



Policy Brief

No. 55, 2021

Fair and transparent benefit-sharing in Philippine Government forest restoration programs

Summary

People's Organizations (POs) in the Philippines have been working with the Government in programs and projects with upland communities since the adoption of a national community-based forest management strategy 25 years ago. The long-term success of Government reforestation programs depends on the incentives of POs to continue managing the resources beyond the lifetime of the program. Clear access and utilization rights — including fair and transparent benefit-sharing agreements — are pre-conditions to this process. This brief provides concrete policy recommendations to ensure that POs can benefit adequately from the timber and non-timber forest resources they have contributed to creating through planting forest- and fruit-tree species or in restoring and rehabilitating forest areas through the protection and maintenance of naturally regrowing seedlings.

Key messages

- The Philippine forest sector is characterized by a plethora of different forest tenure instruments. These instruments

are often overlapping in jurisdiction and have contradicting rules that create ambiguity and potential for conflict over people's rights to land and forest resources.

- One problem arises with the ambiguity of access and harvesting rights for timber and non-timber forest resources that were acquired through community efforts in reforestation programs.
- Access and utilization rights for the timber and non-timber forest resources that can be attributed to the efforts of a community should be independent of the actual land title. As part of project closures, the Department of Environment and Natural Resources (DENR) should mainstream inventories of all timber and non-timber forest resources that can be attributed to the efforts of the community and provide an estimate of the monetary value of the potential timber, wood and non-timber forest product (NTFP) stocks.
- As part of social safeguard procedures of any community-based reforestation project, the Government should ensure that there are clear rules for fair and transparent benefit-sharing or compensation agreements.

Introduction

The Philippine forest sector is characterized by a plethora of different forest tenure instruments introduced during and after the 1970s, transferring access and management rights from the State to upland communities. Some of the instruments often overlap in jurisdiction, such as Community-Based Forest Management Agreements (CBFMAs) and Certificate of Ancestral Domain Claims (CADCs), which have contradicting rules and are so vague that they spark conflicts over people’s rights to land and forest resources.

Also, the complicated web of regulations and processes that underline the different instruments have seen tenure rights expiring, leaving millions in legal limbo. While there have been recent attempts to rationalize and simplify the types of forest tenure arrangements, an estimated 17–22 million people living in the uplands of the Philippines, half of whom are Indigenous Peoples (IPs) and Indigenous Cultural Communities (ICCs), have no written land tenure.

The long-term success of Government reforestation programs, such as the Integrated Natural Resources and Environmental Management Project (INREMP), depends on the incentives of POs to continue managing resources beyond a program’s lifetime. Clear access and utilization rights, including fair and transparent benefit-sharing agreements, are pre-conditions for this process.

INREMP aims to improve the conditions of upland watersheds by turning upland communities into micro-, small-, and medium-sized enterprises producing forest and agricultural

products sustainably. INREMP works directly with POs through two major interventions: 1) financing, design and implementation of sustainable land-use systems, called commercial forestry investment sub-projects (CFISPs); and 2) investments in infrastructure, equipment and community organizational capacity, called livelihood enhancement support (LES) projects for value-chain development, upgrading and governance. INREMP has succeeded in establishing more than 20,000 hectares of integrated tree and crop systems, replanting 625 fast-growing timber and fruit species.

POs hold various tenure instruments. The majority of POs hold CBFMAs while some hold Protected Area Community- Based Resource Management Agreements (PACBRMA).

Both instruments are usually given for a term of 25 years and can be renewed thereafter for another 25 years subject to compliance of the PO with the terms and pertinent laws, rules and regulations.

Harvesting or resource-use permits for timber and non-timber products are embedded in CBFMA and PACBRMA. The permits are conditional on an approved Community Resource Management Framework (CRMF) or Community Resource Management Plan (CRMP). POs 1) are entitled to occupy, possess, utilize and develop forestland and resources; 2) are exempted from paying rent and forest charges on timber and non-timber products harvested from plantations; and 3) receive all income and proceeds from sustainable utilization. If a PO has not finalized a CRMF or CRMP, they are equally entitled to rights over the resources through ‘interim resource utilization rights’.

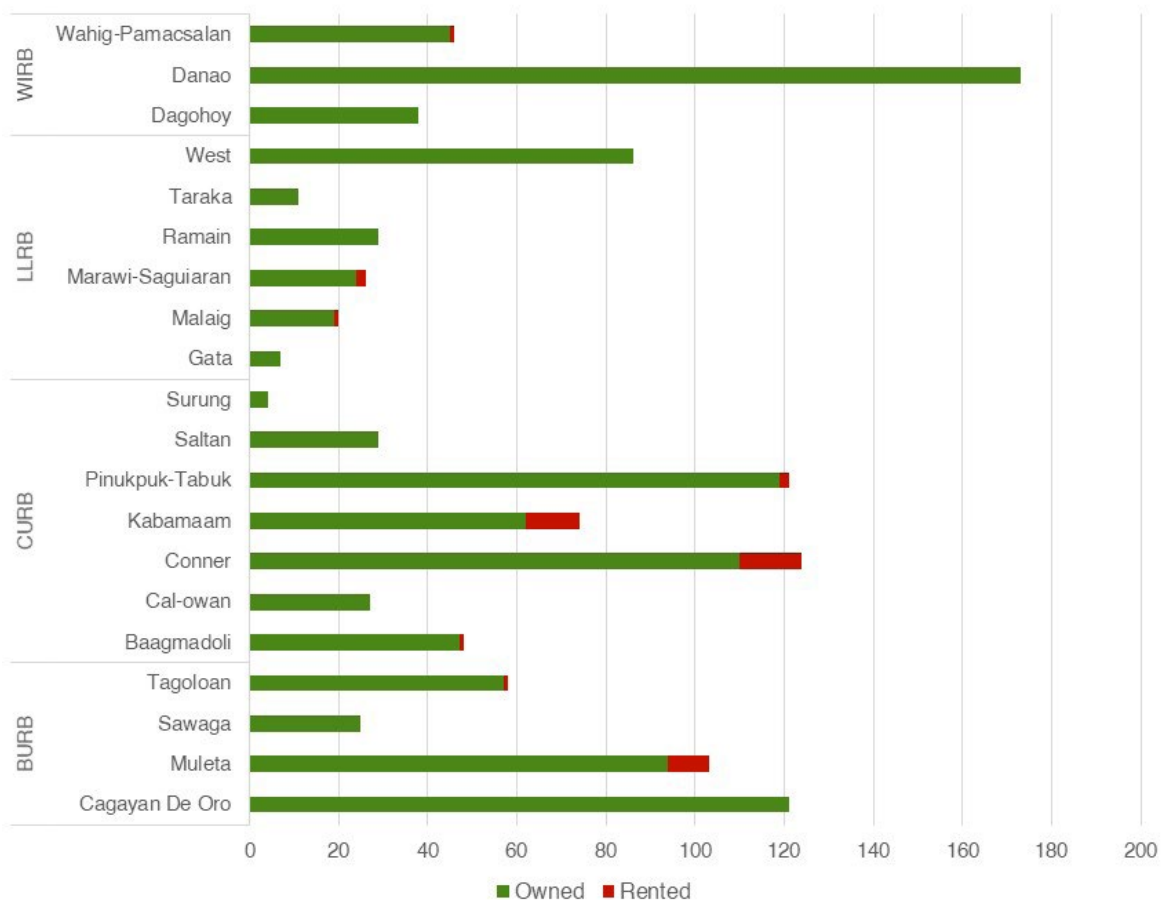


Figure 1. Land-tenure instruments across People’s Organization

Moreover, DENR Administrative Order (DAO) No. 1996-29 offers a social safeguard procedure to Pos that accounts for unforeseen circumstances and policy changes, whereby the tenure holder is entitled to compensation for all improvements made and affected participants shall have the right to harvest or remove improvements consistent with application of policies.

Both CBFMA and PACBRMA licenses are due for renewal. CBFMA contracts were first issued in 1995 and several ended their first 25-year cycle in 2020. PACBRMA are more recent tenure instruments that only started in 2002. Due to new legislation enacted after 1995, there is ambiguity about the renewal process of the licenses and uncertainty over the harvesting or resource-use permits for the CFISPs established under INREMP.

Executive Order 23 of 1 February 2011 suspended the cutting and harvesting of timber in natural and residual forests. This was followed by DENR Memorandum Circular 2003-14, which declared a moratorium on the establishment of new wood-processing plants. The moratorium prohibits the issuing of logging contracts/agreements in all natural and residual forests. ‘Residual forests’ are defined as those composed of indigenous trees not planted by humans. The ambiguity stems from the interpretation of indigenous trees that have been planted or have been restored through assisted natural regeneration.

The other is the National Commission on Indigenous Peoples (NCIP) Administrative Order (AO) No. 3 from 2012. The NCIP AO No. 3 underscores the policy of the Government of the

Philippines that no concession, license, permit or lease or, undertaking affecting ancestral domains will be granted or renewed without acquiring a Free, Prior and Informed Consent (FPIC). The FPIC process is needed before the issuance of a Certificate of Precondition (CP) by the NCIP. With many existing CBFMAs that will wrap up their first 25-year mandate and will be subjected to renewal, the new FPIC requirement of NCIP entails a new and complex seven-step process of consultation.

Methodology

Data and information were collected through key informant interviews and stakeholder meetings with relevant Government agencies, local government units (LGUs), and different POs and Indigenous People’s Organization (IPOs) in the Bukidnon Upper River Basin (BURB) of Region X, Chico Upper River Basin (CURB) in the Cordillera Administrative Region, and Butuan City, Agusan del Sur in Region XIII.

Results and conclusions

Types of tenure agreements

Land tenure of areas included in INREMP is complicated due to overlapping tenure instruments and contradictory policies. The majority of POs were issued CBFMAs dating back to 1995, which in some areas overlap with Certificate of Ancestral Domain Claims/Titles (CADC/ CADTs) issued in 1997. Some POs have pending renewals for Certificate of Stewardship Contracts (CSCs) that expired in 2013. Per Section 14 of DAO 2004-29, CSCs are co- terminus with CBFMAs and shall be issued by CENRO upon recommendation of the PO, provided

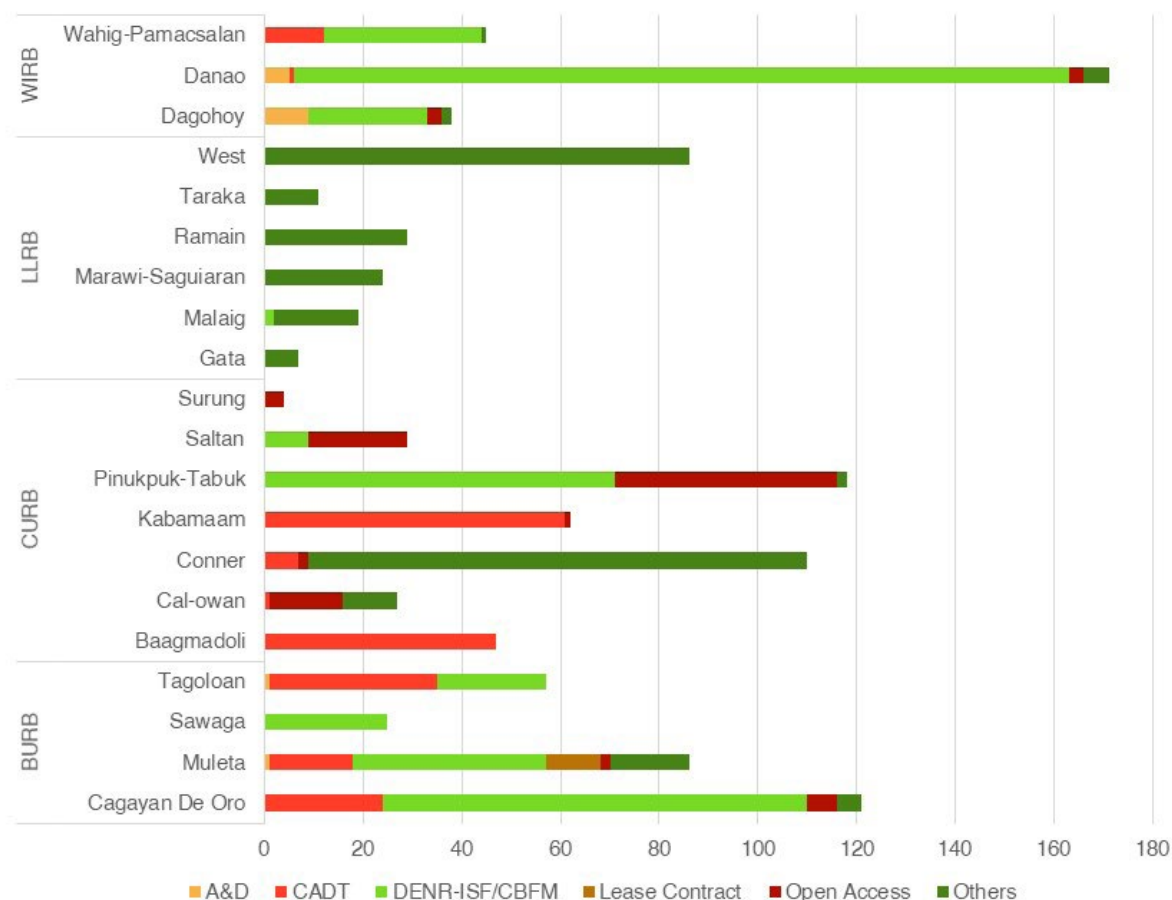


Figure 2. Participants’ responses to the question of land ownership

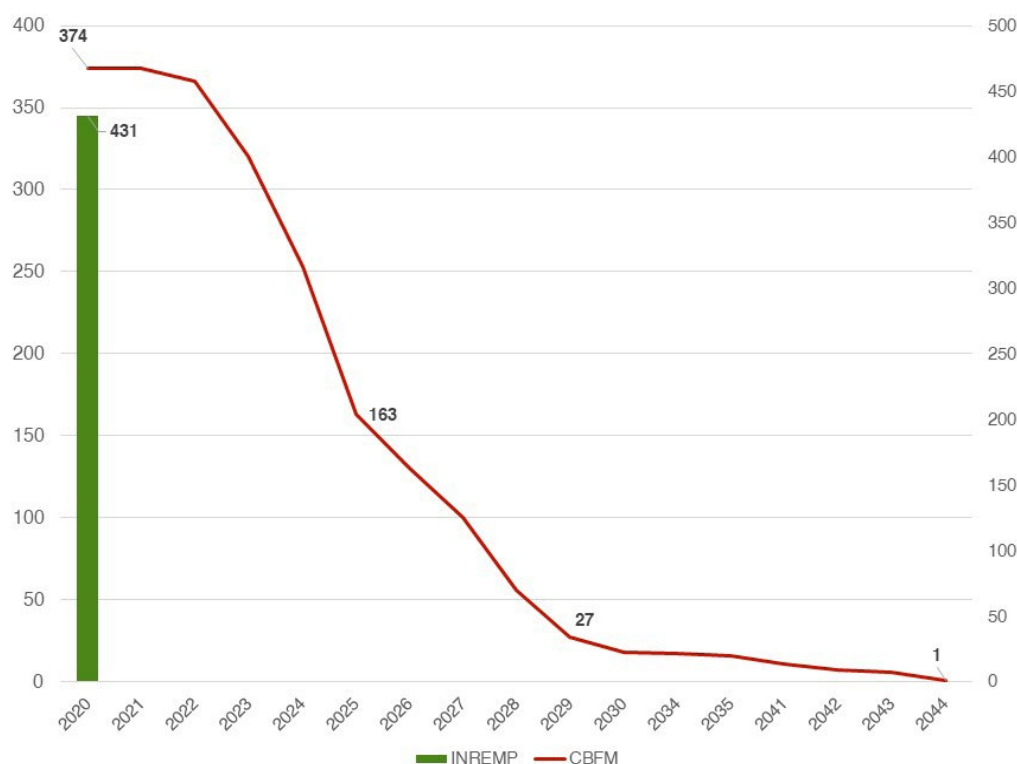


Figure 3. Number of active CBFMAs and INREMP contracts, for INREMP provinces

that the area of the expired CSC falls within the CBFM area and the applicant is a member of the PO. However, handling is not specified outside these conditions.

POs that have benefitted from INREMP activities hold various tenure instruments. Most hold CBFMAs.

Despite the lack of clarity of the legal status of the land, when asked about their land ownership, many farmers who were asked responded that they ‘own’ the land (Figure 2). This shows a strong feeling of ownership and entitlement to the land. Shared cropping under rental contracts was found to

be not very widespread: only three out of the 13 sampled watersheds had more than 5% of farmers working on rented land.

Expiration of current CBFM agreements

Based on the latest available data, there are at least 1884 active CBFMAs (DENR 2018), many of which will be expiring in the next 5–10 years. In the provinces within BURB alone, as many as 150 contracts will expire by 2024 while national CBFM data shows that 379 will expire in 2025 alone (DENR 2020b). Figure 3 shows the number of CBFMAs due for renewal over time. Between 2020 and 2030, 70% of the POs in INREMP areas will have to undergo CBFM renewal. If one assumes that fast-growing timber species planted as part of the CFISPs take about 10 years to mature, on average, then the uncertainty of the CBFM renewal process will provide a strong disincentive for POs to manage their tree resources in years to come. One interviewed PO member summarized the situation as ‘chaos’.

Table 1. Status of Certification Preconditions issued by NCIP as of June 2019

Watershed	Province	CP Issued	Pending CP		Total Submitted to NCIP
			Validated	For Validation	
CURB	Apayao	4	1	0	5
	Benguet	2	0	0	2
	Ifugao	4	0	0	4
	Kalinga	68	58	5	131
	Mt. Province	11	10	0	21
Subtotal					163
WIRB	Bohol	1	0	0	1
Subtotal					1
BURB	Misamis Oriental	0	3	0	3
	Bukidnon	0	9	0	9
Subtotal					12
TOTAL		90	81	5	176

Many of the expiring CBFMAs overlap with ancestral domains. Given the strong feeling of ownership (Figure 2) and lack of clarity about benefit-sharing agreements, conflicts are anticipated. Table 1 shows the number of submitted CPs to NCIP as of 2019 for INREMP sites.

Conflicts may be more challenging in ancestral domains where migrants have occupied portions for years but are still waiting for a CP to legalize their tenure rights. Based on initial scoping, some IPOs would rather wait for expiration of the CBFMA in 2020 than give their consent for the issuance of a CP, so that the migrants will simply leave the place voluntarily. Nevertheless, migrant POs are also expected to defend their claims even as agreements expire. Otherwise, they will have to be compensated for developing the area subject to a local

Table 2. Number of CMPs prepared by people's organizations per Upper River Basin

	2015	2016	2017	2018
CURB				
IPO	50	101	59	88
PO	0	0	0	0
WIRB				
IPO	1	2	1	1
PO	10	8	28	0
BURB				
IPO	12	22	17	0
PO	10	9	18	45
LLRB				
				*1
TOTAL	83	142	123	135

* For LLRB, CMPs prepared by POs were no longer used because ADB adopted the Maranaw Ethnic Development Plan instead.

assessor from DENR. This foreseen conflict is one reason POs are taking an active role in INREMP, because they assume Government support after the current CBFMA expires and that the renewal process will be indefinite or costly.

Securig resource use or cutting permits

Under INREMP, 495 POs were contracted to restore tree cover by establishing agroforestry and conservation farming with trees. As of 31 December 2019, a total of 14,307 hectares of agroforestry and 3434 hectares of conservation farming with trees had been established. All POs were assisted to develop Community Management Plans (CMPs), which provide the basis for any use of the land and forest resources, including the newly established land-use systems under INREMP. The degree to which POs can utilize timber and non-timber resources depends on the tenure of the land; for ancestral lands (CADC/CADTs), traditional harvesting rules supersede the guidelines of DENR.

Table 2 provides a summary of the number of prepared CMPs and their status, at one of the INREMP intervention sites. As of 2017, IPOs make up 265 or 75% of the total CMPs submitted, most of which came from CURB, which is predominantly occupied by indigenous peoples.

In principle, the original process and issuance of a resource-use permit for POs holding CBMFAs are straightforward: a PO applies upon accomplishing a CRMF, an Annual Working Plan (AWP), and a Resource-Use Plan (RUP) through their respective CENROs; and an Environmental Compliance Certificate from the Regional Executive Director through the Environmental Management Bureau (EMB). Changes in

the process were made in 2004 in which the AWP was replaced by a Five-Year Work Plan, per DAO 2004-29. Furthermore, RUPs are not required anymore since 2011; POs have to apply for a cutting permit instead, the issuance of which remains with the Regional Executive Director (DAO 2016-07). The official time requirements for processing should be 30 days for the approval of the work plan and 60 days for

approval of the RUP (FMB, 2020). However, there are many problems:

- The issuance of RUP and AWP is notorious for being voluminous and lengthy (Cruz and Acay 2004, Larson et al 2010).
- An issued RUP is only valid for one year from the end of the previous RUP operation; delays in the approval process result in a significant reduction of the cutting window, for example, if an RUP approval takes six months, it will only be valid for six months.
- There have been reports of RUPs being withheld or canceled by the Government on its own volition at any time (Pulhin and Ramirez 2005)
- Approval of RUPs for naturally grown species is supposedly under the authority of CENRO. In some select cases, as shared by DENR, the approval of the DENR Secretary is needed before a CENRO can issue a Notice to Proceed. This entails additional transaction costs for the PO because it has to follow up its approval at the Central DENR office to fast-track the RUP issuance.
- Regulations to control the transport of harvested timber create additional problems. Communities are required to obtain permits for moving timber from forests to roadsides, and another permit to transport the timber to buyers. Due to the remoteness of the POs, the process can be very time-consuming and costly as DENR offices are far away and officers are not always available.

In 1998, DAO 98-42 was issued, being the guidelines for Production Sharing Agreement with People's Organizations in the Harvest of Forest Plantations Owned by the Government Inside CBFM Areas. This included POs being entitled to 75% of gross sales and the Government to 25% via the National Treasury or the CBFM fund. Per DENR, an amendment to this DAO has been drafted to re-allocate 12.5% for the PO's use for replacement planting.

For tenured POs within protected areas, those that hold PACBRMA licenses, DAO 2008-14, 11.7.4 mandates to 'Issue cutting permit for planted trees for a volume of up to five (5) cubic meters per applicant per year for traditional and subsistence uses by ICCs/IPs and tenured migrants only. Provided that PACBRMA holders with affirmed Community Resource Management Plan (CRMP) shall no longer be issued cutting permits. Provided further, that the total volume of extraction does not exceed the limit set by the PAMB and the location of extraction is within the appropriate site within the multiple use zone.'

The Protected Area Superintendent of DENR is the one who issues this permit.

It is important to note that not all POs that are part of INREMP have a valid tenure agreement in the form of either CBFMA or PACBRMA (Figure 1). For those POs that do not have tenure, their right to use the timber and non-timber resources that were established under the INREMP is unclear.

Recommendations

Clear access and utilization rights, including fair and transparent benefit-sharing agreements, are essential to the

long-term success of government reforestation programs like INREMP. These are pre-conditions to establish incentives for POs to continue managing resources even after the project's lifetime.

For all areas under these reforestation programs, contracts between POs and DENR need to state access and utilization rights for the timber and non-timber forest resources which can be attributed to the efforts of the POs. These efforts can either be direct planting of forest and fruit tree species or restoration and rehabilitation of forest areas through the protection and maintenance of naturally growing seedlings.

DAO 1998-42 should be enforced and monitored strictly, and the draft amendments on re-allocating percentage of gross sales to replanting should also be expedited. Furthermore, the amendment can also include the lessons learned from INREMP.

In cases where harvesting of either timber or non-timber forest resources conflicts with conservation legislation, POs need to be compensated for their time and effort through adequate payments for ecosystem services.

Access and utilization rights for the timber and non-timber forest resources that can be attributed to the efforts of the PO should be independent of the actual land title. As part of project closure, DENR should mainstream an inventory of these resources and provide an estimate of the monetary value of the potential timber, wood, and NTFP stocks.

For areas where POs have a valid CBFMA or PACBRMA licenses which secure the harvesting and access rights to the timber and non-timber forest resources they developed, part of the project closure should be a simplified procedure to process the resource use permits and transport permits. To reduce the burden of the respective CENROs and EMB offices, it is strongly recommended to evaluate the feasibility of group permits based on the PO contracts with DENR, as well as the inventory of all timber and non-timber forest resources that can be attributed to the efforts of the PO.

For areas where CBFMA or PACBRMA licenses expire before POs can harvest the timber and non-timber forest resources that they developed, fair and transparent benefit-sharing or compensation agreements need to be crafted between the POs and the new license holder.

To de-escalate potential conflict between CBFMA license holders and CADC/CADTs, DENR and NCIP should jointly develop guidelines for the review of the Certificate of Preconditions/Compliance Certificates for forestry/agro-industrial projects and guidelines on fair and transparent benefit-sharing agreements. The guidelines on benefit-sharing specifically should consider the lessons learned and success stories in the country.

Glossary of Terms

[AWP] Annual Work Plan: Work plans formulated by POs/ IPOs to guide implementation processes, indicating how each priority activity may be carried out. Guidelines issued per DAO 1997-12.

[CADT/CADC] Certificate of Ancestral Domain Title/Claim:

Refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law.

[CBFM] Community-Based Forest Management: A strategy to improve the well-being of forest-dependent communities, and at the same time ensure sustainable management, rehabilitation and protection of forest lands and the resources therein, through the active participation of multiple stakeholders.

[CBFMA] Community-Based Forest Management

Agreement: A production-sharing agreement entered into and between an organized community and the Government to develop, utilize, manage and conserve a specific portion of forestland consistent with the principles of sustainable development.

[CBTE] Community-Based Tree Enterprises:

Forest industries managed by indigenous and other local communities for livelihoods and profit and which are engaged in the production, processing and trade of timber and wood products and commercial NTFPs and may participate in markets for environmental services.

[CENRO] Community Environment and Natural Resources

Office: Refers to the DENR Office, headed by a Community Environment and Natural Resources Officer appointed by the Secretary of DENR, responsible for the implementation of DENR policies, programs, projects and activities and the enforcement of ENR laws and regulations at community level.

[CFISP] Commercial Forestry Investment Sub-Project:

Sub-projects under INREMP, consisting of Agroforestry, Conservation Farming, Commercial Tree Plantation, Assisted Natural Regeneration, Reforestation, and Community-based Protection and Monitoring.

[CMP] Community Management Plan: Describes current community land use, potential development map, investment plans (targets and activities) and includes all sub-projects to be funded under INREMP.

[CP] Certificate of Precondition: Document issued by NCIP attesting that the applicant or project proponent has complied with the requirements for securing the consent of affected ICCs/IPs in accordance with the Free, Prior and Informed Consent Guidelines of 2006.

[CRMF] Community Resource Management Framework:

A strategic plan for the community on how to manage and benefit from the forest resources sustainably. It describes the community's long-term vision, aspirations, commitments and strategies for the protection, rehabilitation, development and use of forest resources.

[CRMP] Community Resource Management Plan: Together with the CRMF, a required work plan to enter into a CBFM agreement that defines the terms and procedures for access, use and protection of natural resources within CBFM area.

[CSC] Certificate of Stewardship Contract: An agreement entered into by and between the Government and individuals/

families occupying or tilling portions of forestlands covered by community-based forest management agreement.

[DAO] Departmental Administrative Order: Used to document and mandate continuing policies, standards requirements and procedures prescribed by the Office of the Secretary for Department-wide application or for application to two or more major program areas of the Department.

[DENR] Department of Environment and Natural Resources is the primary agency responsible for the conservation, management, development and proper use of the country's environment and natural resources.

[EMB] Environmental Management Bureau: Under the DENR, the EMB is the national authority responsible for pollution prevention and control, and environmental impact assessment.

[FPIC] Free and Prior Informed Consent: The consensus of all members of an affected IP group is to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion and obtained after fully disclosing the intent and scope of the activity.

[ICC/IP] Indigenous Cultural Communities/Indigenous Peoples: A group of people of homogenous societies identified by self-ascription by others, who have continuously lived as an organized community on 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, become historically differentiated from the majority of Filipinos.

[INREMP] Integrated Natural Resources and Environmental Management Project: One of the major projects of the DENR Forest Management Bureau. It aims to address unsustainable watershed management in four priority Upper River Basins.

[LES] Livelihood Enhancement Support: A sub-project component of INREMP intended to enable POs/IPOs and their members to increase their short-, medium-, and long-term incomes from sustainable and market-oriented livelihoods or enterprises while contributing to the overall improvement of watersheds.

[LGU] Local Government Units: Institutional units whose fiscal, legislative and executive authority extends over the smallest geographical areas distinguished for administrative and political purposes. In the Philippines, LGUs are divided into three levels: provinces and independent cities; component cities and municipalities; and barangays.

[NCIP] National Commission on Indigenous Peoples: The agency of the Government of the Philippines that is responsible for protecting the rights of indigenous peoples. The commission is composed of seven commissioners.

[PACBRMA] Protected Area Community-Based Resource Management: An agreement entered into by and between the DENR and the organized tenured migrant communities or interested indigenous peoples in protected areas and buffer zones, which has a term of twenty-five (25) years renewable for another twenty-five (25) years.

[PO/IPO] People's Organization/Indigenous People's Organization: A group of people, which may be an association, cooperative, federation or other legal entity, established by the community to undertake collective action to address community concerns and need, and mutually share the benefits from the endeavor.

Resource-use Permit: A resource-use right issued to holders of tenurial instruments under CBFM programs of DENR who intend to harvest/utilize naturally grown and/or planted forest resources within production forests for commercial use.

[RUP] Resource-Use Plan: A management plan prepared by POs/IPOs with CBFMA/PACBRMA formulated for the area where harvesting of timber or extraction of non-timber forest products could be expected. It is a requirement to secure a resource-use permit.

[URB] Upper River Basin: The upstream portion of a river basin where the headwaters of streams and rivers emanate, consisting of lands with moderate to very steep slopes and medium-to-high elevations relative to the river basin valley.

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World Agroforestry Philippines
2F Khush Hall, International Rice Research Institute
Los Baños, Laguna, Philippines
Email: icrafphi@cgiar.org
Website: www.worldagroforestry.org



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