protected Area Entrance Fees and Facilities User Fees

Specific Principles

- 8.1.1 **Cost-recovery principle**- For Protected Area Entrance Fees, collected revenues shall cover, as much as possible, a reasonable proportion of all costs incurred in protecting, maintaining and enhancing the natural attractions of the protected area. For Facilities User Fees, collected revenues shall cover, as much as possible, a reasonable proportion of all costs incurred in providing and maintaining the man-made facilities in the protected area.

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8.1.2 Willingness-to-pay principle – For Protected Area Entrance Fees, these shall be based on the willingness-to-pay estimates of the visitors based on appropriate surveys.

Guidelines

8.1.1 Protected Area Entrance Fees shall cover access to the protected area. If applicable, an additional Facilities User Fee shall cover access to and the use of man-made facilities in the protected area.

8.1.2 For Protected Area Entrance Fees, the willingness-to-pay principle shall be the primary basis for computing fees. However, if information is not available, the cost-recover principle shall be the basis of computation.

8.1.3 For Facilities User Fees on man-made facilities managed by private entities, rates shall be determined by the private entity but shall be comparable to fees charged for the use of similar facilities in a comparable location. All Facilities User Fees shall be determined in consultation with the PAMB.

8.1.4 For Facilities User Fees on man-made facilities managed by the government, these shall be determined using the cost-recovery principle and shall be comparable to the fees for the use of privately-managed facilities with similar characteristics.

8.1.5 A three-tiered system of Protected Area Entrance Fee shall be developed: lower rates for Filipino students and senior citizens; normal rates for other Filipino visitors; lower rates for minors; higher rates for all foreign visitors.

8.2 Resource User Fees, Development Fees and Concession Charges

Guidelines and Principles

8.2.1 The PAMB may, to the extent feasible, enter into co-production, joint venture or production-sharing agreements with interested parties through the Natural Resource Development Corporation (NRDC) in the processing, marketing and disposition of resources in appropriated management zones within the protected area.

8.2.2 The government share of the protected area through the Integrated Protected Areas Fund (IPAF) in these agreements shall be a reasonable proportion of the excess profits derived from the commercial extraction of resources.

8.2.3 Project proposals for development activities within protected areas which are outside the scope of the management plan shall be subject to an EIA as required by law and other pertinent laws and regulations prior to their implementation.

Royalty

Guideline and Principle

For any use of resource that result in the sale of good or services where the value of total sales can be easily monitored, the resource fee may be based on royalty.

material cost, e.g., gasoline;
rentals for equipment, buildings, etc.
depreciation; and
payments for taxes normally paid by any business enterprise (e.g.,
Income taxes, permit fees, etc.)

Margin for Profit = normal return to entrepreneurial capita, usually
determined through prevailing conditions in the financial market

Margin for Risk = a premium to cover losses from natural calamities and other
causes

**SECTION 9
OTHER PROVISIONS**

- 9.1 The computation of the excess profits shall be guided by the formula specified in Annex A. The corresponding government share from the excess profit shall be determined consistent with the appropriate instrument agreed upon by the contracting parties.
- 9.2 The rate of subsistence use shall be specified for each resource and where possible, for each household of indigenous people and tenured migrants. Such rate shall not exceed the rural annual capital threshold income by region as may be determined by the National Economic Development Authority (NEDA).
- 9.3 The classification of development projects in protected areas in terms of investments shall be regularly updated in accordance with DTI guidelines.
- 9.4 The guidelines and principles enumerated herein shall be elaborated and operationalized in a handbook that shall be developed after pilot-testing in a sufficient number of protected areas.
- 9.5 The PAMB may enter into a MOA with NRDC to be its collecting arm and/or fund manager and marketing arm. Furthermore, PAMB may also engage the services of NRDC to manage and operate it areas it may deemed appropriate.

**SECTION 10
RESPONSIBILITIES OF PAWB AND PAMB**

10.1 PAWB shall:

- 10.1.1 Take the lead in pilot-testing these guidelines and principles in key resources and uses in collaboration with the PAMBs and DENR Field Offices;
- 10.1.2 Develop a manual to be used by PAMBs in the implementation of the guidelines and principles after pilot testing in a sufficient number of areas;
- 10.1.3 Assist the PAMBs to operationalized the manual; and
- 10.1.4 Assist in providing experts required by the PAMBS in the implementation of the guidelines and principles.

10.2 PAMB shall:

- 10.2.1 Collaborate with PAWB in the pilot testing of the guideline and principles;
- 10.2.2 Be guided by the by the manual developed by PAWB in implementing the guidelines and principles;
- 10.2.3 Approve all types of uses of resources in a protected area through a Memorandum of Agreement with the concerned entity;

- 10.2.4 Conduct public consultations/dialogues with interested parties on proposed fees;
- 10.2.5 Formulate and pass all resolutions required to enable and facilitate the collection of fees; and
- 10.2.6 Determine through consultations with indigenous people the traditional uses of resources within the protected areas.

This Order shall take effect fifteen (15) days after publication and revokes, supersedes, and amends any order and/or instructions inconsistent herewith.

ANTONIO H. CERILLES
Secretary

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ANNEX A

A. COMPUTATION OF EXCESS PROFIT

The excess profit per year that arises from a natural resource-based activity shall be computed using the following formula.

Excess Profit = gross sales (GS) of natural resource-based product or service
 Less cost of production
 Less margin for profit
 Less margin for risk

where:

GS = (quantity of product or service) x (farm-gate price)

Cost of Production includes:

payment for wages;
 material cost, e.g., gasoline;
 rentals for equipment, buildings, etc.
 depreciation; and
 payments for taxes normally paid by any business enterprise (e.g.,
 Income taxes, permit fees, etc.)

Margin for Profit = normal return to entrepreneurial capita, usually
 determined through prevailing conditions in the financial market

Margin for Risk = a premium to cover losses from natural calamities and other
 causes

The margin for profit and risk shall be set at a maximum of 30% of the total cost of production.

Information to be used in computing for excess profits shall be based on a hypothetical company operating at an efficient level. Such information may be supplemented with data on the cost of the next-best-alternative is the cost of providing equivalent goods and /or services for the same market without using the resources of or derived from the protected area.

B. COMPUTATION OF WILLINGNESS-TO-PAY

The willingness-to-pay for a natural resource good or service shall be computed from appropriate surveys employing accepted economic tools such as travel cost method or the contingent valuation method. These surveys shall arrive at an estimate of the willingness -to-pay for a natural resource good or service taking into account factors such as income, occupation, and nationality, among others.

