

RESEARCH ARTICLE

Beyond the State's Failure to Protect: The Case of Masungi and the Prospects for Resolving the Environmental Conflict

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Abstract: Protected areas management is usually confronted with conflicting interests from various stakeholders and would, therefore, entail a search for a rational compromise. The Masungi Georeserve in Rizal Province, which is part of the 26,125.84 hectares that comprise the Upper Marikina River Basin Protected Landscape (UMRBPL), captures the challenges inherent in environmental conflict resolution. This paper analyzes the situation in the Masungi Georeserve using a political ecological lens, particularly applying Michel Foucault's theory of governmentality and James Scott's theory of legibility. It is found that attempts of the State to enable governmentality and legibility have further contributed to the conflict. The main goal of the paper is to offer a framework for resolving the conflict that would serve the best interests of all stakeholders, even as it is also the best option for optimizing the ecological services provided by the Masungi Georeserve. The paper argues that the state's legibility and governmentality projects have provided a less enabling landscape for environmental protection and offers Cullen's theory of transitional governmentality as an alternative theoretical framework that could be used in imagining a solution.

Keywords: protected area management, environmental conflict resolution, legibility, governmentality, transitional governmentality

People participation is considered as one of the main pillars of environmental governance not only in the Philippines but in other countries. This entails the involvement not only of organized local communities and non-governmental organizations (NGOs) but even of private foundations in environmental resource management and protection. They are awarded various tenurial instruments to engage not only in production activities but also in resource protection and conservation. Private sector involvement in resource management is given constitutional cover in

Section 2 of Article XII of the 1987 Constitution of the Philippines, which states that:

The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such

citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.

The Philippines Congress has passed several laws that aim to place areas under protection. Republic Act (RA) 7586, passed in 1992, has established the National Integrated Protected Areas System (NIPAS). The area of coverage, as well as the scope of the law, was amended and expanded in 2018 when Congress passed RA 11038, which is referred to as the Expanded NIPAS Law, or E-NIPAS law.

However, despite the declaration of protected areas, it is a fact that the local communities, composed either of migrants or indigenous peoples, could be found inside these protected areas. Thus, their interests and needs should be considered, and their rights be recognized without compromising environmental protection. RA 7586, as amended by RA 11038, provides buffer zones where tenured migrants and indigenous communities can engage in productive activities. The existence of protected areas, as declared by RA 7586 and RA 11038, tacitly recognized the indigenous people's rights as stipulated in the Indigenous People's Rights Act (IPRA), RA 8371 of 1997.

Laws on environmental protection have openly recognized the need for cooperation among various stakeholders in the management of protected areas. The policy clearly points toward the direction of forging a rational compromise. This is contained in Section 2 of RA 11038, which amends Section 2 of RA 7586, which states that:

... the effective administration of these areas is possible only through cooperation among the national government, local governments, concerned nongovernment organizations, private organizations, and local communities.

Unfortunately, environmental conflicts abound in many parts of the country. One of these is the Masungi Georeserve, occupying about 2,700 hectares out of the 26,125.64, which comprises the Upper Marikina River Basin Protected Landscape (UMRBPL) in Rizal Province.

At present, there is a dearth of scholarly literature on the political and institutional dimensions of the problem in Masungi. Most of the published sources are mainly

contained in news features and articles. This paper will analyze the situation in the Masungi Georeserve using a political ecological lens, particularly applying Michel Foucault's theory of governmentality and James Scott's theory of legibility. The available literature on these topics are limited to journals in critical anthropology and geography, and there are few available literature that focus on the Philippines.

The main goal of the paper is to offer a framework for resolving the conflict that would serve the best interests of all stakeholders, even as it is also the best option for optimizing the ecological services provided by the Masungi Georeserve. The paper will argue that the state's legibility and governmentality projects have provided a less enabling landscape for environmental protection and will offer transitional governmentality as an alternative theoretical framework that could be used in imagining a solution.

Theoretical and Methodological Framework: Theories of Legibility and Governmentality

Michel Foucault's (2007) theory of governmentality led to efforts to reframe environmental governance in the context of recasting human behavior toward the direction of a political order constructed around biodiversity. Authors like Luke (1999) offered the term "green governmentality," and Agrawal (2005) conceptualized the term "environmentality" and bestowed on it an ontological meaning to describe the transformation of people's subjectivity towards environmental care. Agrawal's (2005) concept of an "intimate government" expressed in the adoption of participatory approaches in governance like community forestry in India ended up being criticized for his alleged failure to recognize autonomous community action independent from the state.

Foucault (2008) defined governmentality as the "art of government according to truth, art of government according to the rationality of the sovereign state, and art of government according to the rationality of economic agents, and more generally according to the rationality of the governed themselves" (p. 313). Foucault reframed the concept away from a construct that was appropriated by those who theorized about progressive environmental politics in the face of a relatively benign state, like Agrawal (2005), to now acquire a more abstract meaning that has become useful

in theorizing about internalized state control. Foucault offered a more detailed description of the different forms of governmentality, all of which are framed in the context of legitimizing the establishment of political order based on coercive but rational processes.

Fletcher (2010) advanced Foucault's theory by offering four forms of governmentality. In its disciplinary form, governmentality is embodied in norms and values that are internalized by human subjects and enable them to have the capacity to self-regulate. A sovereign form of governmentality exacts compliance from human subjects through coercive threats of punishments. A more subtle form of social control implying institutional re-design and modification that would generate compliance among subjects is what constitutes neoliberal governmentality, while truth governmentality enables social and political order through the mobilization of rational ideology. Politics, for Foucault (2008), is when these types of governmentalities "overlap, lean on each other, challenge each other, and struggle with each other" (p. 313).

At the outset, the positioning of politics in the framing of governmentality, as the complex interplay between the four forms outlined by Foucault (2008) and reframed by Fletcher (2010), can be very useful in describing actual environmental situations where there are complex and multiple stakeholders, such as the one presenting itself in the case of the Masungi Georeserve. Some studies presented overarching forms of governmentalities. Fletcher and Breitling (2012) illustrated a predominantly neoliberal form of governmentality in the case of payment for environmental services (PES) in Costa Rica. Wynne-Jones (2012) reached a similar conclusion in a PES study in Wales.

However, in other cases, two or more forms of governmentality are present. This is the case of an ecotourism project in Thailand, where neoliberal governmentality overlapped with disciplinary governmentality (Youdelis, 2013), and in Ecuador, where all forms of governmentalities were documented to be present in water management (Boelens et al., 2015).

Most of these studies are descriptive characterizations of how political order is maintained. They can all be described as manifestations of how states have effectively deployed various forms of governmentality in multi-stakeholder environmental situations.

Another useful concept is legibility, as offered by James Scott (1998). Legibility is "a state's attempt to make society legible, to arrange the population in ways that simplified the classic state functions of taxation, conscription, and prevention of rebellion" (Scott, 1998, p. 2). Scott described in detail how the state renders societies legible by using:

... processes as disparate as the creation of permanent last names, the standardization of weights and measures, the establishment of cadastral surveys and population registers, the invention of freehold tenure, the standardization of language and legal discourse, the design of cities, and the organization of transportation seemed comprehensible as attempts at legibility and simplification. In each case, officials took exceptionally complex, illegible, and local social practices, such as land tenure customs or naming customs, and created a standard grid whereby it could be centrally recorded and monitored. (1998, p. 2)

And yet, initiatives to operationalize governmentality and legibility may not necessarily lead to a condition where there is political order. This is what is present in situations where conflicts among different stakeholders prevail. Conflicts may emerge when the state fails to impose legibility, as Scott (1998) imagined. In the context of Foucault's governmentality, conflict may emerge when the presence of different forms of governmentality interacts in dysfunctional ways, such that politics does not lead to consensus but instead leads to a state of political contestation. What could hasten this process is when emergent behaviors become irrational and inconsistent with desirable and ideal attributes that can enable governmentality, where control fails to be internalized by rational actors, discourses, and institutional processes.

For example, within Foucault's framework, disciplinary governmentality requires human subjects to act in ethical ways, whereas neoliberal governmentality requires rational actors who make decisions based on costs and benefits. Sovereign governmentality would require a system of fair rules and a relatively neutral state, whereas truth governmentality cannot be functional without authentic, well-defined, and coherent ideological processes that are either pervasive to all parties or are articulated differently by actors. A

situation where people act unethically and irrationally, where rules are not fair and government agents are no longer neutral arbiters, and where ideologies are undefined and inauthentic presents enormous structural challenges to translating governmentality into political order. Figure 1 is a diagrammatic representation of the framework.

This paper argues that Foucault's theory of governmentality and Scott's theory of legibility are appropriate in providing a new and more innovative lens in inquiring into a complex situation like Masungi, where the State is no longer a mediator but is now a party to the conflict.

The Case of the Masungi Georeserve: A Diversity of Conflicts

The complex landscape that characterizes Masungi is not only because of the complex and diverse biophysical characteristics or its multiple ecological services. It is also seen in the presence of stakeholders with conflicting interests. It is also manifested in the prevailing legal and policy landscape that is not only multi-layered but also contains several contradictions.

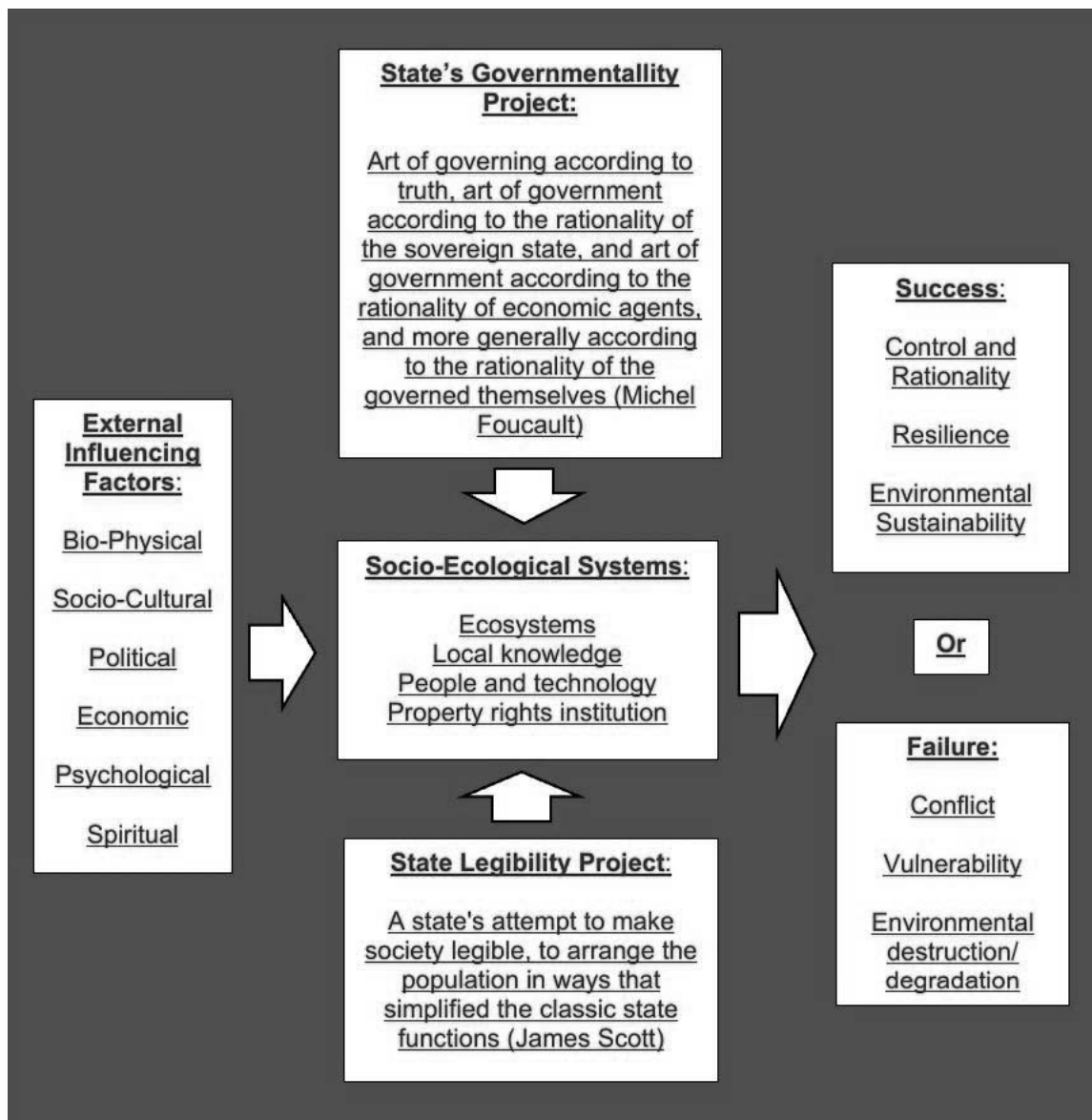


Figure 1. Diagram of the Governmentality and Legibility Framework

The Legal Landscape

Masungi started to be recognized by the State as a protected area in 1904, when Executive Order (EO) No. 33 established the Mariquina Watershed with an area of 27,980.22 hectares located in Teresa and Baras in the province of Rizal. On February 19, 1915, this was expanded by EO No. 14 to include parts of San Rafael and Wawa in Montalban (Leones, 2023).

Yet, as early as 1960, there was already a competing legal regime that classified certain portions for possible alienation and disposition into becoming private lands. In March of that year, 330 hectares, later referred to as Lot 10, was covered by OCT No. 3356 issued by a local court.

Proclamation No. 573, issued on June 26, 1969, set aside 27,608 hectares as the Kaliwa River Forest Reserve (Leones, 2023). Four years later, on October 29, 1973, President Ferdinand Marcos Sr. caused the exclusion of 1,729 hectares from the Mariquina Watershed Reservation when he issued Presidential Decree (PD) No. 324. This rendered such an area as alienable and disposable (A and D), which subjected it to exploitation and use under the provisions of the Public Land Act (Tamoria, 2023; Leones, 2023).

Four years later, however, Marcos reversed PD No. 324 on April 8, 1977, with Proclamation No. 1636, which reverted the 1,729 hectares back to its nature as a protected area, as part of a larger area that he declared as a national park, wildlife sanctuary, and game preserve. When plotted on the map using the proclaimed technical metes and bounds, this national park, which contained the reverted lands, is 146,311.14 hectares, which is actually larger than the area of 46,310 hectares mentioned in the proclamation (Leones, 2023).

The policy regime of protection was enhanced with the passage of RA 7586 on June 1, 1992, which established the National Integrated Protected Area Systems (NIPAS). This law included areas covered by Proclamation No. 1636 (Leones, 2023).

Pursuant to RA 7586, then Department of Environment and Natural Resources (DENR) Secretary Angel Alcala proposed the conversion of the Masungi Rock, which is a portion of Lot 10, and its environs into becoming a Strict Nature Reserve and Wildlife Sanctuary. This was contained in the DENR Administrative Order (DAO) No. 1993-33. Under this category, Masungi Rock will be managed solely for protection purposes, and activities such as

mining and other land uses that can adversely affect the environment will be prohibited (Leones, 2023).

In April 1996, President Fidel V. Ramos issued Proclamation No. 776, which reserved a portion of the area previously covered by PD No. 324 to become a housing site for government employees (Tamoria, 2023). In 1997, a Joint Venture Agreement (JVA) was signed between the DENR and Blue Star Development Corporation (BSDC) to implement these government housing projects. An amended agreement was executed between DENR Secretary Heherson Alvarez and BSDC in November 2002 (Tamoria, 2023; Masungi Georeserve Foundation, Inc., 2023).

On September 8, 2006, President Gloria Macapagal Arroyo signed Proclamation No. 1158, where 270 hectares of Lot 10 were reserved as a new site for the New Bilibid Prison (NBP) of the Bureau of Corrections (BuCor) and 30 hectares were reserved for the field office of DENR Region IV-A. On November 21, 2007, the BsD-040005053 subdivision plan was approved in the name of the Republic as Lot 10-B DENR with 30 hectares, and Lot 10-A BuCor with 270 hectares (Tamoria, 2023). In 2009, however, and responding to the opposition from residents of Tanay, then DENR Secretary Lito Atienza directed BuCor's regional office to look for another site for the NBP (Cabico, 2023). Despite this, TCT 069-2022010986 was issued to BuCor over Lot 10-A, covering 270 hectares in 2023. Lot 10-B remained in the name of the Republic of the Philippines (Tamoria, 2023).

Meanwhile, the housing project that was the subject of the JVA between DENR and BSDC encountered delays, mainly caused by the presence of squatters, which the government failed to clear (Masungi Georeserve Foundation, Inc., 2023).

On September 28, 2011, the DENR Regional Office in CALABARZON (Region IV-A) and the local government of Tanay, Rizal signed a memorandum of agreement (MOA) on the co-management of the Masungi Rock. Two months later, President Benigno S. Aquino, pursuant to RA 7586, declared the Marikina Watershed Reservation as a protected area and renamed it the Upper Marikina River Basin Protected Landscape (UMRBPL) through Proclamation No. 296, which he signed on November 24, 2011 (Leones, 2023).

In 2012, the Masungi Rock Management Council (MRMC) was created by the Municipality of Tanay through Order No. 2012-02-01. The said order designated BSDC as the private sector partner. This

was followed by the issuance of Municipal Ordinance No. 1 in 2013, which declared Masungi Rock as a local Protected Area (Leones, 2023).

In 2017, then DENR Secretary Gina Lopez signed an MOA with the Masungi Georeserve Foundation Inc. (MGFI), an entity composed of people involved with BSDC. The MOA granted MGFI management rights to protect, conserve, and sustainably develop 2,700 hectares of land, which included Masungi Rock or Lot 10 (Leones, 2023; Masungi Georeserve Foundation, Inc., 2023). The said area is hereby presented in Figure 2.

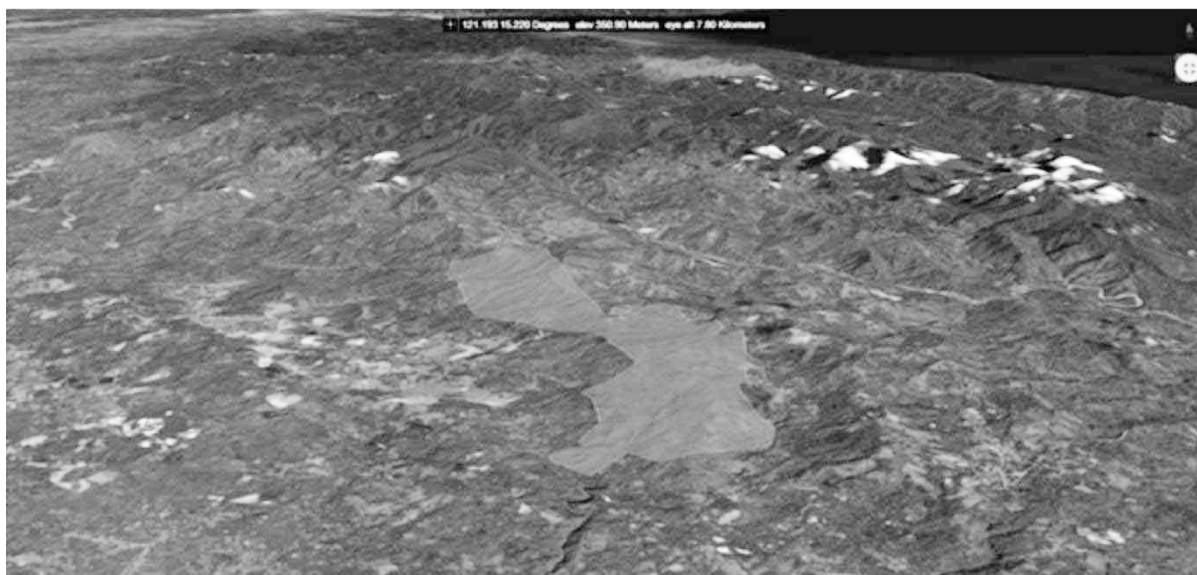
On June 22, 2018, RA 11038, or the E-NIPAS Law, was passed by Congress. It amended RA 7586 and expanded the coverage of NIPAS. It has provided legislative cover to UMRBPL as a protected area (Leones, 2023).

The Issues and Controversies

In the face of layers of laws and policy issuances in relation to Masungi, it is a fact that the DENR has entered into a valid agreement with MGFI in 2017. A MOA was executed in good faith and must be presumed to have legal cover under the presumption of regularity. However, the 2017 MOA became the object of doubt even by DENR. A call to review it was made by DENR in early 2022 to purportedly examine whether it is consistent with the provisions of RA 11038 (DENR,

2022). Citing its patent illegality and suggesting that the 2017 MOA has displaced them from their lands and that they suffered harassment from the hands of MGFI, a group of local residents of Sitio San Roque, Brgy. Pinugay, Baras, Rizal (which is within the UMRBPL), who are members of Luntiang San Roque Association, Inc. (LSRA), filed a petition to cancel the 2017 MOA. DENR is well within its right to scrutinize how MGFI is implementing its side of the agreement, which it has actually done officially in Congressional hearings conducted for the said purpose. DENR has alleged that MGFI now appears to privilege its commercial interests in ecotourism over its commitment to conservation advocacy (DENR Region 4-A, 2022).

On March 1, 2022, the Protected Areas Management Board (PAMB) of the UMRBPL issued Resolution No. 02-2022 recommending the cancellation of the 2017 MOA of Masungi and the DENR for being void since it violated the 1987 Constitution when it appeared to have allowed MGFI to hold the land in perpetuity (Yalao, 2022). In a Senate Hearing conducted on the issue, the DENR openly assailed the validity of the MOA, which its own Secretary signed in 2017. The DENR questioned the perpetual nature of the land trust. It also questioned the alleged lack of diligence that led to a lack of financial transparency in relation to the ecotourism activities conducted by MGFI, which DENR labeled as disadvantageous to the government.



Source: DENR Region 4-A (n.d.)

Figure 2. Map of the Masungi Georeserve, Showing the Area Covered by the 2017 MOA Between DENR and MGFI

DENR also alleged that the MOA failed to secure clearance from the indigenous peoples in the area, as required by the IPRA Law (Yalao, 2022).

The MOA was signed prior to the passage of RA 11038 and when RA 7586 was already a law. The contract granted the MGFI the authority to manage not only the 300 hectares for ecotourism purposes but expanded this to include around 2,700 hectares. The passage of RA 11038, which formalized UMRBPL, has not voided the 2017 contract. It is standard practice that existing valid contracts, unless contrary to the law itself, are respected.

Like the indigenous rights being claimed by the indigenous Remontados by virtue of the IPRA Law, as well as the usufruct rights of tenured migrants that are recognized by law, the 2017 MOA has bestowed upon MGFI legitimacy. RA 7586, as amended by RA 11038, has recognized the role of the private sector, of which MGFI is one, in protected area management. Furthermore, MGFI has delivered its part of the MOA, which is to protect and conserve the areas assigned to it. It has rehabilitated and recovered about 2,000 hectares of degraded forestland at no cost to taxpayers (MGFI, 2023).

In line with its conservation efforts in Masungi, MGFI has received international recognition from bodies such as the International Union for the Conservation of Nature (IUCN), United Nations Development Programme (UNDP), Global Water Partnership, the World Travel and Tourism Council (WTTC) and the UN World Tourism Organization (UNWTO).

If there are infirmities in the agreement, DENR has the option to renegotiate the agreement. In view of conflicting claims, the DENR had the authority to bring all concerned parties to the table. These include MGFI, the local communities, the Remontados, other resource users, like the resort owners whose existence should be backed by a Special Agreement for Protected Areas (SAPA), and the BuCor with its ownership claim over a portion of the protected area. Financial arrangements could have been ironed out, considering that sharing the revenues earned from ecotourism activities was not clearly stipulated in the MOA.

The best venue for reconciling these differences would have been the PAMB. Unfortunately, with DENR as Chair, the PAMB became a hostile venue toward MGFI as it voted to terminate the 2017 MOA.

DENR opines that it can unilaterally void the

MOA because it was bereft of legality, as it may have run afoul not only with RA 11038 but even with the Constitution, with the grant of perpetual trust being the main bone of contention. MGFI is now also accused of violating the rights of indigenous peoples and of tenured migrants residing within the UMRBPL.

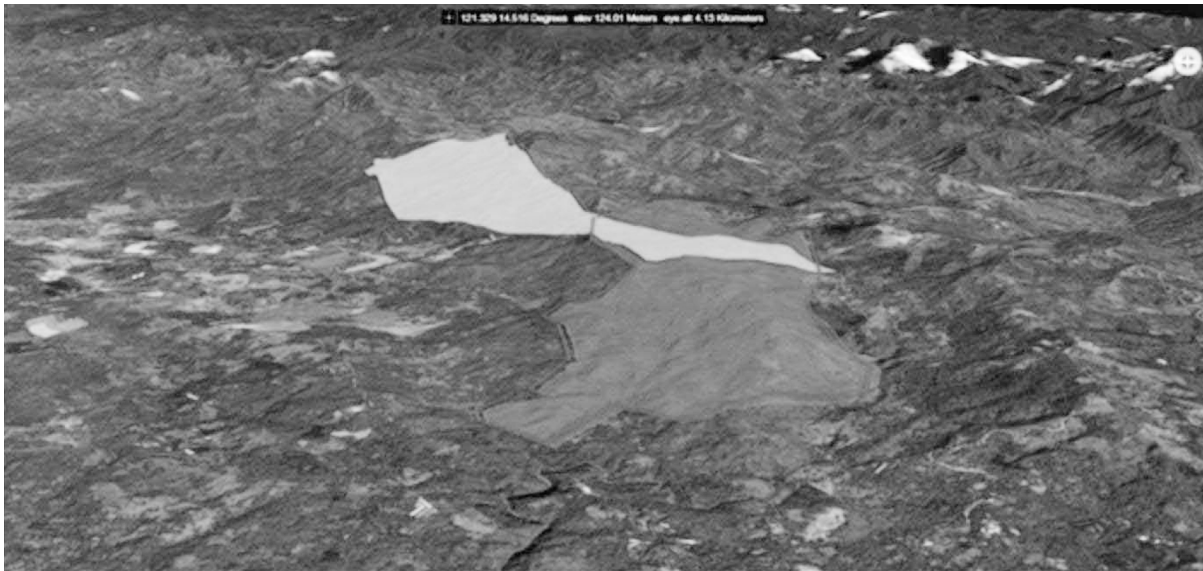
However, the burden of proving the legal infirmities of the MOA and the alleged violation committed by MGFI lies with those who assail its legality. A perusal of the 2017 MOA reveals, as stipulated in item 7, that only a final judgment by the court can cause its termination (MGFI and DENR, 2017). The DENR may have constrained its unilateral power to rescind the agreement without the judgment of a court when Secretary Lopez signed it. The claim that the MOA was void from the start because its provision granting MGFI perpetual rights was unconstitutional required the intervention of the court. The DENR cannot unilaterally make this determination, considering that it is the Supreme Court that has jurisdiction on Constitutional questions.

Masungi Through the Lens of Legibility and Governmentality

The Legibility Crisis

The state embarked on a legibility project through the issuance of laws and official declarations. The attempt to put the Georeserve into the ambit of protection was made by standardizing the rules and regulations of how the land may be legally used and disposed of and who can have access to the resource. This was evident in a series of issuances across several years that directed the protection of the area, which included EO No. 33 issued in 1904, EO No. 14 issued in 1915, and Proclamation No. 573 issued in 1969.

However, the issuance by then President Ferdinand Marcos Sr. of PD No. 324 in 1973, setting aside 1,729 hectares of protected area for alienation and disposition (colored green in Figure 3), has clearly interrupted the continuity of this policy intent. It created a space for the blurring of the actual protection agenda of the state and provided an opening for private interests to lay claim on the land for privatization.



Source: DENR Region IV-A (n.d.)

Figure 3. The Area Covered by PD No. 324 in Green in Relation to the Area Covered by the 2017 MOA Between DENR and MGFI



Source: DENR Region 4-A (n.d.)

Figure 4. Map of the Masungi Georeserve Showing Lots With Private Claims That are Already Surveyed and With Approved Plans Located Within the Area Covered by the 2017 MOA Between DENR and MGFI

The overall intent of the government is to protect Masungi by virtue of PD No. 7586 as amended by PD No. 11038. However, this overall intent was muddled with the issuances of instruments that led to private claimants, which was given impetus not only by PD No. 324 issued by President Marcos but by later issuances by Presidents Ramos and Macapagal-Arroyo. Figure 4 shows these private claims.

It is significant to note that in the current exchanges of legal positions, there is a relative silence on the impacts of the passage of PD No. 705, or the Forestry Reform Code, in 1975. The implication of this law on PD No. 324 would be significant. Section 15 of PD 705 (1975).

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act.

The intent to revert back to protection lands that qualify under this provision is clear. The burden was on the part of the claimant that there is already an existing title or that there is an existing public land application. This was a tall order, considering that PD No. 324, which granted free patent rights on the land, was barely two years old at the time PD No. 705 was issued. The 30-year requirement would also imply that the claimant must have continuously occupied the land since 1945. Thus, even before Proclamation No. 1636 was issued in 1977, there was already a law that directed the reversion of lands that were declared as A and D by PD No. 324 to its original protection classification as a national park and wildlife preserve. In fact, PD No. 705 even empowers the State to expropriate private lands when it deems that it is in the public interest.

PD No. 324 would not be the only action of the state that weakened the intent toward protection and has thus undermined its efforts to render legible the regime of laws and regulations in relation to the Georeserve. Proclamation No. 776, issued by former President

Fidel Ramos, set aside a portion of the reserve for a housing project for government employees despite PD No. 705 and Proclamation No. 1636, and the sweeping Congressional mandate provided by RA 7586, or the NIPAS Law. This led to the JVA between the government and BSDC for the implementation of a housing project, which eventually was shelved due to operational problems.

The legibility project to place the area under protection was further weakened with the signing of Proclamation No. 1158 by then President Gloria Macapagal Arroyo in 2006, which eventually led to the titling of a 270-hectare portion of the Georeserve in 2022 in the name of BuCor.

To reassert its legibility project, the DENR weighs the 2017 MOA with MGFI using the lens of the 1987 Constitution and pertinent laws like RA 11038, or the E-NIPAS Law and RA 8371, or the IPRA Law. Thus, it finds the MOA as wanting not only in terms of its adherence to these laws but in its consistency with the Constitution. Other state actors joined in problematizing the MOA, including not only local political leaders but congressional representatives of concerned legislative districts. Hearings at the House of Representatives and the Senate were held. The PAMB of the UMRBPL recommended the termination of the 2017 MOA between DENR and the MGFI. The DENR, on its own, can implement the recommendation. However, canceling the MOA cannot provide a sustainable solution to the problem.

First, such a move could lead to a protracted legal battle, considering that many of the issues raised against the MOA, ranging from the constitutionality of its provisions to the alleged violations of the terms of the agreement, are justiciable issues for which only the courts can render final judgment. What makes the position of DENR untenable is that it reveals further its weak internal control mechanisms. DENR would assail a MOA, which it signed in good faith. The argument that former Secretary Gina Lopez signed the MOA sans complete staff work and was considered a midnight deal in collusion with MGFI amounts to the DENR delegitimizing its own former Secretary.

Second, DENR failed to create an oversight committee and appoint its own project manager, as stipulated in the MOA. This will highlight its inability to implement provisions of the MOA it signed. Meanwhile, MGFI has performed its part in the agreement, effectively managing an ecotourism

endeavor and reforestation and protecting over 2,000 hectares, enough for it to gain awards and recognition from international organizations.

DENR offered MGFI the option of converting its MOA into a Special Agreement for Protected Areas (SAPA) by virtue of an administrative order issued by DENR in 2007, DAO 2007-17, in pursuance of Section 25 of RA 7586. Unfortunately, the implementation of SAPA was suspended in 2011 due to questions raised in relation to the fees required. It was only in 2018 when the suspension was lifted. SAPA, in principle, is an instrument whose main purpose is to provide economic access to indigenous peoples, tenured migrants, and other stakeholders within protected areas to support livelihood activities. The claim by resort owners to belong to the category of being tenured migrants largely rests on PD No. 324. This is premised on the argument that Presidential Proclamation No. 1636, which reinstated the protected nature of the area, was an executive action that was not equivalent to a PD where Marcos exercised legislative functions and can, therefore, not rescind PD No. 324. It does not take into account the fact that PD No. 324 may have been repealed earlier by PD No. 705.

Arguing for rights held under PD No. 324, as earlier discussed, depends on the existence of actual titles or evidence of the initiation of such proceedings or, in the absence of these, of continuous occupation for 30 years. Using PD No. 324 to shield those who held claims prior to the passage of RA 7586 and RA 11038 is legally tenuous and would require judicial determination, as it would touch on the nature and limits of Marcos' martial law powers. It would also not protect the resource users whose activities that are otherwise contrary to the law began only after 1997, when RA 7586 was issued, or after 2018 when RA 11038 became law. It is, therefore, valid that these users, granted that they are qualified, must apply for a SAPA because that may be the only legal instrument for them to have access to the resource.

Such could not be said for MGFI simply because it had an existing valid 2017 MOA even before SAPA gained legal standing when its suspension was lifted in 2018. Forcing SAPA on MGFI without its consent would be legally problematic and may require judicial intervention. In addition, MGFI's engagement with Masungi is not mainly economic but ecological and for protection purposes. The revenue it generates from the ecotourism activities is not for profit but is put back

into conservation activities and to fund the salaries of its personnel.

A hardline position by DENR can cause it to suffer in the eyes of public opinion, where it will be seen as terminating an agreement with a known and multi-awarded environmental protector like MGFI, even as it now opens up the land for use by commercial resort owners. This would erode the credibility of the agency not only locally but likely even internationally. MGFI appears to have gained favorable ratings and vocal allies not only from local and international civil society organizations but also from local and international media.

The Governmentality Crisis

The failure of the attempts of the state to render legible the policy context governing the Masungi Georeserve is matched by similar failures in establishing governmentality.

Section 2 of RA 11038 or the E-NIPAS Law, which amends RA 7586, the original NIPAS Act, clearly laid out that the management of protected areas has to be within the ambit of a multi-stakeholder policy platform. Yet, Masungi has become a landscape that is not of cooperation but of conflict. Ideally, it should be the government, through the DENR, that should serve as an umpire or mediator among competing interests. However, the DENR has become a party to the conflict.

The DENR has the legal mandate to determine a solution to the problem. The PAMB should have been the multi-stakeholder platform in which a solution would be crafted. But, the PAMB also appeared to become adversarial to MGFI.

An analysis of the facts, events, and the laws and regulations reveals that the state failed to establish governmentality that is based on reason, ethics, and truth. In its ideal, disciplinary governmentality rests on the internalization of strong ethical and moral standards among actors. This is translated to rational decision-making that would ensure neoliberal forms of governmentality, as well as fair rules and objective decision-making processes, which are, in turn, necessary to achieve sovereign governmentality. Furthermore, actors and stakeholders are animated to adhere to well-defined, well-articulated, and authentic ideologies that are geared towards environmental protection, which, in the case of Masungi, is a requirement for maintaining truth governmentality.

It is clear that the motivation of many actors and stakeholders is no longer driven by environmental protection or by transparent ethical commitments. Market interests look at benefits and costs not in terms of environmental values but solely in terms of profit. There is inauthenticity, particularly seen in the appropriation and cooptation of local communities and indigenous peoples by powerful interests that are more market-driven. For example, the key to the opposition of the people's organization to MGFI is its alleged denial for them to engage in farming activities in the area, something which is now alleged by MGFI to be not factual because these people are actually employed in resorts, and in economic activities peripheral to their operations, and not in actual farming within the MGFI's area of coverage (MGFI, 2023). There is no evidence of an actual investigation by DENR, or the PAMB, indicating actual farm lots claimed by the opposing local residents. By logic, if there is a party that caused the denial of livelihoods to community members working in resorts, it would be the DENR when it issued closure orders to these resorts, in addition to the quarrying operations in the area.

Ideally, conflict could have been managed by appealing to consultative, participatory, and inclusive processes, which are provided not only in the established rules of the game but as contained in written agreements. Unfortunately, what transpired instead is a situation where parties have hardened their stances, with the MGFI now experiencing what can be termed as a siege mentality, as it faced not only the competing interests from resort owners, other private claimants, and local residents but the entire bureaucratic and regulatory apparatus of the state.

Clearly, sovereign governmentality is undermined by the adversarial stance taken by state bodies like DENR and PAMB, which are supposed to be objective and unbiased. DENR has imposed a legal regime that is either inconsistently applied or incoherently articulated. It deploys legal rubrics as it assails the propriety of its MOA with MGFI but is constrained by the fact that it does not have the final power to interpret laws. Its ethical neutrality has been effectively undermined by its prosecutorial stance vis-à-vis MGFI during the Congressional hearings.

Neoliberal governmentality, where the ideal is for actors to be governed by rational considerations, is weakened by the prevalence of extreme emotional mindsets prevailing over reason. Mutual distrust and

animosity are now prevalent, particularly between DENR and MGFI. MGFI felt besieged from all sides, and this is evident when its leaders articulate their commitment to environmental protection clothed with an emotional attachment to a mission that they are even quoted as saying they are willing to die for their cause, where they see those who have a different agenda on Masungi as enemies. Violence has also erupted, with forest rangers being fired at. The government was forced to send peacekeepers to the area to contain the escalation of tensions (Mangaluz, 2022).

Meanwhile, the stakeholders that are driven by market interests are not rational in their stands. They insist on entitlements based on PD No. 324, whose legality is in doubt, even as they are driven by profit-seeking behavior that does not take environmental costs into consideration. The presence of rent-seeking behavior among stakeholders, from market players to their enablers and allies in the political and bureaucratic classes, renders them ethically compromised.

Disciplinary governmentality rests on the legitimate exercise of the legitimate coercive power of the state, which is internalized among all actors. The failure of the legibility project by the State, marred by conflicting legal pronouncements and laws that grant privileges to certain market players and some government bureaucracies such as BuCor—to have titles and use rights over areas that are contradictory to the declared intent of the laws that classified the land as a protected area—have diminished the legitimacy of those laws. This led to a breakdown and weakening of the disciplinary form of governmentality.

The interplay between and among sovereign, neoliberal, and disciplinary governmentalities ushered in a regime not based on scientific truth. Underpinning ideologies have been muddled, if not totally absent. At the core of this is the breakdown of the real intent of the legal landscape in relation to Masungi, which is to keep it as a protected landscape, carried by the very name by which it is classified legally and bureaucratically—as part of the UMRBPL. There is empirical evidence of the absence of a coherent ideology on environmental protection that should ideally be shared and held in consensus by all stakeholders. This is embodied in the seemingly contradictory situation wherein MGFI, which is probably the only stakeholder that truly works for the protection of the area in line with all relevant proclamations and policy instruments, is ironically the one that is being subjected to the state's

de facto prosecution and persecution. Thus, this had the effect of undermining the fourth remaining form of governmentality, that of being a regime of truth.

Alternative Forms of Governmentality in the Face of Environmental Conflict

The conflict in Masungi is an outcome of the failure of the state's legibility and governmentality initiatives. The complexity brought about by layers of legislation and competing interests has become the source for unraveling the attempt to govern. This is a classic example of the dysfunctional effects of state simplification. In addition, the intent of the state to put the area under a policy regime of protection was undermined by the emergence of irrational motives and ideologically incoherent decisions.

In Scott's (1998) legibility framework, bureaucratic mechanisms simplify complex indigenous contexts to render them more governable. In Michel Foucault's (2008) governmentality framework, the core is rationality; not necessarily to simplify complex systems but to enable the internalization of a set of values that could enable governance. Both frameworks would be empirically expressed through order and are negated by the presence of conflict.

Foucault's governmentality framework invited criticism as ushering in a green panopticon, which goes back to his characterization of disciplinary power in "Discipline and Punish" (Foucault, 1977). The idea of self-regulation to enforce compliance was framed by Agrawal (2005) as an intimate form of governance, seen in community-based natural resource management projects that intend to create an environmental consciousness among people and produce subjects that care for the environment.

Present research on environmental governmentality has focused on states and elites exercising power and less on resistive forms of politics manifested in those that seek autonomous forms of governance that oppose state and external authority, which is what prevails in Masungi, manifested particularly in the stance of MGFI. This limitation may persist even if we relocate the analytical framework outside the ambit of state processes and into more community-based and non-state approaches, which, in fact, were precisely the main arguments of Luke's (1999) "green governmentality" and Agrawal's (2005) "environmentality," considering

that both approaches failed to address the presence of conflict.

Fletcher and Cortes-Vasquez (2020) enumerated several trends in research that sought to address the relative absence of conflict in environmental governmentality research. Some researchers focused on Foucault's conceptualization of resistance (Asiyanbi et al., 2019; Nepomuceno et al., 2019), whereas others offered the idea of multiple environmentalities (Ferguson, 2011; Fletcher, 2010).

Fletcher (2017) offered a framework for what he termed "liberatory governmentality" by advancing what Foucault referred to as a fifth form of governmentality, which he initially labeled as socialist. Unfortunately, liberatory governmentality, while offering a framework to address competing programs and strategies and highlighting participatory equality, may not work in situations where conflict presents itself in the form of deep polarization presided over by bureaucracies that have become adversarial to a key stakeholder that views them as enemies, like that which exists in Masungi.

One particular work has addressed a situation similar to Masungi. Alexander Cullen (2020) applied the governmentality framework in Timor-Leste in a situation where the relationship between the state and other stakeholders is problematic and fluid. He referred to a form of environmental governmentality, which he termed as "transitional environmentality," that can be applied in situations where the prevailing interactions between the state and its environmental subjects are evolving and do not neatly fit into the prevailing governmentalities, which Foucault and other scholars have theorized. Cullen argued that such situations require the emergence of new practices in environmentality in the context of ongoing and conflict-ridden negotiations between the state and other stakeholders.

For Cullen (2020), environmental governmentality, or environmentality, can only provisionally exist and are fluid, delicate, and transitional in nature. As such, they could be subjected to negotiations. Masungi presents a condition that is in a state of flux, which is engendered by the existence of conflict among stakeholders, most dramatically between the DENR and MGFI. It also presents the state as having fragile authority, further heightened by a fluid policy environment where even the state has contradicted its own declarations.

State legitimacy, and even the legitimacy of the policy regime of protection, which ranges from the legal instruments, such as RA 11038, and the geographical landscape encapsulated by the declared protected area, which is the UMRBPL, is largely unstable. Formal governance is relatively weak and prone to fracture, and it can be easily eroded. Cullen saw in his case in Timor-Leste features of a problematic situation that also presented itself in Masungi. These include “incomplete environmental outcomes; local costs perceived to be ineffectively offset by conservation gains; a disconnection between policy formation and implementation; and insufficient consultation.” (Cullen, 2020, p. 438)

Despite the relative success of MGFI in protecting the areas covered by its MOA with DENR, the presence of market forces threatens protection and renders the achievement of the protection agenda incomplete. The principal driver that animates those with market interests rests largely on the perception that conservation gains are insufficient to compensate for their economic losses. This is because there is no actual monetization of the environmental benefits in terms of market prices and the valuation of the various ecosystem services using appropriate techniques (such as payments for ecosystem services or PES) and further aggravated by the perception that the MGFI is earning financial windfalls from its ecotourism activities. This is the root of the DENR’s gripe about the absence of a profit-sharing arrangement, something that was not provided for in the 2017 MOA but that DENR now expects from MGFI.

There is also a serious disconnect between policy formation and implementation, which is aggravated by the incoherence and patent contradictions in the process of policy formulation. Adequate consultation is also apparently wanting, not only because of the current failure of MGFI to consult DENR, which was the outcome of DENR’s inability to appoint a manager as required in the MOA. It is also apparent in the failure of former Secretary Gina Lopez to conduct wider internal consultations within DENR before she signed the MOA with MGFI.

Cullen (2020) illustrated a condition in Timor-Leste that clearly describes the Masungi Georeserve, as it also clearly suggests a way to move forward, when he wrote:

... the processes and goals of this State environmentality are transitional, in that

they simultaneously work to unsettle its own aspirations of ecological citizenship.

They threaten a fracture of the very legitimacy the State’s conservation seeks to claim. It is argued that a ‘transitional environmentality’ works as a powerful framework to explain these processes, eco-behaviours and the temporal fluctuations in technologies of power that produces weak legitimacies of environmental regulation. (p. 438)

Key to this is the argument that environmental conflict and weak environmental governance offer an opportunity for environmental citizen-making and the formation of what Agrawal (2005) referred to as environmental subjects. Situations like Masungi lay out a landscape where seemingly conflicting interests can be transformed, as long as the main premise is to implicate an ecological logic or eco-logic unto governance. Cullen (2020), based on his empirical investigation of parties involved in a conservation project in Timor-Leste, revealed that conflict situations require nuanced analysis, where the eco-logic of the social and political order rests on its being transitional, negotiable, precarious, and liminal. This creates spaces where environmental citizenship can be leveraged and where state-initiated environmental governmentality projects and their concomitant attempts to produce environmental subjects can be undone and transformed.

As the analysis of these cases reveals, the resulting contestations and the required solutions are basically subjective in character. Actors are influenced not only by institutional agendas but by personal motivations. Bureaucratic behavior can even be due not just to the legal and policy contexts but also to emotions and personal interests. DENR public officials have taken offense at the combative stance of MGFI and may have appropriated legalities to rationalize their otherwise emotional responses.

Concluding Remarks

Transitional environmentality, or environmental governmentality, can be enabled by the formation of environmental subjects from otherwise conflict situations. It is the nature of transitional governmentality that the onus for action is shouldered by non-state

actors, considering that it entails a resistive form of politics. In addition, non-state actors, like MGFI, have more flexibility to deal with institutional inertia, which encumbers state actors. Transitional environmentalism speaks of the emergence of environmental citizens who are engaged in proactive mobilization that should navigate the environmental bureaucracy, simultaneously engaging with and resisting it.

For example, MGFI can engage in a concerted effort to dispel its elitist environmentalist image by conducting more grassroots environmental education activities and having more dialogues and participatory activities with the local communities. It can also convert private interests, particularly resort owners, into allies by turning hostility into possible partnerships to further ecotourism in the area. In addition, it can even forge partnerships with the BuCor, a stakeholder representing the State that is outside the DENR bureaucracy that has established property rights claims over some portion of the area, by integrating environmental protection in the penology program of the facility by turning their inmates into environmental workers and advocates.

The dominant state discourse in Masungi has already been laid out by RA 7586, as amended by RA 11038. The intent is to protect the landscape to enhance its ability to render ecological services. Although the legibility and governmentality projects of the state may have even caused further conflict, there are available spaces for creative action that environmental citizens can take advantage of and populate. There is also a space provided for the private sector, as stipulated in Section 2 of RA 11038, where it is articulated that the state has no monopoly over protection initiatives. Rights are well-placed, as long as these are legally covered by prevailing laws, such as those held by indigenous peoples enabled by IPRA, and by the various agreements which local communities, private entities like MGFI, and market interests such as miners and resort owners forge with the state.

As long as these preconditions remain, transitional environmentalism suggests that spaces can be opened, whether as outcomes of environmental conflict negotiations, or as directed by judicial intervention, that can lead to the emergence of new forms of governmentality, and new practices for environmental citizenship.

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