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Legal Pluralism, Forest Conservation, and Indigenous Capitalists: The Case of the Kalanguya in Tinoc, the Philippines

Adrian Albano, Els van Dongen, and Shinya Takeda

Abstract

The Philippines is one of the many countries that currently acknowledge the presence of indigenous peoples (IPs) within their territories. This acknowledgment often comes with a formal recognition of the rights of IPs, including the right to practice their customary laws. Because of the equal existence of overarching state laws, this formally leads to a situation of legal pluralism for IPs. For many forest conservation advocates, legal pluralism for IPs, particularly with regard to land ownership and forest management, is expected to help conserve forests. This expectation, however, is founded on the erroneous assumption that the traditional land use of IPs is nondestructive and that traditional land ownership is communal. Using a relatively long historical perspective, this article demonstrates that these assumptions do not apply to the Kalanguya of Tinoc, the Philippines. In contrast to the notion of IPs being market-averse, this article further demonstrates that many Kalanguya have been and remain “capitalists”. The article favors the inclusion of a market-based forest conservation policy, which is arguably consistent with the reality of value pluralism.

Keywords: customary law, forest ownership, Ifugao, indigenous peoples, land titling

Introduction

In the process of the establishment of nation-states, many policies justified as for the common good end up being detrimental to ethnic and cultural minorities. More recently, as highlighted in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (United Nations 2008), many nation-states have shown intent to amend the past by reforming policies in favor of ethnic and cultural minorities, now more commonly referred to as indigenous peoples (IPs).¹ Policy reforms include allowing IPs to practice their customary laws, which, considering the existence of overarching state laws, formally enables IPs’ legal pluralism. Incidentally, legal pluralism, and particularly laws concerning forest resources, is also being encouraged. This is especially the case following recent disasters causally linked with global deforestation. It is now generally accepted that a primary cause of deforestation is the weakening of traditional forest institutions, which started with the formation of nation-states. Efforts to undo deforestation include a reversal of past forest policies, particularly the gradual recognition of the rights of IPs to their ancestral lands. It is generally believed that legal pluralism not only enables IPs to determine what is best for them, but that it also improves the current state of forests.

A closer look at land ownership in the Philippines, however, reveals a different picture. After gaining independence from Spain and later the United States, the Philippines

continued the colonial governments' doctrine of state ownership of natural resources, particularly the "Regalian doctrine" and "eminent domain".² It was only after the toppling of Marcos's dictatorship in 1986, and after many IPs joined the armed struggle against the state, that indigenous rights were specifically included in the new constitution. The 1987 Constitution of the Republic of the Philippines (art. 2, sec. 22) states that it "recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development" (*Official Gazette* n.d.). This brought about the enactment of the Indigenous Peoples' Rights Act (IPRA) of 1997.³ Under the IPRA, IPs could own their land through the issuance of a Certificate of Ancestral Domain Title (CADT) for communal ownership, or a Certificate of Ancestral Land Title (CALT) for private ownership (individual, family, or household). It needs to be noted that this system also exists at a global level; White, Molnar, and Khare (2004) report that around 11 percent of global forests are legally owned by IPs. However, in the Philippines, as much as around 3.4 million hectares (ha) of CADT, but only 12,830 ha of CALT, had been approved or was in the process of registration in 2010 (NCIP 2010). This granting of communal rather than individual land ownership is in fact more evident both in Asia (Andersen 2011) and worldwide (FAO 2010).

The skewed issuance of land titles in favor of communal ownership follows the perception (mostly in IPs advocacy groups, but also in academic discourse) that IPs are traditionally known for communal as opposed to private ownership and that the latter is not beneficial to them. The International Work Group for Indigenous Affairs (IWGIA), an influential organization that promotes the rights of IPs, explicitly states on its website that "individual land ownership rather than collective land rights is another threat to indigenous peoples, since it opens up not only for the privatization of land and resources but also for sale of land to non-indigenous individuals and business interests."⁴ In the Philippines, the same notion of communal land ownership among pre-Hispanic Filipinos (IPs) still prevails (Reidinger 1995, quoted in Vargas 2003; DAR 2013). This is further indicated by the legal provision under the IPRA that prohibits the sale of land to "outsiders" or IPs not belonging to that particular IP's group (IPRA 1997). Communal land ownership is not only associated with "traditional" lifestyles and practices, but also with nondestructive land use. As Nadasdy (2005) notes, those who consider IPs to be the "original ecologists" often take the image of the "ecologically noble savage" as their starting point (Redford 1991). In response to this image, many scholars have argued instead that IPs have always changed their environments (e.g., Butzer 1993; Krech 1999; Martin 1967, quoted in Nadasdy 2005). Denevan (1992) has similarly argued that this "pristine myth" of IPs was in fact largely a construction of nineteenth-century romanticism.

Although the connection between IPs and nondestructive land use may not be prevalent in scientific journals, it is widespread in policy dialogues and even in actual forest policies. The IPRA in the Philippines, for example, assumes and expects that IPs will protect their forests once these are granted to them, which explains the support it receives from environmentalists. It is estimated that the land area that could be claimed for ownership by IPs under the IPRA is 6.3 million ha or about 21 percent of the total land area of the Philippines (AITPN 2008). However, the country only has about 24 percent of forest cover in its 30 million ha of land area (FMB 2004; Pulhin, Inoue, and Enters 2007). Since the IPs and the remaining natural forests are in remote areas, it is highly probable that most of the remaining forests of the Philippines are within the claimed territories of IPs. Because of this, it is all the

more important to expose the erroneous nature of assumptions regarding land use and ownership among IPs.

Land issues, especially among IPs, have been discussed extensively in various specialized journals (Prill-Brett 1994; Li 2010). As indicated in the key term “indigenous capitalists”, however, this article offers a different perspective. Using a relatively long historical viewpoint, as well as relying on extensive fieldwork regarding present land property institutions and practices, this article demonstrates how a certain group, the Kalanguya, have practiced both destructive and nondestructive land use, and how their traditional land ownership included individual private ownership. Their history further shows that many Kalanguya have traditionally been, as they are now, astute market players. The insights from this case study will then be used to put forward policies that are arguably more beneficial to IPs—and that better suit the goal of forest conservation—than the current system of legal pluralism.

Concepts, Theoretical Framework, and Methods

Legal pluralism is “generally defined as a situation in which two or more legal systems coexist in the same social field” (Merry 1988: 870). In the context of IPs (who now all belong to nation-states), it refers to the legitimacy of their customary laws, which include traditional property rights institutions. For the Philippine highlanders, who continued to control their lands under Spanish rule, these customary laws coexist with “conflicting national laws, international law, and principles of human rights” (Prill-Brett 1994: 687). *Forest conservation* broadly refers to the act and objective of improving the present status of forests, be it standing or degraded forests. *Indigenous peoples* are defined as follows:

[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 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 [*sic*] historically differentiated from the majority of Filipinos. (IPRA 1997: chap. 2, sec. 3h)

The key phrase, *indigenous capitalists*, refers to IPs engaging in a business enterprise. It is admittedly intended to be provocative given the still common negative connotation of the term “capitalist”, paired here with “indigenous”, which is commonly associated with adjectives such as “traditional” and “noncapitalist”. Marx already explored the relation between IPs and capitalism; for him, the ownership of “tribal” peoples represented an “undeveloped stage” of production (Simon 2011). Apart from Marxist scholars, advocates of private property rights for IPs, as well as scholars writing on enterprises, investment companies, and tourist businesses in relation to IPs, have also discussed the latter in relation to capitalism (Ah Mat 2003; Larson and Zalanga 2004; Bunten 2010). In this article, we use the term because we argue that the Kalanguya have been voluntarily participating in a competitive market, thereby utilizing the various factors of production (namely, land and natural resources, labor, and capital) at their disposal for the purpose of earning profit.

We further emphasize the importance of avoiding the assumption of a homogenous outlook of “the Kalanguya” that is furthermore static. A person might have changing desires or orders of priorities, especially when a transformation in information and perception about his/her external environment takes place, but that person will always “act purposively” to better his/her situation (Mises [1949] 1998). In other words, people have subjective desires and orders of values (*subjective value theory*). This makes it necessary to treat them as separate and autonomous acting persons; social phenomena are a consequence of such individual human actions (*methodological individualism*). We mainly use both theories here to achieve consistency in explaining the actions of the Kalanguya (or non-IPs) throughout different time periods. This approach, we argue, leads to more consistent policies on the issues at hand because it acknowledges both diversity and change over time.

In our methodology, we have combined existing literature with extensive fieldwork. We have relied on pre-Spanish and Spanish accounts of the Kalanguya that were mainly taken from studies on their past settlements and on the people of the Cordillera region in general. These accounts were supplemented with oral history and genealogies collected through interviews with key informants during field visits to the municipality of Tinoc, Ifugao Province, where the first author stayed throughout the field visit periods of November 2010, February 2011, and July 2011.⁵ We have relied on detailed accounts of past and present land use and land ownership from the *barangay* (the smallest political unit in the Philippines) of Eheh in particular, where data have been obtained from fifteen key informants, with each of the major clans represented by at least one informant (figure 1). The traditional land use map was based on a topography map prepared by the National Mapping and Resource Information Authority (NAMRIA) in 1979, while the present land use map was based on a WorldView-1 satellite image of the village taken in March 2010. Present land use is perceptible in the satellite image and was delineated along with land ownership claims after ground verification. Collected *barangay* data—including past community settlements, past and present land use and land ownership claims, and government programs—were then verified through group discussions with village elders and *barangay* officials. This was done formally during regular *barangay* official meetings, and informally, often on Sundays, when many villagers gather at the *barangay* hall after attending church.

Figure 1: Study location, developed from NAMRIA map sheets.

The Case Study: The Kalanguya

Historical Connections: The Cordillera

We use a long-term historical perspective to look at the Kalanguya because it enables us to deconstruct ethnic identities that only emerged in the process of the state’s local political boundary delineation. Current differences between the Kalanguya and other groups, rather than being based on biological differences or mere environmental adaptation, are the product of historical factors (Acabado 2009). Before the arrival of the Spanish, as we will demonstrate here, there were long-term historical interactions between the Kalanguya and other groups of the southern and northern Cordillera, as revealed in both linguistic affiliations and trade routes. We emphasize this point because it debunks the notion that the “indigenous” Kalanguya are more inclined to nondestructive land use because they are “different” from lowland populations by nature. A long-term historical perspective also reveals that some of

the “nondestructive” land uses practiced by the Kalanguya in Ifugao might be of relatively recent origin.

The word “Kalanguya” is primarily based on a linguistic peculiarity unique to its speakers: it is short for the phrase *kalay ngu iya*, which translates as, “Why is this?” Although the word is now generally accepted by and understood to refer to its speakers, this has not always been the case. Some of those who speak the same language but who lived outside Tinoc, mainly in the adjacent province of Nueva Vizcaya, were referred to, and preferred to refer to themselves, as Ikallahan. The word “Ikallahan” is a combination of the words *I* (from) and *kallahan* (not pine tree) and literally means “[people] from nonpine forests”. The land of the Kalanguya/Ikallahan (hereafter referred to as the Kalanguya) IPs was divided into different provinces with independence in 1946; the people are currently located in the mountain areas bordering the provinces of Ifugao, Benguet, Nueva Vizcaya, Pangasinan, and Nueva Ecija. Oral history traces their origins back to Tinoc (figure 2), and more particularly to Ahin, which is now a *barangay* of the municipality of Tinoc, Ifugao Province. When or how they first settled in Ahin, however, is not known and mainly explained by legend.

Figure 2: Cordillera region surrounded by lowlands.

Some ethnographers suggest that the Kalanguya people most likely originated from the coastal province of Pangasinan, as suggested by the linguistic affiliation with the southern Cordillera group of languages (Rice 2008; Afbale 1989, 2004). Among the southern Cordillera group of languages in the Cordillera region, the Ibaloi speakers are the more dominant and most studied. A study about the migration of the Ibaloi to the mountains suggests that they followed the Agno River from Pangasinan, most likely motivated by the search for gold during the “14th to the 15th century, or earlier” (Canilao 2011: 120). While the few studies that specifically deal with the Kalanguya have suggested the same place of origin, Pangasinan (Afbale 2004; Rice 2008), the gold motive has not been applied to the Kalanguya, although there are various reasons to do so. Aside from the close linguistic and geographic affiliation between the Kalanguya and the Ibaloi, people in Ahin—according to oral history, a settlement and the place of origin of the Kalanguya—were known to also have engaged in mining during the Spanish colonial period (Scott 1974; Lewis 1992).

The Cordillera region was already known for its gold during the arrival of the Spanish in the Philippines in 1521, but not much is known about this early period. A 1598 attempt by a missionary to list the settlements in the central Cordillera based on accounts of Igorot⁶ trading in the coasts of La Union mentioned still existing settlements near Tinoc, but not Tinoc itself (Antolin 1971: 33–34). By the early 1700s, the lowlands surrounding the Cordillera were mostly under Spanish control, including the provinces of Ilocos in the northwest, Cagayan and Isabela in the east, Pangasinan in the west, and Nueva Vizcaya in the southeast. In 1739, Dominican friars based in the lowland of Nueva Vizcaya recorded the presence of an Igorot trade route connecting Nueva Vizcaya to the lowlands of Ilocos, across the mountains of the Cordillera, and passing through Tinoc. Further accounts of this period show Tinoc to have already been settled, with few rice terraces. The local people had amiable relationships with lowlanders, most likely because they were involved in the trading of goods to and from the lowlands (Scott 1975).

Spanish proselytization and attempts to rule the Igorot, however, eventually led to conflict and lowland-highland animosity that would later determine the “indigenouslyness” of the highlanders. Spanish missionaries had to “save” the Igorot “pagans”, while the military, composed mainly of lowland Filipinos, had to punish the highlanders for not following colonial rules—such as the tobacco monopoly—or for their crimes against Christians or Hispanicized Filipinos (Antolin 1970). Some recorded events worth highlighting are the 1745 and 1748 destruction of villages located in the “tributaries of the Matunu river” near Panuypuy and Ipituy (Scott 1975; see also Antolin 1970: 234–236). The exact location of these villages is not known, but Scott (1974) suggests that Ipituy could possibly be the same as Itbuy (trans. from Tabuy); Tabuy is in the present *barangay* of Danggo⁷ (about a four-hour walk to Poblacion, Tinoc). Despite the lack of reference to this linguistic affiliation, the proximity of these villages to Tinoc suggests close interaction and even intermarriage and cultural exchange between them. In the said villages, there are also indications of the presence of rice fields and houses that were built closer to each other than the relatively dispersed later Kalanguya settlements of the Spanish colonial period.

After the recorded destruction of the Panuypuy and Ipituy settlements, no further reference was made to them. Tinoc, however, was still settled, as indicated by a note from Scott (1974: 192) on a certain wealthy man, Lapak of Tinoc, who died in 1788. Soon, however, on a map of the Cordillera region in 1794, Tinoc was indicated as *abandonado*, with no reason indicated. By the mid-nineteenth century, Spanish presence in the interior of the Cordillera became more apparent. The Spanish divided the Cordillera into *comandancias*, or districts under military control, with military posts in larger or troubled settlements. In 1854, it was noted that troops from Lepanto invaded “independent villages” as far as the Ahin valley. Ahin was in the district of Lepanto, then a district in between Benguet and Bontoc, all located in the Cordillera (Lillo de Gracia 1877). From this date forward,⁸ Ahin and its surrounding villages became targets for punitive expeditions, often for hiding lawbreakers (Scott 1975). Ahin and its neighboring settlements (such as Tukukan) remained settled despite these military expeditions. Gradually, however, others left the area to occupy their present settlements outside Tinoc, mainly in the adjacent mountains in Nueva Vizcaya, Benguet, and Pangasinan (ibid.) (figure 3).

Figure 3: Around Tinoc; historic settlements are noted in italics.

Land Use Exposed: Mining, Cattle Ranching, and Shifting Cultivation

A pre-Kalanguya history already hints at their different “traditions” and “cultures”, which started when their ancestors occupied the coastal lowlands of Pangasinan. Compared to the rice-cultivating groups of central Ifugao and the central Cordillera, earlier Spanish accounts of the southern Cordillera (where the Kalanguya people originate) indicate that its inhabitants relied mainly on mining and shifting cultivation. An eighteenth-century description of a mining settlement pictured some degree of specialized economy, with mine laborers (and even “slaves”) working for a mine owner or owners and sellers of various goods and services. Supplies were brought by traders from different sources, including heavy agricultural products from nearby settlements, weaved cotton, Chinese porcelain from the eastern coasts of Pangasinan and Ilocos, and *carabaos* (a type of water buffalo) and cows from the lowlands of Nueva Vizcaya. In his study in the adjacent municipality of Buguias (Benguet), and basing

himself on oral histories, Lewis (1992) notes that the Kalanguya of Tinoc were astute traders who supplied the mining town of Suyoc (Benguet) with live pigs and *carabaos*, as well as slaves (usually bought from central Ifugao).⁹

An earlier change in traditions of the southern Cordillera can also be seen in the present landscape: the dominance of pine forests. Kowal (1966: 417) has suggested that the pine forests (*Pinus insularis*) mostly dominant in Benguet may have resulted from the regular practice of shifting cultivation. Kowal adds that most of the pine forests must have originally been “montane and submontane broadleaved-evergreen forests.” Kowal did not link this landscape to mining or its later offshoot industry, cattle ranching, which we believe is also a crucial and more destructive factor compared to shifting cultivation.¹⁰ As will be further explained when describing the traditional belief system of the Kalanguya, the mine owners needed large animals to conduct redistributive feasts. Having gold, they could afford to buy *carabaos*, cows, and horses, which they later raised themselves, often employing laborers specifically to take care of the animals near the mines (Bagamaspad et al. 1985: 79).

Unlike shifting cultivation, which requires fallow and secondary forest recovery, cattle ranching requires grassland and the need to regularly burn the grassland to encourage new grass growth. The city of Baguio, for example, mainly had pine trees when the Americans first arrived; it was a pastureland. In addition, a patch of mountain in Tinoc covered by grass with dispersed but dominant pine trees (within *barangays* Wangwang and Binablayan) was said to have been a pastureland (Daguitan 2010: 45; Magno Dulawan, pers. comm.). Spanish accounts of the mines and nearby settlements pictured a landscape that was heavily deforested.¹¹ The same landscapes could also be seen in photos taken earlier by Americans in these areas (Worcester 1906; Barton 1919).

From the time they moved to the Cordillera and their “traditional” settlement, namely, their government-recognized ancestral domain, there have been transitions in the land use of the Kalanguya, with varying degrees of “destructiveness”. This includes the less destructive land use in the coastal area (possibly with a large fishing component), the most destructive land use through gold mining and cattle ranching—and to a lesser extent shifting cultivation—and, finally, “nondestructive” land use through isolation and the adaption of a semisedentary rice agriculture. Bagamaspad and colleagues (1985) note that laborers from Ifugao built many of the rice terraces in Benguet in the last part of the nineteenth century. Lewis (1992) specifies that some hired laborers in Buguias in the twentieth century were Kalanguya.¹² This was further confirmed by an interview with an elderly Kalanguya in Liwon, Asipulo, who worked as a terrace-building laborer in Ambuklao before World War II. The same process may have happened earlier in Tinoc, with relatively rich people hiring laborers from the rice-building towns of central Ifugao, who took over the work themselves later as they learned the rice cultivation technology.

These changes suggest that most of what is thought to be the “traditional culture” of the Kalanguya is relatively recent, as indicated by the vegetation pattern of the land, geographic location, language, and genealogy. As for vegetation, compared to nearby settlements in Benguet, Tinoc is not much covered with pine trees, but with nonpine or *kallahan*. The fact that the Kalanguya are also referred to as Ikallahan, or people from the nonpine forests, suggests that Tinoc could be a relatively new settlement compared to the nearby (past and present) mining and cattle-ranching areas, now dominated by pine trees. Tinoc was also not known to have a mine. The later settlement of Tinoc could also be

deduced by its elevation, which is higher compared to nearby highland settlements. High elevation would also not be a primary choice for a people used to wearing traditional loincloths, as documented by Antolin (1970). Furthermore, as mentioned earlier, it was not included in the 1598 list of settlements; it only appeared in Spanish documents in the eighteenth century (Scott 1975).

Some peculiar features of the Kalanguya language relative to other southern Cordilleran languages, particularly Ibaloi, also indicate influence from the northern Cordillera group of languages, particularly Tuwali.¹³ The Tuwali are better known for their rice culture and are believed to have come from the western lowlands, following the Magat River (Keesing 1962; Acabado 2010). They currently occupy some of the settlements included in the 1598 list of known settlements in the Cordillera (e.g., Kiangnan). The Kalanguya language and rice cultivation must have developed only after a relatively long period of encounter with, as well as isolation from, the Tuwali group, more likely during the Spanish colonial period, which brought military force and epidemics such as smallpox and cholera (Bagamaspad et al. 1985: 89; Newson 2009). The most comprehensive genealogy of the Kalanguya people available so far (Cabanero n.d.) also traces the Kalanguya to a patriarch twelve generations ago. If a generation equals twenty years, this patriarch would have been around during the early 1700s, during the Spanish colonial period.

Land Use and the Kalanguya Belief System

In order to understand the Kalanguya's traditional economy, it is necessary to place it in the broader context of their belief system and worldview. Like many ethnic groups before Spanish colonization, all the Cordillera tribes, including the Kalanguya, were animists believing in spirits who had power over the fate of the living. To improve their state, they tried to please the spirits in times of need (sickness, for example), but more often in times of plenty (such as thanksgiving). They did this through offering animals that were to be redistributed to the people in a feast. This "periodic feast-giving" has also been documented for Ifugao culture (LeBar 1975, quoted in Eder 1982: 110; Conklin, Lupāih, and Pinther 1980). Among the Kalanguya, people could also use these feasts to climb the social ladder by following the rules of a specific redistributive feast called *padit*. *Padit* was a multiple-leveled practice, with the cost (or the number of black pigs offered) getting higher at each stage. Ultimately, the level achieved was a measure of a person's wealth and social status, where the highest achievers usually became the political decision makers.

Given this belief system and practices, the economy revolved around producing or procuring the goods and services needed to conduct these status-attaining feasts. The traditional land use in the municipality of Tinoc was the cultivation of sweet potato, and, to a lesser extent, rice terraces. Sweet potato was a staple food rich in carbohydrates, but it was also used to feed pigs, which were essential ritual animals. Rice, apart from being a staple food, was also important for ritual purposes, such as the production of rice wine. The land use of the Kalanguya is in line with, as Acabado (2012) argues, the "agro-cultural complex"¹⁴ of Ifugao, in which intensive production forms (e.g., rice cultivation), extensive production forms (e.g., swidden cultivation), and agroforestry coexist.¹⁵ The relation between the several types of land use is determined by factors such as slope, population size, and topography. For example, in the village of Eheh (16°40'35" N latitude, 120°56'10" E longitude), one of the twelve *barangays* of Tinoc, the area of rice terraces is limited, mainly due to the low

temperature, steep slopes, and limited sunlight in cultivable areas near the river where irrigation water is sourced. The maximum area traditionally planted with rice in the village is only about twelve ha, or 1 percent of the total area. Rice production is further limited by the use of low-yielding traditional varieties. Sweet potato requires less labor in comparison and can be grown in a wide range of environmental conditions—including on higher, colder, and untterraced land—which explains why it has been the main staple food for most of the villagers.

Following the economic principles of productivity enhancement, the redistributive feasts of the Kalanguya limited individual and thus societal accumulation of savings. This further constrained investment activities, particularly in the improvement of the productivity of land and labor, which remained stagnant throughout the history of the Kalanguya. Overall, the Igorot remained materially poor, in spite of their occupation of the gold mines; they consumed everything they produced, and their investment in infrastructure (e.g., rice terraces) or technology generation and acquisition was limited. With regard to agricultural practices, we can say that those of the Kalanguya were relatively sustainable. The main reason for this, however, was this “cultural system”, facilitated by some degree of physical, social, and economic isolation. At the same time, regular out-migration and epidemics (of which at least two were recorded in the southern Cordillera) also led to a limited population growth.

Due mainly to the scarcity (and high valuation) of labor, goods requiring a relatively large amount of labor investment usually get exclusive access and hence private ownership. Rice terraces have therefore been traditionally privately owned land. Ownership was usually passed on to children or relatives through inheritance, but it could be sold or mortgaged by the owner like any other private property, such as animals or tools. Sweet potato farms, on the other hand, had usufructuary ownership: the user had exclusive rights to the land while it was in use only; it could be cultivated, resided on, or fenced (for free-range pigs) by others only after the user/occupant had abandoned it. For land planted with fruit crops, exclusive ownership was recognized not on the land, but on the trees. Forests were accessible to anyone, including Kalanguya from neighboring villages, partly because land was abundant, while more neighbors meant greater availability of labor traded through traditional labor exchanges, or *ubbu*. From the above, we can see that, although the “traditional” economy of the Kalanguya was relatively sustainable, this was the case because it was part of a cultural system that does not exist anymore today. Also, traditional land use was not necessarily characterized by communal ownership only.

Recent Land Use and Land Ownership Transition

During the period of American control, public schools and Christian mission schools were established and roads were constructed in the area. As the Kalanguya gained access to formal education, converted to Christianity, and integrated into the wider society, their values and, more importantly, their notion of wealth changed. Having converted to Christianity, *padit* was no longer practiced, since most people no longer believed in the need to appease their dead; they also had other options to gain wealth and to climb the social ladder.¹⁶ In Ifugao, already during the early twentieth century, a transition took place from a subsistence economy to simple commodities, with agricultural products being sold instead of merely consumed by households (Acabado 2012).

One driver in the transition toward de facto private ownership of land other than rice terraces was the introduction of the municipal land tax declaration system, introduced in the municipality of Tinoc in the early 1950s. Despite being intended to raise local government revenue, it evolved as a tool to secure exclusive land control. Initially, few people applied for a land tax certificate; those who applied declared only small rice fields or residential lots to avoid a larger tax. This hesitance to apply for a land tax declaration system, however, changed with the introduction of vegetable cultivation followed by roads. People started to extend their claims based on natural landmarks rather than on “land improvement”.

Regarding changes in land use, it is also worth mentioning the rise of a wood-carving industry after World War II. This negatively affected the so-called *muyong/pinugo* system of land use for privately owned “woodlots” in Ifugao. Relevant for local agroforestry, these lots were located higher up the hills and contained water sources for the irrigation of rice fields. In combination with national policies for forest conservation that placed a ban on logging, the rise of this industry led to illegal logging and damage to some of the terraces given the vital function of the woodlots for the terraces (Acabado 2012; Eder 1982; Sajor 1999). In 2013, however, the government approved an exemption from the log ban for Ifugao wood-carvers after an appeal from the latter to Congress in 2012 (Dumlao 2013). This example also illustrates how the government’s attempt to integrate traditional institutions into its system for land management is wrongly based on notions of sustainable and unchanging land use of IPs (Sajor 1999).

In Ifugao, another major change in land use took place when the government started to construct roads and promote cash crop cultivation through various programs between 1970 and the mid-1980s (Sajor 1999). The major transition in land use in Eheb, and to a larger extent Tinoc, happened in the past three decades, particularly after the opening of a farm-to-market road during the 1990s, connecting from the Mountain Trail coming from Baguio. The construction of the Mountain Trail started from the city of Baguio during the American colonial period. It reached Botoan, Buguias, and Benguet (the village before Eheb in the early 1980s [Lewis 1992]), and finally Tinoc (Poblacion) in 1992. It passed through the upper part of Eheb (west), and then gradually branched down the lower part of Eheb from 1995 onward, where construction is currently still ongoing. Upon the arrival of the road, the cultivation of temperate vegetables, earlier introduced in Benguet, was also introduced here. It continues to expand in Eheb and in the whole of Tinoc. Temperate vegetable cultivation is now a well-established industry supported by financiers based in the vegetable trading posts in Baguio and more recently in Bambang, in the province of Nueva Vizcaya, after the road from Tinoc to Kiangnan was also opened around 2002.

This transition in both land ownership and land use can be observed from the data collected in the *barangay* of Eheb. It has an area of about 1,154 ha, with elevations ranging from 1,245 to 2,700 meters above sea level. As of early 2011, the village had 86 households and 470 individual residents. In Eheb, almost half of the land area is already under private ownership (figures 4 and 5). Elsewhere (Albano and Takeda 2013), the process and dynamics (claims, conflicts, and settlement) of forest privatization in Eheb are further detailed. In neighboring *barangays* (Impugong, Ap-apid), however, private ownership is almost 100 percent, as can be seen from more visible patches of privately owned vegetable gardens. The same trend near Tinoc and in the Cordillera is also reported in other studies and newspapers (Cariño 2008). Just as traditional values, isolation, and out-migration perpetuated Kalanguya

traditional land use and property institutions, so could changes to these factors explain the transition of property institutions.

Against the background of these changes, we can understand why the granting of communal ownership is not necessarily beneficial to IPs and forest conservation. Nevertheless, the Kalanguya in Santa Fe were able to get their CADT in 2003, after having secured a communal land tenure in 1974. This was one of the pioneer community-based forest management agreements (CBFMA) in the country. Meanwhile, the Kalanguya in Tinoc were issued their CADT in April 2011. The boundary followed the municipal boundary of Tinoc, which was made a distinct municipality taken from the municipality of Hungduan (and from the Tuwali speakers) in 1982. Like many cases in the Cordillera, within these CADTs of the Kalanguya, there are non-Kalanguya de facto private lands. Similarly, there are Kalanguya in other CADTs (for example, in Kabayan, which is an Ibaloi CADT).

Figure 4: (Traditional) land use in the village of Eheb, 1970s.

Figure 5: Recent land use and land ownership in Eheb, 2010.

Discussion and Policy Implications

The encouragement of legal pluralism under nation-states has been justified by the intent to allow ethnolinguistically and culturally different citizens govern themselves according to what is socioculturally acceptable to them. There are, however, various aspects of laws where such pluralism may not be realizable, as it conflicts with state law; clearly, the state would not abdicate its “*eminent domain*” over the land and natural resources to IPs. A solution has been the interpretation of land ownership as a bundle of rights where the grantor of rights is the state. The recognition of IPs’ ownership of land then means the granting of land rights through a formal title. Under the IPRA, this has mainly taken the form of the issuance of a Certificate of Ancestral Domain Title (CADT).

The various “special” provisions that come with the land tenure now being granted to IPs are believed to enforce customary land ownership and hence more egalitarian and sustainable land use. The historical overview of the Kalanguya, however, contends that many of the assumptions are fallacious; the Kalanguya themselves also disagree with the notion that these provisions are for their benefit. There is not much difference between the Kalanguya, or other IPs in the Cordillera, and their lowland neighbors, who are historically their linguistic (and of course genetic) relatives. Ironically, the events preventing IPs from owning their land were blessed with good intentions: the Spanish missionaries wanted to convert them, and along with the Spanish colonial government tried to civilize them by placing them in towns (*pueblos*); the American state planners tried to protect them from the Hispanicized and Christianized lowlanders; and the Philippine government allocated much of their lands for development and forest conservation. Although the present granting of mainly or even only communal land ownership might also be based on good intentions¹⁷ toward both the IPs and the forests, it does not fit local reality and will result in ineffective policies.

This article confirms that land use and land ownership institutions are evolving as people change their worldviews and values as they adapt to an equally changing external environment. Rather than implementing a legal pluralism based on a static view of customary law, it should be based on the more fundamental as well as realistic pluralism of values. Land

titling should then not be limited to communal ownership—it should also include private ownership.

Several arguments against privatization have been put forward, to which we will briefly respond here. Firstly, one argument is that privatization poses no problem for agricultural land, but it does for forests, as this could mean giving people more rights to convert forests into vegetable gardens. Conklin, Lupāih, and Pinther (1980), writing on north-central Ifugao, already noted a similar issue, namely, that communal forests in Ifugao could be claimed as “private” property if they were converted into rice terraces. However, as we demonstrated in the case of Eheb, with or without land titles, the forests have been and continue to be cleared—sometimes merely to secure land ownership where local legitimacy has already been acknowledged.

The issuance of private land titles will prevent forest clearings merely for the purpose of securing ownership. Moreover, it will encourage land use with longer time preferences that may be demonstrated through conservation or land improvements, which would eventually bring higher value to the owner, while at the same time providing public goods. Nevertheless, the concern regarding privatization and the clearing of forest land is real and should be addressed through actual land use regulation as well as incentives, including direct or indirect payment to landowners for keeping their land forested. This could be facilitated better with private ownership land titles, as it would enable formal and more enforceable contracts. Furthermore, land use (being individual actions) would still remain under both (state) property law and customary law, where damage to someone else’s property makes a culprit liable. Again, pinpointing responsibility and liability is made easier under a clear property ownership regime.

Since IPs do not necessarily practice nondestructive land use, it is expected that some of them may not find it worthwhile to protect the forests; they might want to convert their landholdings into vegetable farms or sell them to raise a relatively large amount of money. Following the principle that voluntary exchange can only take place if it would benefit both seller and buyer, policy should eventually allow land markets, even to non-IPs. Not allowing land markets while allowing individual ownership implies preventing non-IPs from directly conserving forests in present IPs’ territories while trying to force IPs who want to move to cities to remain in the forests. As shown by Prill-Brett (1994), population pressure and integration into the wider region has spurred migration; the lack of a clear ownership regime in this context also facilitates land grabbing and squatting.

Some fear that allowing the sale of land by IPs could make IPs landless, and worse off than before (Porter 2001). This requires the qualification of such a policy to allow for land sale to outsiders only if IPs can be protected from fraud. This is particularly so for remote communities relatively unexposed to land market values and legal practices. Then again, if IPs are not granted the transfer of ownership of their land to “outsiders”, this precludes them from livelihood opportunities—especially the potential benefits of land markets with which many Kalanguya, as demonstrated, have been quite familiar. In fact, despite the lack of land titles, some villagers have already sold some agricultural and forest land—the market value of the latter being lower in comparison—to non-Kalanguya in the same manner that the Kalanguya buy land outside their ancestral domain, including in the lowlands.¹⁸

Finally, some argue that private property and the opening of land markets endangers intergenerational rights. However, this argument is based on homogenous and static notions

of Kalanguya land use. As discussed earlier, land could also be sold or mortgaged; in addition, it is crucial to note that the integration of Ifugao within the wider region has also led to changes in inheritance practices, as Eder (1982) already noted. Social status is not tied to the ownership of family land anymore—education also plays a significant role. This shows once more how important it is to bring landownership and land use practices and policies in line with drastically changing and changed values.

Conclusion

Through a relatively long history of a group of IPs, this article has demonstrated how landscapes, culture, language, and ethnic identity are neither homogenous nor static. Rather than simply assuming a link between tradition, communal land ownership, and stable land use, the article demonstrates that Kalanguya practices were linked to the interplay of the people's beliefs and their natural environment and macroenvironment (such as the larger economy, the state, and neighboring IPs). Traditional land use included both destructive (mining and cattle ranching) and nondestructive (rice cultivation) practices, but the latter was tied to the cultural system of redistributive feasts. This practice consequently led to other factors such as the use of low technology, a high mortality rate, regular out-migration and vulnerability to more powerful groups. It has also been shown that in this system, rice plots were already privately owned, thereby dismantling the notion that private ownership is not reconcilable with IPs' practices.

These were all to change following the transformation in the Kalanguya's worldview and beliefs, as well as the changes in their political, economic, and sociocultural environment. Currently, many practice unsustainable land use in vegetable production as well as in securing their individual claims. Because of this changed reality, granting only communal land ownership to IPs may not necessarily be beneficial to IPs and forest conservation. We argue that formalizing private ownership is vital to secure ownership and prevent wasteful forest clearing for such purposes. In addition, land markets should be granted given the reality of changes in values and livelihoods—such as nonfarming or new types of out-migration—and even social identity formation among IPs.

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¹ In Asia, the term “indigenous peoples” is used in the Philippines, Cambodia, India, and Nepal, but not in, among others, China, Vietnam, Lao DPK, and Myanmar (Andersen 2011). It needs to be noted that the abbreviation “IP” is also often used to refer to “intellectual property” in the context of the conventions on biodiversity, intangible cultural heritage, and related instruments for indigenous property rights.

² According to the “Regalian doctrine” (*jure regalia*), first put forward by the Spanish Crown, all lands in the public domain belong to the state; the doctrine was adopted in the Constitutions of the Philippines of 1935, 1973, and 1987. “Eminent domain” (*dominium eminens*) refers to a state or government’s power to take back private property for the purpose of public use.

³ The IPRA is also known as the Republic Act (RA) no. 8371.

⁴ See <http://www.iwgia.org> (accessed 3 September 2014).

⁵ The first author is himself a Kalanguya who grew up in Tinoc and who speaks the Kalanguya language.

⁶ “Igorot”, meaning “from the mountain”, is a generic term used to refer to both the “dominant population” and the languages of the main groups of the Cordillera region (Conklin, Lupāih, and Pinther 1980).

⁷ Afable (1989), however, maps Ipituy further south from Danggo, Tinoc.

⁸ Notably in 1861, 1868, 1873, 1880, and 1896.

⁹ Lewis (1992: 86) also notes that in Buguias, large cows or *carabaos* once had the same price as slaves.

¹⁰ As Acabado (2012), referring to Conklin (1957), notes, not all forms of shifting cultivation are necessarily destructive; a crucial distinction is that between “partial” and “integral” systems. See also Eder (1982: 107) for different positions regarding the effects that shifting cultivation has on the environment.

¹¹ In the 1750s, the settlement of Tonglo (presently Tuba, Benguet) “was so denuded of trees and bamboo that fuel-gathering was a sun-to-sun undertaking” (Scott 1974: 117).

¹² Lewis (1992) further notes that while many people of Buguias recognize that their ancestors came from Tinoc and even specify that they are Kalanguya, many of them no longer speak Kalanguya but instead Kankana-ey or Ibaloi.

¹³ Like Tawali but unlike Ibaloi, the Kalanguya language does not use the consonant “s”, instead replacing it with “h”.

¹⁴ Acabado (2012) takes this term from O'Connor (1995), who used it for Southeast Asia.

¹⁵ Conklin, Lupāih, and Pinther (1980: 6–7) mention the following eight types of “land-form categories” in Ifugao agriculture: grassland, forest, caneland, woodlot, swidden, house terrace, drained field, and pond field.

¹⁶ Some Kalanguya still appease their dead or unseen spirits, but no longer through expensive *padit*. Instead, they rely on less expensive banquets among relatives or friends, often combined with Christian prayers. In his study on Banaue, Eder (1982: 111) also notes that, since World War II, the price of rice had increased tenfold, while that of piglets had increased fifty- or hundredfold.

¹⁷ Some authors (e.g., Vitug 2000) suggest that this might be based on bad intentions because the recognition of “ownership” is more of a transfer of responsibility of forest protection to IPs without the corresponding advantages.

¹⁸ According to the National Statistics Office of the Philippines (NSO) census in 2000, the Kalanguya are the largest group of IPs in Nueva Vizcaya, where many of them now reside in the lowland part of the province, such as in the municipalities of Bambang, Aritao, and Santa Fe.