Indigenous land tenure systems define practices of access, use, and control over resources by individuals, clans, and communities. These practices among indigenous cultural communities are circumscribed and modified by varying economic and political transformations as well as national land laws within a diversity of historical and social conditions. This chapter examines the issues of indigenous land tenure systems and communal land management, in particular, among Cordillera communities of Northern Luzon, Philippines. The discussion covers three aspects: (i) national land policies and laws affecting the land rights of indigenous peoples in the Philippines, (ii) the character of communal land ownership in different land-use systems and the forms of access to and control over land by landholding households, and (iii) the prospects for communal land management.
ownership and management under the legal framework of the Indigenous Peoples Rights Act (IPRA). This law, passed in 1997, recognizes communal land tenure of indigenous peoples as a legitimate right and creates a favorable legal environment for it to continue. Economic forces, however, appear to be pushing in the opposite direction. In the Cordillera region, new livelihood possibilities are motivating individuals to claim personal ownership over resources that have been commonly owned by their clans or by the community. The opportunity to replace subsistence farming with nontraditional cash crops and even nonfarming activities such as tourism may be the insidious force that will undo communal land tenure among indigenous peoples.

**Diverse Mountain Cultures**

The Cordillera is located in the northern part of Luzon, the largest island in the Philippine archipelago (figure). The Cordillera central region is formed by a series of mountain chains, and most of the major river systems of northern Luzon have their headwaters in the Cordillera.

Cordillera culture is characterized by its diversity. The major indigenous cultural communities who occupy the Cordillera are the Ibaloy and southern Kankana-ey in Benguet Province, the Ifugao of Ifugao Province, the Bontok and northern Kankana-ey of Mountain Province, the Kalingas of Kalinga, the Isnag of Apayao, and the Tingguian of Abra. There are numerous smaller distinct ethnic groups and subgroups within these provinces, such as the Balangao, Kalanguya, and Karao. The groups vary in their political, kinship, economic, and religious organizations (De Raedt 1987; Prill-Brett 1987; Russell 1983; Scott 1982).

Lowland Philippines was a Spanish colony for more than 300 years, but peoples who lived in the Cordillera uplands and the island of Mindanao were never subjugated by the Spaniards (Scott 1982). The highlanders of the Cordillera were successful in repelling the punitive expeditions sent by

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3 There are 110 indigenous peoples in the Philippines, listed by the government in seven clusters: (i) Cordillera and Region I; (ii) Region II, Caraballo Mountains; (iii) the rest of Luzon/Sierra Madre Mountains; (iv) the island groups; (v) southern and eastern Mindanao; (vi) central Mindanao; and (vii) northern and western Mindanao (Guide to R.A. 8371, 1999).
the Spanish colonial government, especially during the 1800s, primarily because the highlanders had undermined the Spanish tobacco monopoly. During the Spanish colonial period, community lands were assigned to early Spanish conquerors as a reward for their services to the Spanish Crown. But the mountain peoples have continued to control their communal lands through their indigenous land tenure system. During the American occupation of the Philippines, the indigenous communities in the Cordillera region continued to practice their traditional resource management with minimal intervention from the colonial government (Jenista 1987).

**Land Laws and Indigenous Peoples: An Overview**

The claim to land ownership in the Cordillera is legally no different from the land claims of other indigenous peoples in the Philippines and other parts of the world. On the one hand, these peoples claim rights to the land as ancestral lands, which they have tilled and which have sustained them for generations. On the other hand, the national government, pursuing a policy of integration, has promulgated and attempted to implement land policies that have displaced and/or dispossessed the indigenous communities of their ancestral lands (Casambre and Rood 1994).

During the American period, several land laws were passed to the detriment of indigenous communities. These include the Land Registration Act of 1902, which required the acquisition of a Torrens title as proof of land ownership, and the Public Land Act of 1905, which declared all unregistered lands and those without Torrens title public lands.

The ambivalent attitude of the Philippine national government toward the assertion of land rights by indigenous communities is reflected in legislation with contradictory intentions. One group of laws and administrative orders has recognized the rights of indigenous peoples to the land they have occupied. The more salient legislations include (i) Executive Order 180 of 1950, authorizing the Bureau of Lands, Forestry, and Soils and the Mountain Province Development Authority to grant Igorots the right to acquire titles over lands they had occupied and cultivated within the Mount Data National Park and the Central Cordillera Forest Reserve; (ii) the
Communal Land Management in the Cordillera Region of the Philippines

Manahan Amendment of 1964, which reset the legal viability of the period of possession of untitled agricultural land by national cultural communities from 1945 to 1955; and (iii) Administrative Order 11 of 1970 of the Bureau of Forestry, providing that all forest concessions, “shall be subject to the private rights of cultural minorities within the concession.”

The other body of law has striven to protect the “national patrimony” even though the state might recognize that indigenous communities live in the affected areas. This includes laws setting aside forest reserves, watersheds, and national parks. Of particular interest to the Cordillera region is Proclamation 217 that established the Central Cordillera Forest Reserve in 1929 and Proclamation 634 that established the Mount Data National Park in 1940 covering 5,513 hectares of territory in Benguet and Mountain provinces. Both proclamations were passed during the American period. Other laws passed after Philippine independence in 1946 include the Forestry Reform Code of 1974 and the Revised Forestry Code of 1975. These declared that all lands of the public domain that had a slope of 18% or more would be permanent forests or forest reserves. This policy negates the classification of most of the centuries-old highland terraced pond fields found in wet-rice cultivating villages of the Cordillera, which should generally be categorized as agricultural land. There was also Presidential Decree 1559 of 1978, which declared that kaingeros (slash-and-burn dwellers), squatters, cultural minorities, and other occupants of public forests or unclassified public land shall, whenever the best land use of the area so demands, be ejected and relocated to the nearest government settlement area.

As Casambre and Rood asserted (1994), “The juxtaposition of these two sets of legislation creates a disjunctured situation where, on one hand, the indigenous peoples’ right to the land by virtue of occupation is recognized, but on the other hand, this is also virtually taken away because of the setting aside of uplands for forest reserves.” What is more important, “the claim of the Cordillera communities to the occupied lands is to be validated only by appropriate procedures of registration and titling” (Casambre and Rood 1994).

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4 Igorots is a term for members of indigenous communities in the Cordillera mountain region.
Recognizing ancestral holdings

In 1990, the Department of Environment and Natural Resources (DENR) created a Special Task Force on Ancestral Lands to identify, evaluate, and map ancestral land claims in the Cordillera Administrative Region. Three years later, in January 1993, the agency’s Special Order 25 and its accompanying Departmental Administrative Order 2 set up task forces on ancestral lands and ancestral domains throughout the Philippines (Rood 1994). This was a watershed in the long struggle of Philippine indigenous cultural communities to make the Philippine state recognize native title.

More specifically, the administrative order recognized indigenous property regimes and the rules of indigenous land tenure systems. Indigenous cultural communities were now legitimate occupants on lands they had traditionally occupied, possessed, and controlled over many generations. Within this legal context, ownership and/or usufruct right is vested in persons or groups not through a land grant from the state but because of the proof of the possession of the land over a long, continuous period of time, which confers natural rights or native title to the occupants. The main objective of the order is to preserve and maintain the integrity of ancestral domains and to ensure that customs and traditions of the indigenous cultural communities are recognized. Moreover, it provides the basis for identifying and delineating ancestral domains and ancestral land claims, and it formulates strategies for effective management of such lands.5

The grant of a “certificate of ancestral domain claim” provided the legal basis for the recognition of ancestral lands and ancestral domains. Ancestral domain claims are made by indigenous cultural communities, and ancestral land claims are made by households or clans. Although the

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5 Ancestral domain refers to all lands and natural resources occupied or possessed by indigenous cultural communities, by themselves or through their ancestors, communally or individually, in accordance with their customs and traditions since time immemorial, continuously to the present except when interrupted by war, force majeure, or displacement by force, deceit, or stealth. It includes all adjacent areas generally. Ancestral land refers to land occupied, possessed, and used by individuals, families or clans who are members of the indigenous cultural communities, since time immemorial, by themselves or through their predecessors-in-interest, continuously to the present except when interrupted by war, force majeure, or displacement by force, deceit, or stealth.
certificate is a claim rather than a title, it vested indigenous communities with the legal basis to confront the actions of government agencies or development programs that assert the state’s prerogative to claim indigenous peoples’ lands that lack paper titles. The recognition of ancestral domain of indigenous communities is necessary to provide legal protection for indigenous communities in their claims on forest resources against outside forces, especially state interventions and large-scale commercialization.

Then, in 1995, the National Protected Areas System law recognized ancestral domain and customary rights in designated protected areas and stressed the role of indigenous cultural communities in protecting biodiversity. Finally, the expanding recognition culminated in the passage of the IPRA in October 1997.

This landmark law commits itself to the protection of four rights of indigenous communities: the right to ancestral domains and lands; the right to self-governance and empowerment; the right to social justice and human rights; and the right to cultural integrity. Taken together, these represent a national decision to choose acceptance of ethnic diversity and political and social heterogeneity over a determined integration of minorities into political processes dominated by hispanized Filipino groups.

The decision is reflected in the evolution of official terms for indigenous peoples in the Philippines. In colonial history, various words have been used, each of them reflecting the attitude of national government. Religion was an important factor in this identification process. Under the Spanish government, members of indigenous communities were referred to as infieles (or infidels), Christianized natives as Indios, and natives who were converts to Islam as Moros.6 The American government officially referred to

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6 Corpuz (1997) says that for centuries before the arrival of the Europeans, Southeast Asia had been penetrated by world traditions from the People’s Republic of China, Saudi Arabia, and India. However, the people of pre-colonial Philippines participated little in these developments. This was so because “the archipelago lay beyond or at the end of land and sea routes travelled by these great traditions.” The exception is the southernmost part, where “Islam entered Sulu in the 13th century. The sultanate was founded here by 1450. By the 16th century and early 17th century, Islamic political institutions were present in Magindanao.” Islam expanded northward
these groups as “Non-Christian Tribes” or “Non-Christian Filipinos”. The Philippine government, creating the Commission on National Integration in 1957, referred to them as national cultural minorities. This term appeared in the 1973 Constitution (Article 15, Section 2): “The state shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies.” A slightly different phrase—“indigenous cultural communities”—appears in Article 11, Section 5 of the 1987 Constitution: “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.” This was later adopted in the IPRA, where it was made synonymous with the term “indigenous peoples”. The national Forestry Department, however, has used the terms “upland dwellers” and “forest occupants” to refer to members of these groups (Resurreccion 1999). Unfortunately, these phrases highlight the individual identity and neglect the collective identity that the terms “indigenous cultural communities” and “indigenous peoples” carry.

International organizations can be credited for drawing attention to the collective identity of indigenous cultural communities and to the eventual adoption of the phrase “indigenous peoples”. A pivotal role was played by the United Nations (UN). In the early 1980s, a UN special rapporteur, José Martínez Cobo, submitted a comprehensive report detailing the woes suffered by indigenous peoples. In response to this, in 1982, the UN established a Working Group on Indigenous Populations composed of five independent experts chosen from five UN geographical regions (Tauli-Corpuz and Alcantara 2004). This group crafted the Draft Declaration of the UN on the Rights of Indigenous Peoples, which was adopted by the UN Sub-commission on the Promotion and Protection of Human Rights (formerly called the Sub-commission on the Prevention of Discrimination and Protection of Minorities) in 1994. Tauli-Corpuz and Alcantara (2004) through Palawan and Mindoro, then to Batangas in Luzon and the Manila-Tondo area. Here, some people had converted to Islam before the Spaniards took Manila in 1571. “By 1588, the Muslim link to Luzon was ended and the Spanish regime became secure.” Islam strengthened its foothold in Mindanao, disappeared from Luzon, and did not establish itself in the Visayas.
assert that the IPRA is one example of a national law that was significantly influenced by this draft.

The act provides a legal framework for upholding indigenous land rights, particularly over communal land. It provides for the grant of state recognition of native title that indigenous peoples in the Philippines have long sought. It also establishes free, prior, and informed consent of the affected indigenous peoples as a requisite for any development program introduced by the state or any outside agency in their ancestral domains. The consent requirement has given indigenous peoples some clout in dealing with outside commercial interests keen on exploiting resources found within their ancestral domains.

**Regalian Doctrine versus indigenous rights**

The Regalian Doctrine, a concept dating back to the days of the Spanish monarchy that still underpins the Philippines’ legal system of land ownership, declares that the state owns all natural resources. As Article 12, Section 2 of the 1987 Philippine Constitution says:

> All lands of the public domain, waters, mineral, 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.

Under this system of land ownership, lands are generally classified as private or public. Private lands are lands that have been segregated from the general mass of the public domain by any form of grant by the state. Public lands refer to all lands that are not acquired by private persons or corporations and are generally classified as agricultural or nonagricultural lands. Only lands classified as agricultural may be declared as “disposable” and eligible for private ownership.

One can argue from the point of view of the Regalian Doctrine that most indigenous occupants are squatters on public lands since any land not covered by official documentation is considered part of the public domain and owned by the state, regardless of how long the lands have been continuously occupied. The occupants may be evicted should the government have a need for the land. This negates the viewpoint of the indigenous
peoples that villagers have prior rights to territory they have traditionally occupied and exploited from generation to generation (Prill-Brett 1988).

The proposition that the Regalian Doctrine and the state recognition of ancestral domains and ancestral lands are incompatible became the subject of a petition in 1998 less than a year after the passage of IPRA. A suit before the Philippine Supreme Court was filed challenging the constitutionality of certain provisions of the law and its implementing rules and regulations as an unlawful deprivation of the state’s ownership over lands of the public domain as well as minerals and other natural resources there, in violation of the Regalian Doctrine embodied in the Philippine Constitution. After listening to arguments from respondents and intervenors, the Supreme Court deliberated and then voted on the petition. The first vote was tied at seven to seven, which meant that the petition would be denied. A re-deliberation followed, but the outcome of the voting remained the same. Hence, the petition against the law was dismissed on 6 December 2000 (Candelaria 2002). Based on this decision, one can conclude that the court saw no inconsistency between the concept of native title and the Regalian Doctrine.

Justice Reynato Puno, now chief justice of the Supreme Court, said the IPRA is “recognition of our active participation in the indigenous international movement. Indigenous rights came as a result of both human rights and environmental protection, and have become a part of today’s priorities for the international agenda” (Human Rights Agenda 2000).

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7 This suit was filed by Isagani Cruz and Cesar Europa. The specific provisions are Sections 3(a), 3(b), 5, 6, 7, 8, 57, and 58 defining ancestral domains and ancestral lands, indigenous concept of ownership, and rights to ancestral domains and ancestral lands. The petitioners also cited (i) provisions defining the powers and jurisdiction of the National Commission on Indigenous Peoples and making customary law applicable to the settlement of disputes involving ancestral demands and ancestral lands for violating the due process clause of the Constitution, and (ii) the rule that defines the administrative relationship of the commission to the office of the President as lateral but autonomous for purposes of policy and program coordination as an infringement upon the President’s power of control over executive departments under Article 7, Section 17 of the Philippine Constitution (Candelaria 2002).
Communal Land Tenure in the Cordillera

In the Cordillera region, traditional occupancy and exploitation of land and natural resources by indigenous cultural communities are covered by indigenous land tenure systems. These have evolved over time through the process of selection and adaptation as a result of the interaction of the people with their natural environment (Rambo 1983; Sajise and Rambo 1985). Such community–environment interactions produce social arrangements affecting the utilization of natural resources. These types of property systems have been practised among Cordillera cultural communities, especially among the wet-rice irrigators (Prill-Brett 1985, 1993; Boquiren 1995).

Land use and tenure rights

The general principle in claiming land rights in the Cordillera region is to be the first to occupy the land by clearing it. Indigenous cultural communities recognize different land-use systems with corresponding rights, e.g., land rights for wet-rice farming, grazing cattle and water buffalo, swidden—also known as shifting—agriculture, foraging, and mining. It is not uncommon for indigenous communities to have multiple land-use systems, each of which is governed by a different set of customs and rules.

For shifting cultivation, productive land is acquired by clearing a portion of a forest through the slash-and-burn method. Shifting cultivation is governed by usufruct rights, and each cultivator has exclusive ownership rights to the crops produced. Such lands are cultivated for several years until the soil becomes depleted of nutrients. Then the land is kept fallow for several years for regeneration. During this period, the cultivator either clears another portion of the forest or returns to a piece of land that has been kept as fallow land for several years. In such a cyclical system, minimal land improvement is made because of the temporary tenure and the limiting ecological conditions. Indigenous communities who practice shifting cultivation where land is still plentiful and the population density is low are governed by community rule. However, where land is scarce and population density is high, the communities have a well-defined form of ownership rights for a more regular “short cycle” cultivation of land. This usually is prevalent among wet-rice cultivators.
Pasture or grazing lands called *estancias* generally belong to community members who have common ownership rights over the land, as in the case of Ibaloy and Bontok communities. Although any member of the community can graze cattle, buffalo, and other livestock on such land, it is generally the more wealthy people—those who can afford many animals—who benefit from such land rights. Some pasture lands were privatized among the Ibaloy during the American colonial period (Tapang 1985; Wiber 1986).

Stands of trees may belong either to the community as communal property or to a descent group as corporate property. In vast and sparsely populated areas, such tree stands may even become “open access” land. Forest lands that have become agro-forests are looked after by individual members of indigenous communities who collect forest products and exclude others from benefiting from them. The rights to agro-forests such as the *muyong*, found in Ifugao province, have devolved to individuals, but this private property is managed by households or by clan.

Those whose livelihood depends only on forest products generally do not display a strong attachment to land, as they do not invest labor in maintaining or improving the land. The claims of such communities are not for the land but for the products gathered within a territory that they have traditionally exploited.

Mining sites, particularly in Benguet province, are traditionally owned by individuals who have invested labor and materials in the construction of mines and tunnels and possess exclusive rights over such sites (Scott 1974; Wiber 1986; Bagamaspad and Hamada-Pawid 1985).

An important characteristic of land ownership in the Cordillera region is the rule of non-alienation of lands to individuals or groups who do not belong to the community. Land transfers are strictly governed by the following rule: land is first offered to the immediate family, then to close kin, before it is finally offered to other members of the community.

**Access to land and land “markets”**

The presence of different forms of indigenous land tenure and land-use rights is confirmed by a 1994 survey in which 125 landholding house-
holds in three villages of the Cordillera region participated: Village 1 is in Benguet, Village 2 is in Ifugao, and Village 3 is in Mountain Province. Survey data show a household can have access to common land owned by the husband’s or the wife’s clan and also to common land owned by the community. A household may also possess land inherited by each spouse.

At the time of marriage, household land consists of each spouse’s inherited land. Inheritance rules may be specific to the type of land. One such distinction is between the inherited land and the acquired land (Agarwal 1994). The former is that which has been passed on to the first-born from generation to generation along a descent line referred to as *ancestral*. The latter is land acquired during the spouses’ lifetime. The acquired land is passed on to non-first-born children. Inheritance rules in the Cordillera region do not discriminate between sons and daughters.

Children inherit usufruct rights to land owned either by their father’s or their mother’s clan. The harvest from the cultivation of such land is privately owned, although the land itself is not. Thus, the land cannot be used as collateral for a loan, nor can the cultivator sell it. When he or she stops tilling it, another member of the clan with user rights may cultivate it. However, in some communities like the Bontoks, it is possible under certain conditions to appropriate and alienate parcels from the clan land. These rules include continuous cultivation for five years or more and land improvements such as the building of irrigation canals or terracing.

In addition, the married couple may have access to land through individual user-rights to the clan’s and the village’s land. Sharecropping exists in some villages, allowing land-scarce farmers to have access to land. Although the traditional means of access to land through inheritance and usufruct remain dominant, land purchase and land rental have recently become quite common in Cordillera region.

To gain access to land to cultivate was not difficult in the sample villages according to the 1992 census. Access to farmland was available to 91% of households in Village 1, 84% in Village 2, and 80% in Village 3. The table presents the proportion of sample households that have access to land through different types of tenure. In all three villages, there is a close relation between the type of access to land and the level of commercialization
of farms, that is, cultivation of cash crops. The percentages of households that rented or purchased land are high among farms that grow cash crops. On the other hand, on land where they have only user rights, farmers were not keen to cultivate cash crops. Farms in Village 1 are highly commercialized, Village 2 farms are moderately commercialized, and Village 3 farms are the least commercialized. Village 1 grows only vegetables, while Villages 2 and 3 both practice a mixed farming system with rice and vegetables.

For most of the households in all three villages, inheritance gives access to land. More than two-thirds (69%) of households have access to land by the husband’s inheritance, and 62% have access through the wife. Even without inherited land, a married couple can have access to land for cultivation through their individual user rights on land owned by the husband’s or wife’s clan, and/or the community. Land can also be accessed through inheritance or through share-cropping agreements, renting with a fixed rental, or by purchase. About one-fourth of houses have access to land through land rentals. Ten percent of households purchased land from others and became absolute owners of such land. The sale and purchase of land usually result from the inability to redeem mortgaged land.

### Land Access and Commercialization of Crops
 (% Distribution of Households)

<table>
<thead>
<tr>
<th>Forms of Access to Land</th>
<th>Cash Crop Cultivation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High (Village 1)</td>
</tr>
<tr>
<td></td>
<td>Moderate (Village 2)</td>
</tr>
<tr>
<td></td>
<td>Low (Village 3)</td>
</tr>
<tr>
<td></td>
<td>All 3 Villages</td>
</tr>
<tr>
<td>Inherited by husband</td>
<td>62</td>
</tr>
<tr>
<td>n = 48</td>
<td>62</td>
</tr>
<tr>
<td>User rights from husband’s clan</td>
<td>10</td>
</tr>
<tr>
<td>n = 48</td>
<td>14</td>
</tr>
<tr>
<td>User rights from wife’s clan</td>
<td>4</td>
</tr>
<tr>
<td>n = 48</td>
<td>14</td>
</tr>
<tr>
<td>User rights to community land</td>
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</tr>
<tr>
<td>n = 48</td>
<td>0</td>
</tr>
<tr>
<td>Sharecropped land</td>
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<tr>
<td>n = 48</td>
<td>14</td>
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<tr>
<td>Rented land</td>
<td>40</td>
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<tr>
<td>n = 48</td>
<td>14</td>
</tr>
<tr>
<td>Purchased land</td>
<td>12</td>
</tr>
<tr>
<td>n = 48</td>
<td>7</td>
</tr>
</tbody>
</table>

The type of access to land varies among the three villages. The number of households having access to land through inheritance is highest in the least commercialized village, Village 3. Households with user rights to clan land are slightly more prevalent in rice-producing Village 2 and Village 3 than in vegetable-growing Village 1. Again, the proportion of households with user rights to community land is highest in the least commercialized Village 3, and there are none in the moderately commercialized Village 2. This means that there no longer any land that is communally owned.

Sharecropping is nonexistent in the highly commercialized Village 1, because villagers no longer cultivate rice, which often requires the help of sharecroppers. In Village 2, fewer than one-sixth of households cultivate rice on their lands. As Sajor concludes from the data from an Ifugao village, sharecropping is the most important access a landless person could have to a piece of land to earn his living (1999).

Renting of land is significant among vegetable-growing Village 1 (40%) but much less so in Village 2 (14%). This indicates that land rental and purchase are more important in the highly commercialized farms, where vegetable gardening is the predominant agricultural activity. However, quite unexpectedly, 23% of households rented land in the least commercially developed Village 3. This may be because of the growth of other cash-earning jobs, such as local tourism and overseas employment, which bring money to the village. Such money has enabled households with limited land resources to rent extra land parcels for growing crops. On the other hand, some households with large landholdings have rented out part of their land because they have discovered that their household labor can find employment elsewhere that is more lucrative than farming.

The access to land through purchase is rather low in the rice-growing villages, with 7% in Village 2 and 8% in Village 3. The proportion of households with purchased land is highest—12% in the highly commercialized Village 1, where about two-thirds of purchases of land are transactions between relatives (Cruz 1994).

**Farm cultivation and new crops**

Vegetable gardens have transformed the physical landscape of the Cordillera. The spread of vegetable farming was gradual in the past but
has become rapid since the 1980s. Farmers in Mountain Province grow salad tomatoes not only on their pond fields in rotation with rice but also on their swidden land parcels (Mendoza et al. 2006). The Regional Office of DENR has confirmed that the mossy forests of Mount Pulag in Benguet are in danger of being overrun by vegetable gardens.8

Among farmers in Cordillera communities, decisions to adopt new crops and new technology on agricultural plots have not all been detrimental to the environment. In the rice-growing village in Ifugao, farmers adopted the modern, double-cropping varieties in the 1980s, replacing indigenous rice varieties that had been cultivated. Given that the net income per cropping on the same field is more or less equal between the two varieties, farmers adopted the high-yielding varieties because the maturation period is shorter, labor inputs are generally smaller, and resistance to local pests is higher. These farmers either avoid the heavy application of agrochemicals or refrain from using them altogether, thereby minimizing the damage to the soil and to edible fish in their pond fields (Sajor 1999).

Prospects of Communal Land Management in the Cordillera

A key argument for recognizing indigenous peoples’ land rights is that there is a link between land conservation and indigenous peoples, as “they would be better ecological managers” (Leonen 1998). In this regard, an accepted presumption is that recognizing ancestral domain and thereby communal land ownership is ecologically sound (Rood 1994). Indigenous resource management practices are seen as conservation-oriented. For example, the Regional Master Plan for Forestry Development of 1992 cites the forests owned by indigenous corporate groups, such as the tayyân of Bontoc or the muyong of Ifugao, as living representations of excellent methods of soil and water conservation practices present in indigenous forest management systems. Policy documents of the natural resources department affirmed that by recognizing ancestral domain and land claims, the state would enlist indigenous cultural communities (who become responsible for rehabilitating, protecting, and managing the

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8 Midland Courier. 2007, 20 May.
resources in their ancestral domain) for sound forest conservation (Sajor 1999). In January 2006, a memorandum of agreement was signed by the department with the National Commission on Indigenous Peoples, recognizing the indigenous forest management practices in the Cordillera such as among the muyong in Ifugao, the batangan of Sagada, Mountain Province, the kijuwan of Benguet, and the lapat of Abra. The memorandum expands the department’s limited recognition of the muyong in 1996. The most significant outcome of this agreement is the recognition that members of indigenous cultural communities in the Cordillera can utilize forest resources under certain conditions, that is, villagers can harvest lumber or other forest products to build houses and for other domestic needs from their clan and communal forests without first obtaining a permit from the natural resources department.

Recognition of indigenous people’s land rights could address the growing threat to the environment from the tendency toward “open access”, which is a result of the interface of customary land law and the Regalian Doctrine of national law. Prill-Brett (2003) argued that in the Cordillera, there is an increasing tendency for common property regimes to be converted into open access regimes. The state, through agencies such as DENR, formally asserts its rights over forests through the declaration of forest reserves or protected areas. The indigenous cultural communities who may have previously exercised rights to use these forests as resources in their ancestral domain are deprived of their access and use rights. From their view, when these forests are declared public lands, they become “open access” property. As such, they are open to competition for use by all. Users try to extract the most that they can while the resources are still abundant. There is little regard for allowing resources to regenerate, because the users’ future access is not guaranteed. The tragedy is that even members of indigenous cultural communities will compete for such limited resources, thereby hastening their rapid depletion. This is the story that one draws from the accelerated conversion of the mossy forests of the Mount Data National Park into vegetable gardens since the 1970s (Delson 1989). The same is threatening the mossy forests in the Mount Pulag Protected Area of Benguet and Mount Polis of Ifugao. In addition, the government’s declaration that the forest is a public property and is owned by the state has encouraged neighboring villages to encroach into the traditional domain of other villages to exploit their resources. This
has resulted in increased conflicts over resources and boundary disputes among members of different village communities.

**Delineating ancestral domains: the ili**

The prospect for sustaining communal land management brightened with the passage of the IPRA because the law recognizes “ancestral domains” of indigenous cultural communities. However, a thorny problem has arisen regarding the identification and delineation of ancestral domains in terms of who the indigenous cultural communities are with rights to their ancestral domains. The elaborate definition of indigenous peoples contained in IPRA does not uniquely identify the spatial reference of the territory of the organized community that exercises authority over an ancestral domain. The definition may apply spatially to the barangay, which is the smallest politico-administrative unit of the Philippines, or to the municipality, a larger unit. So far, certificates of ancestral domain titles have been awarded to municipalities. The first one granted under IPRA in the Cordillera was awarded to the municipality of Bakun in Benguet in July 2002.

However, if historical realities were to be the basis of such demarcation, the spatial reference must be neither to a barangay nor a municipality but to the smaller ili, a term in the Philippines for a geographical area historically inhabited—and defended—by a homogeneous people with common ancestors. The traditional territory that a Cordillera community would defend, as a way of asserting the prior right to its natural resources, today would constitute only a barangay or a cluster of barangays. Rarely would an ili be as large as an entire municipality. Thus, the awarding of an ancestral domain claim or title over an entire municipality may not be prudent, as there is no traditional mechanism for managing resources in such a created “ancestral domain” and it would lead to serious problems of conflicting uses, resource competitions, and boundary disputes. Municipal officials may insist on making decisions over the ancestral domain, since the certificate was granted to the municipality. The council of elders of the ilis within a municipality may also assert their authority based on customary laws. Clans, user groups, and even peoples organizations may contest these. Who will adjudicate these competing claims to exercise authority over the ancestral domain is still unknown.
Privatizing indigenous corporate property

Another emerging problem is the tilt toward individual ownership of common resources as new livelihood opportunities emerge. Among indigenous communities that still practice collective land ownership through corporate descent groups, there are occasions when such corporate land becomes privatized through individual actions. This tendency of privatization is facilitated by the cultivation of nontraditional crops and cash crops such as temperate vegetables, coffee, citrus, and fruit trees on indigenous corporate lands. The incentives to adopt such crops also come from the development programs of the Department of Agriculture, which are part of the poverty alleviation measures to uplift the economic conditions of these indigenous cultural communities.

After planting orchards and making other changes to the land such as building barbed-wire fences, the enterprising person then takes the next step toward privatizing the land by declaring it to be individual property for the purposes of paying taxes. This is also referred to as obtaining a tax declaration on the property, filed with the local Assessor’s Office or the Bureau of Lands. If the other members of the descent group, who by virtue of customary law possess coequal rights to this property, do not protest, they will eventually find themselves excluded from any future use of this common property. Hence, the common rights of members of the corporate descent group would have been successfully extinguished by the tax declaration that contains only the name of the individual who complied with the requirements of national law for the registration of the property and the payment of taxes.

It is also likely that this scenario will be repeated even for the common property owned by the community or the ili. As cash crops require a large investment of financial capital, the push toward individual ownership is strong as the farmer seeks to ensure sole and continuous land use to recoup expenses. Individuals would claim what would normally be communal land owned by the indigenous corporate group or the community for cultivation. And when no one challenges the private utilization of such communal land, it may eventually be claimed by the cultivator as individually owned. It is plausible that communal ownership will dismantle over time, as the exercise of exclusive control over land and its resources is
increasingly becoming lucrative, especially with the scarcity of farm land (Smith and McCarter 1997).

The Right to Say No to Development Projects

Free, prior, and informed consent of the concerned indigenous cultural community is a foremost requirement before any project may be introduced in any area covered by the ancestral domains. Section 59 of the IPRA provides that indigenous cultural communities have the right to stop or suspend a project that has not undertaken the required consultation. This provision intends to avert the repeat of several struggles of indigenous cultural communities to ward off outsiders’ encroachments into their ancestral territories. The most memorable and successful resistance to state encroachment into the Cordillera territory threatening the existence of several indigenous cultural communities was the concerted action against the Chico River Hydroelectric Dam Project in the 1970s (Leonen 1998). At that time, the dominant attitude among state agencies was that the need for national development projects such as large dams could override communal rights and traditions of indigenous cultural communities. The affected indigenous cultural communities, based on their own alliances, resisted the state forces, and the dam was not built.

Today, under the legal framework of the IPRA, indigenous cultural communities in the Cordillera are seriously exercising their right to decide over projects operating within their territories. In April 2007, seven ancestral domain units in municipalities in Kalinga were asked by the National Commission on Indigenous Peoples in a series of consultations whether they would agree to the intent of a company to explore their lands for possible sources of geothermal energy. Five gave their free, prior, and informed consent, one rejected the offer, and the other still had to make a decision. In July 2007, the Cordillera office of the commission issued a certificate of no consent for the planned expansion of a mining firm in Benguet. The provincial government was requested to look into the issues raised by residents of the affected area. In August 2007, an agreement was signed between an oil and energy corporation and a Kalinga cultural community to allow the company to conduct
exploration work and to develop and operate the mineral claims over territory located in the community’s domain. In return, the corporation committed itself to several social development projects, including a geodetic survey for the ancestral domain of the community, construction of suspension bridges, rehabilitation of footbridges, undertaking a community medical outreach program, construction of a single classroom structure for the elementary school, and the acquisition of an ambulance for the community.

These favorable scenarios are perhaps strongly facilitated by the fact that in the Cordillera region, indigenous cultural communities constitute the majority of the population. As a result, members of indigenous cultural communities get elected to municipal and provincial positions. Owing to the passage of the Local Government Code of 1991, which decentralized important administrative functions and provided a stable source of funds for local government units, local government officials in the Cordillera have become a reliable partner in the pursuit of indigenous peoples’ rights. This cannot be said of other regions in the Philippines, where indigenous peoples constitute a minority of their locality or where none of the elective or appointed officials of government agencies are members of indigenous cultural communities. In such instances, marginalization is probably the rule.

**Conclusion**

The passage of the IPRA in 1997 has provided a framework for safeguarding native title and indigenous resource management practices. The law recognizes communal ownership through its grant of a certificate of ancestral domain title, establishing a necessary support for communal land management. Not only did the law reverse the discrimination of indigenous peoples, but it also led to government policies that uphold human rights of indigenous cultural communities. What is more important, this national law has also created through free, prior, and informed consent a powerful process that indigenous cultural communities can wield against unwanted private and public incursions into their traditional domains. The process also enables the community to negotiate the terms and conditions under which outsiders may use the resources within its ancestral domain.
Among the Cordillera communities, communal land ownership is exercised alongside clan and individual land ownership. Communal ownership is a property system that is exercised by indigenous corporate groups such as clans or wards or by the ili or community over swidden lands, forests, and pastures. It is not strong enough to arrest the development of individual entrepreneurship among community members. As a result, many individual farmers with property rights over their farms have invested in productive land uses and adopted new crops and technology where appropriate. In fact, the persistent concern is that the lure of more farm income from cash crops has induced rapid conversion of swidden, pasture, and forest land, even those traditionally belonging to clans or communities, into private, individual agricultural plots. Not only does this conversion threaten the forest cover, but it also eliminates the channels through which equitable use of common property resources is ensured. From this perspective, the threat to communal land management may in fact arise from the internal socioeconomic dynamics of indigenous cultural communities. The drive for materially sufficient lifestyles may prove to be the more difficult threat to overcome.

All indigenous cultural communities have experienced changes in varying degrees. An important lesson that bears repeating is never to disregard the complexity of the dynamic interactions of indigenous cultural communities, which have their own historical antecedents, with economic, political, and social transformations and with state policy, as these take place in a specific ecological landscape. These are the specific contours of individual communities that policies and programs must take into account if they are to improve the socioeconomic status of indigenous people. There are no magic formulas, no universal templates, and no standard models that apply to each and every case.

References


