

## **Public Participation in Philippine Biodiversity Conservation**

Lourdes E Tolentino

1. Studies in the Asia-Pacific region have found that areas containing the highest concentrations of biological diversity are often those inhabited by indigenous or local communities that have developed their own resource management systems. In many instances, local communities have been directly responsible for the protection of the existing resources and even to maintain delicate ecosystems and their flora and fauna.

Despite the evidence of local community care for natural resources, traditional knowledge and practices promoting sustainable resource use are under threat. Local communities and indigenous peoples themselves are being harmed. Their lands have come under increasing pressure from economic exploitation. As a result, and in spite of increasing interest in indigenous knowledge and practices, forest-dwelling indigenous people have often been forced from their traditional homelands and, in the most extreme cases, they have been decimated as a result of contracting diseases against which they have no immunity. Outside the forests, local farming communities in many regions suffer from desertification, a phenomenon which is most often the result of human misuse of soil and water.

These problems can be mitigated and environmental protection can be enhanced if indigenous groups and other local communities are able to exercise the right to environmental information and participation. Local knowledge of environmental conditions and threats can help in developing appropriate norms and ensuring compliance with them. In general, it seems clear that allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate threatened harm and contribute to public support for environmental action, as well as lead to better decisions.

2. In the Philippines, there is a provision in the 1987 Constitution wherein the State shall encourage non-governmental community based or sectoral organizations that promote the welfare of the nation. (Be it noted that in the Philippines, the right to a healthy environment is recognized as a human right, it being a duty imposed upon the State and a responsibility required of individuals). In connection therewith and, specifically in relation to Philippine biodiversity conservation by local people, customary law forms part of the Filipino legal heritage because the Constitution provides that 'the State shall recognise, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions'. This was true even as early as 1899 because the old Civil Code provided that 'where no statute exactly applicable to the point in controversy, the custom of the place shall be applied, and in the absence thereof, the general principles of the law'. Although this provision was discarded in the new Civil Code (Republic Act No. 386) which took effect in 1950, it is believed that the judge may still apply the custom of the place or in its default, the general principles of law in the absence of any statute governing the point in controversy. The Civil Code also provides that 'customs which are contrary to law, public order or public policy shall not be countenanced,' and 'a custom must be proved as a fact according to the rules of evidence'. Thus, Philippine law takes cognizance of customs which may be considered as supplementary sources of the law.

3. State regulation of Philippine wildlife protection for biodiversity conservation finds adequate justification in the Constitution too. 'All lands of the public domain, waters, minerals, coal, petroleum and other minerals oils, all forces of potential energy, fisheries, wildlife and other natural resources of the Philippines belong to the State'. On the basis of State ownership, several statutes have been enacted by the legislature in order to safeguard Philippine wildlife. Among the more important laws are Act 2590 (1916) - The Game and fish Protection Act; Commonwealth Act No. 73 (1936) - 'An Act prohibiting the killing, hunting, wounding or taking away of *bubalus mendorensis*, commonly known as *tamaraw*'; Republic Act No. 11 (1946) - 'An Act to prohibit the slaughtering of male and female carabaos, horses, mares and cows'; Republic Act No. 1086 (1954), amending Republic Act 6177 (1970) - 'An Act declaring the *Pithecophaga Jeffery*, commonly known as monkey-eating eagle, as a protected bird in the Philippines, providing for the preservation of the same and authorising the appropriation of funds for the purpose'.

A study of relevant statutes reveals that legislative intent for wildlife protection in the Philippines is overwhelming. The basis of this observation is the wide range of prohibited and regulated acts scattered among existing laws, the thrust being the protection of various species of the Philippine flora and fauna. Act 2590, as amended, aims to protect three categories of Philippine fauna during the closed season. These include protected birds, mammals and other species recommended by the Department of Environment and Natural Resources (DENR) to be protected, and approved by the Chief Executive.

4. Apart from the laws previously mentioned, there exists other complementary legislation on wildlife protection. Act 2548 (1916) provides for the immunization of cattle and carabao to prevent the spread of rinderpest within the Philippines; Act 3166 (1924), as amended by Act 3825, provides for the use of rinderpest vaccine in the control of rinderpest and other contagious diseases; Act No. 2172 (1912) even authorizes the Director of Animal Husbandry to declare under quarantine any place in the Philippines which is infected with any infectious, contagious and communicable disease which is a threat to the health of the animal; Department of Environment and Natural Resources Administrative Order No. 12 (1979) provides for conservation regulation of the licensing, taking, possessing, selling, exchanging, or exporting of protected game; and Forestry Administrative Order No. 18 (1939) deals with closed seasons and regulations for protected game.

5. While Philippine wildlife laws concern themselves mostly with fauna species, their habitats as well as the habitats of floral species are not left behind. Republic Act No. 7856, otherwise known as the National Integrated Protected Areas System Act (1992), is the latest biological diversity-related legislation enacted by the Congress of the Philippines. The National Integrated Protected Areas System (NIPAS) 'is the classification and administration of all designated protected areas to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein, and to maintain their natural conditions to the greatest extent possible'. The law gives policy recognition to a protected area system whereby each designated protected area will serve one or more of the objectives of conservation as part of the system with the corresponding planning and management required to ensure that the national objectives are met in one or another part of the system. Among the salient features of the Integrated Protected Areas System (IPAS) are: (i) Addition of new classifications of protected areas to those provided in the existing law (e.g., adding protected seascapes and landscapes, natural monuments, natural biotic areas, resource reserves). The new classification scheme broadens the system and substantially increases its scope and management options. (ii) Strict requirements on management plans. A process is laid down for the formulation/preparation and approval of management plans, giving legal status to the same for purposes of regulating activities within each protected area. (iii) Delineation of types of activities within a protected area. The law distinguishes between activities that are generally prohibited within a protected area and those which may be regulated through a special permit, license or open access as long as they are consistent with the objectives of the area and specific management needs as defined in the area's management plan. (iv) Provision of safeguards to ensure that activities adjacent to designated protected areas will not result in negative impacts within the protected area. This consists of zoning, environmental impact assessment and procedures for agency review of permit applications. (v) Recognition of ancestral lands within protected areas and customary rights over them. (vi) Direct participation by local people in protected area management. (vii) Creation of the IPAS Fund as a private trust fund for purposes of financing projects of the system; and (viii) Identification of the Department of Environment and Natural Resources (DENR) as the main entity responsible for the implementation of the law.

6. Furthermore, the IPAS law adopts a two-tiered management plan. There shall be a general management planning strategy, on the first level, to serve as a guide in formulating individual plans for each protected area. The on-site plan on the second level will effectively address peculiar situations in the area. It will also afford a more direct participation by the private sector in protected area management and planning through the management board.

Most important of all, participation of indigenous and other local communities is included in the management scheme. Community benefits from the protected area in the form of livelihood sources are essential to the successful management of protected areas.

For a more effective administration and management, private sector and local government participation was given much thought and consideration. A management board can take the role of a local protected area administrator. This devolution of function from the DENR to the regional office of DENR and the creation of a division in the Regional Office called the Protected Areas and Wildlife Division will solve the present problem of lack of priority and interest in protected area management.

Under the same law, certain enforcement mechanisms were updated, particularly as to the penalties that could be imposed for violation of laws concerning protected areas. The penalties that may be imposed are a fine or imprisonment or both, as determined by the court, provided that if the area requires rehabilitation or restoration, the offender shall also be required to restore or compensate for the restoration of the damage. The court may also order eviction of the offender from the land and forfeiture in favor of the government of all minerals, timber or any species collected or removed therefrom, including all devices/equipments used in connection therewith and constructions or improvements placed thereon.

7. To render more effective public participation in biodiversity conservation vis-à-vis indigenous communities, the Department of Environment and Natural Resources (DENR) issued Administrative Order No. 02 to implement the country's National Integrated Protected Areas Law which entered into force in 1994. The basic policy of the rules and regulations as laid down in Administrative Order No. 02 is to ensure recognition of the customs and traditions of indigenous cultural communities in their ancestral domains and the importance of promoting indigenous ways, such as ecologically sound traditional practices, for the sustainable management of natural resources. In furtherance of this policy, indigenous communities are to exercise general supervision and control over the management of their claimed ancestral domains, including the resources found therein. For this purpose, the council of elders of each community is recognized as the decision-making and management body within the domain. Implementation of government programs under the control of the DENR requires the consent of the indigenous cultural community concerned, written and signed on its behalf by a majority of its recognized leaders. Once such consent is given, the community must be allowed to participate in the planning, implementation, and maintenance of the program. The rules and regulations require the preparation of a comprehensive, ancestral-domain management plan by each indigenous community that takes into consideration indigenous land use and systems of tenure including customary laws, beliefs, and traditional practices. Also to be considered are the question of indigenous community participation in the protection, conservation, development, and maintenance of indigenous communities' rights over their sources of livelihood as well as the question of the provision of supplemental sources of livelihood.

8. It can thus be seen that public participation in biodiversity conservation in the Philippines is in furtherance of Principle 22 of the Rio Declaration on Environment and Development which addresses the role of local communities by stating "Indigenous people and their communities, and other local communities, have a vital role in environmental

management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development". Likewise, the Philippines concern for public participation is in accord with the recommendation of Agenda 21 on the greatest degree of participation in suggesting direct control of land and living resources. It provides that indigenous people and their communities 'may require in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas'.