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Review of Selected Land Laws and Governance of Tenure in the Philippines

**Discussion Paper in the Context of the Voluntary Guidelines
on the Governance of Tenure (VGGT)**

Antonio B. Quizon

Jose Ignatius Pagsanghan



PHILIPPINE DEVELOPMENT FORUM
WORKING GROUP ON SUSTAINABLE RURAL DEVELOPMENT

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I. Introduction

The *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)*, was developed under the World Committee on Food Security as a result of collaboration among different groups of stakeholders – governments, civil society, private sector, academe.¹ The VGGT is intended to provide a framework for responsible tenure governance² that supports food security, poverty alleviation, sustainable resource use and environmental protection. It sets out principles and internationally-accepted practices that may guide the review, preparation and implementation of policies and laws related to land tenure & resource governance.

The Voluntary Guidelines on Responsible Governance of Tenure addresses a wide range of issues including:

- Recognition and protection of legitimate tenure rights, even under informal systems
- Best practices for registration and transfer of tenure rights
- Making sure that tenure administrative systems are accessible and affordable
- Managing expropriations and restitution of land to people who were forcibly evicted in the past
- Recognition of rights of indigenous communities
- Ensuring that investment in agricultural lands occurs responsibly and transparently
- Mechanisms for resolving disputes over tenure rights
- Dealing with the expansion of cities into rural areas
- Dealing with tenure rights in the context of climate change, disasters and conflict

However, the Voluntary Guidelines (VGGT) does not establish binding applications nor does it replace existing laws, treaties and agreements. Here lies the challenge. How can the Voluntary Guidelines enforce its objectives? At the same time, what is the value added of the VGGT in the Philippine context? Given that there are various laws, policies and programs on land, water and fisheries, can the voluntary guidelines enhance their implementation in order to realize the set objectives?

¹ The VGGT was negotiated under the World Committee on Food Security (CFS) as a follow-up to the earlier *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* that was passed at the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD). The VGGT itself was formally adopted at the 38th (Special) Session of the Committee on Food Security held in Rome on 11 May 2012. The VGGT document is available online at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

² “Tenure” is the relationship, whether legally or customarily-defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions. FAO (2003). *Multilingual Thesaurus on Land*, Rome: Food and Agriculture Organization, page 36.

This discussion paper on the VGGT and National Policies on the Governance of Tenure has been commissioned by the Asian NGO Coalition (ANGOC) as a member of the Philippine Development Forum – Working Group on Sustainable Rural Development (PDF-SRD).³ This paper examines national policies as embodied in the 1987 Philippine Constitution and the major land and natural resource laws passed by the Philippine legislature. This research is supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

Objective of the Review

The study aims to compare and analyse the Voluntary Guidelines and the major laws governing land and natural resources in the Philippines, identifying areas of policy and program complementation and gaps. The identified areas of convergence and divergence between the set of Voluntary guidelines and major Philippine land laws can serve as a springboard for advocacy and implementation of the VGGT in the country.

Scope and Limitations

The study examines 11 major Philippine policies and legislations on the governance of tenure over land, water and forests, described as follows:

<i>Overall framework</i>	1. Philippine Constitution of 1987
<i>Sectoral tenure reforms (rural sector)</i>	2. Indigenous Peoples Rights Act of 1997 (RA8371) 3. Philippine Fisheries Code of 1998 (RA 8550) 4. Comprehensive Agrarian Reform Program of 1988 (RA 6657) as amended by CARPER (RA9700)
<i>Natural resource management, protection and use</i>	5. Agriculture and Fisheries Modernization Act of 1997 (RA 8435) 6. National Integrated Protected Areas System Act of 1992 (RA 7586) 7. Forestry Code of the Philippines (PD 305) 8. Philippine Mining Act of 1995 (RA 7942) 9. Public Land Act of 1936 (CA 141, as amended)
<i>Climate change and risks</i>	10. Climate Change Act of 2009 (RA9729) 11. Philippine Disaster Risk Reduction and Management Act of 2010 (RA 10121)

The 1987 Philippine Constitution provides the broad legal framework on land and resource governance. The other legislations listed above cover the major laws governing land and natural resource tenure in the *rural*

³ The PDF-SRD is platform for government agencies, CSOs, and development partners working on rural development in the Philippines. As a member of the PDF-SRD, ANGOC is implementing this VGGT project with members of the PDF-SRD. The project intends to facilitate the formulation of an implementation plan of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security at country level by building partnerships among key stakeholders from government agencies; CSOs, NGOs and POs working on access to land; development partners led by FAO and GIZ and other sectors.

areas, which is the focus of this study. The objectives and scope of this paper (including the list of laws for study) was reviewed by the Reference Group on the VGGT of the PDF-SRD.⁴

This study is limited to *content analysis* of the provisions of the abovementioned laws, and how they relate to the Voluntary Guidelines. The study does not assess the *implementation* of these laws, and neither does it review the specific administrative orders, implementing guidelines and staff policies that may be related to the implementation of the above laws.

It is also worth noting that certain legislations that have relevance to the *overall* governance of tenure are not covered by this study. These include: the *Civil Code* (on inheritance, property rights and protection, anti-discrimination); the *Urban Development and Housing Act/ UDHA* (on informal tenure rights); the *Tax Code* (on valuation systems, tax administration); the *Local Government Code* (on local administration, land classification, assignment of local tenure rights, local taxation); and *investment policies*, including the creation of *special development zones and authorities* that may impact on tenure over land, fisheries and forests.⁵

Meanwhile, there are certain limitations within the VGGT itself. For instance, while the VGGT identifies its focus as “land, fisheries and forests in the context of national food security”, it does not provide specific guidelines on tenure for *fisheries*. It should be noted that Philippine sovereignty and its EEZ extends over 220 thousand square kilometres of offshore waters, which is seven times the size of its land and inland waters. In this sense, the physical attributes of the Philippines as an archipelago is unique in the global context, and this factor may not have been taken into account in the international FAO/CFS negotiations over the Voluntary Guidelines.

Methodology

This strategic assessment of the major Philippine laws on land and resource governance in the rural areas, vis-à-vis the VGGT was undertaken mainly through *desk reviews*. An initial *mapping* was done to identify the VG provisions that are currently covered by provisions on the same subject matter in Philippine laws on land and resource governance in rural areas. In addition, an initial assessment was done to indicate whether these related provisions are in agreement with (+), contradict (-) or are undefined (?) vis-à-vis the VGGT provision concerned. A broader assessment on the philosophical and operational differences and similarities between the VGs and the aforementioned laws was also conducted, and comments provided.

Strategic Assessment of VGs and Philippine Laws on Land and Resource Governance

VGGT provisions	Natural Resource Laws	(+)	(-)	(?)	Comments
1. Principles	Constitution provision 1 provision 2, etc Forestry Code provision 1	x		x	

⁴ Inclusion of the Public Land Act of 1936 was made upon a suggestion raised at the meeting of the 2nd Meeting of the Reference Group on the VGGT held on September 05, 2013.

⁵ It is important to note that a parallel study is being undertaken by ANGOC on the principles of responsible agricultural investments.

	provision 2, etc		x		
2. Legal Recognition	CARPER IPRA Forestry Code NIPAS Fisheries Code AFMA, etc				
3. Transfers	CARPER Mining Act IPRA AFMA, etc				
4. Administration					
5. Climate Change & Risks	CC Law, DRRM Law, etc				

The comments were then consolidated and drafts of the study findings were subjected to feedback and additional inputs through the following processes: (a) an *experts meeting* [Department of Agriculture, Quezon City on 03 October 2013]; (b) three *regional consultations* [DA-Agriculture Training Institute on 30 October 2013; Xavier University, Cagayan de Oro City on 19 November 2013; and Ninoy Aquino Parks and Wildlife, Quezon City on 19 March 2014]; and (c) a *national consultation* [Bureau of Soils and Water Management, Quezon City; 20 March 2014]. This study has integrated the relevant feedback from this series of consultations. Researchers also reviewed secondary materials as provided or recommended at the consultations. Some of the secondary materials reviewed have focused on descriptions of tenure instruments. *Annex A* provides a list of references. *Annex B* provides a summary table of some legal tenurial instruments in the Philippines.

Presentation Outline

This study is structured and presented as follows:

- I. Introduction
 1. The Voluntary Guidelines
 2. Philippine Commitment to the VGs
 3. Study Objectives and Scope
 4. Brief Background on Philippine Laws on Land and Resource Governance
- II. Summary of Main Findings and Recommendations
- III. Assessment of Philippine Laws on Land and Resource Governance vis-à-vis the VGGT
 1. General Principles
 2. Legal Recognition
 3. Transfers
 4. Administration
 5. Climate Change
- IV. Annexes
 1. List of References
 2. Summary Table of Tenurial Instruments in the Philippines

II. Summary of Main Findings and Recommendations *(to be finalized after the Consultations)*

Context

The Philippines consists of 7,107 islands covering 30 million hectares, with 29.8 million hectares of land and 1.83 million hectares of inland waters.⁶ Moreover, it has a coastline of 36,289 kms, and 2.2 million square kilometres of territorial waters that include its exclusive economic zone (EEZ).⁷ With 98 million people, it ranks as the second most densely populated country in Southeast Asia (with 346 persons per square kilometer of land).⁸ Yet as an archipelago with rugged and mountainous interiors, only 4.9 million hectares (or 16% of the land area) is arable. Land distribution is uneven and highly skewed, and resources suffer from erosion, deforestation and pollution.

One key challenge faced will be how the country will feed itself with a growing population with diminishing land per capita – amidst increasing competition for resources, with the threats of climate change and disasters, and increasing human competition, needs and expectations. The conservation, management, distribution and use of land and natural resources will be a central factor to meet this challenge, and therefore the governance of tenure will take central importance.

Executive Summary

- The 1987 Constitution provides the overall legal framework on tenure governance.
- There is an overall strong policy framework on tenure rights consistent with the principles of the VGGT
- The Constitution is not only reflects the principles of the VGGT, but introduces the social reform agenda, which includes tenure reforms
- Four major tenure reforms – CARP/ER, IPRA, UDHA & Fisheries Code seek to broaden the base of people with secure tenure, providing different tenure instruments. Now at different levels of implementation & accomplishment.
- However, sectoral and landscape approaches to the governance of tenure lead to the fragmentation and conflict of policies, overlapping boundaries & functional overlaps among agencies
- Overlapping laws & mandates tend to be addressed through multi-agency coordination (TWGs) but this can be tedious; rather than synchronization of policy
- Meanwhile, a new generation of land issues arising – there are sectors left out (eg landless laborers); forces of reconsolidation likely to overtake forces of redistribution
- There is an inadequate framework in dealing with private sector (vis-à-vis the VG); not pro-active

⁶ Data from faostat.fao.org/ (accessed 6 March 2014)

⁷ <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> (accessed 6 March 2014)

⁸ Philippines ranks second to Singapore in population density in Southeast Asia.

- In general, there is a weak policy framework in dealing with pro-active disclosure, access to information. This is in relation to market forces (markets, investments) as well as to taxation and valuation.
- Strong points on participation, consultation
- Some aspects of the VGGT are not covered by the laws studied; they are covered by other non-land laws but have impact on tenure rights (ex, Civil Code, Tax Code)
- Many of the “gaps” may be addressed by Bills still pending. These three (3) include: the National Land Use Act, the Freedom of Information Act, and the Land Administration (LARA) bill. However, these pending laws need separate review, based on the principles of the VGGT.
- There are alternative systems for dispute resolution. However, these are only for within the respective sectors, not for across sectors.
- In terms of restitution: IPRA is the main policy & program that recognizes prior or pre-conquest rights to indigenous peoples. However, the effectiveness of IPRA is being eroded at the margins by conflicting laws and policies. Mining is a major threat.
- In terms of redistribution: CARP/ER is the main policy & program. Still pending targets, uncertainty after 2014. Many issues will still remain & new generation cases/ disputes likely to arise.
- Climate change & natural disasters: The CC Act and DRRM policies are in place, but these laws focus mainly on the establishment of institutions, rather than on policy directions. It appears that there is still a lack of understanding on the links between CC and disasters with tenure rights. These include the tenure rights of affected people, as well as of host communities in case of resettlement.
- There is an overall gap in land administration: efficiency, transparency & the multiplicity of agencies and systems that deal with land administration.
- There are many different tenure instruments & systems which need to be reviewed.
- The goal is not to make uniform tenure systems, but to codify & protect different types of tenure rights.

III. Assessment of Philippine Laws on Land and Resource Governance vis-à-vis the VGGT

Working notes on the VGGT

The *Voluntary Guidelines on the Governance of Tenure* or the *VGGT* is the product of inter-governmental negotiations under the Committee on World Food Security (CFS). This document was officially endorsed by the CFS in May 2012. As an international legal instrument, the *VGGT* may be considered as an *International Declaration* without the legal binding effect of an International Convention or UN Treaty. The *VGGT* document focuses on “governance of tenure of land, fisheries and forests in the context of national food security”.

Nature and focus. The *VGGT* may be characterized as follows:

- **It is voluntary** (Sec 2.1)
- **It takes on a ‘rights-based’ approach** (Sec 2.2). It does not seek to introduce new “rights” or “obligations”; rather, it elaborates on existing commitments of States. (Sec 1.1 & 2.2) It is framed in the form of a “legal code” or a “systematic and comprehensive compilation of laws on a subject matter”.
- **It also identifies “standards” for tenure governance** (Sec 2.3). It does not just stipulate “minimum obligations” for States, but includes “aspired standards” based on good/ best practice. Thus, the document is also seen as a useful “assessment tool” for policy review & implementation (state) and for claim-making (by non-state actors)
- **It takes into account the diversity of tenure systems** (Sec 2.4). It takes on a broader framework that recognizes multiple tenure systems – including communal & collective, indigenous & customary tenure.
- **While global in scope, it is to be interpreted based on national legal systems & institutions** (Sec 2.4 & 2.5). While this increases the general acceptability of the document especially for UN member-states, it also somewhat decreases the value of the document as a standard for universal compliance and monitoring.

Scope. The *VGGT* document has 7 sections, but only Sections 2-6 deal with the more substantive themes.

These 5 substantive themes have 23 sections and 169 provisions. The focus of Part III of this paper is on the 5 substantive themes and the 23 sections/ general principles.⁹

Content. The *VGGT* contains a *large volume* of 169 provisions. As a document finalized through international and multi-sectoral negotiations, certain provisions are not coherent or well-organized; it is observed that some provisions are packed with several different ideas. Several phrases and ideas are also *repetitive* in many parts – i.e., on the “rights of women”, “indigenous peoples’ rights”, policies that should be “consistent with international agreements and obligations”, “rights and guarantees against arbitrary evictions”, “recognition of informal tenure”, etc. Thus, it may be easier to understand the organizing framework of the *VGGT* through its broad outline:

⁹ Note: this Paper follows the numbering of the *VGGT* Principles, in order to facilitate cross-referencing with the *VGGT* official document. Hence, the *VGGT* Sections presented here are numbered from 3-25.

- **Theme 2: General matters:** refers to the State's overall state policies and principles in ensuring tenure rights for citizens. This includes the overall policy, legal and organizational frameworks. In the Philippines the 1987 Constitution is the main policy document that defines these state policies and principles that are further expounded through legislation.
 - Guiding principles
 - Rights and responsibilities
 - Policy, legal & organizational frameworks
 - Delivery of (tenure) services
- **Theme 3: Legal recognition and allocation of tenure rights and duties:** focuses on the systems by which the tenure rights of different populations are legally recognized, and how these rights and duties are initially allocated. There is a strong focus on “public” lands, and on recognition of multiple tenure systems with equal importance given to customary and informal tenure rights.
 - Safeguards
 - Public lands, fisheries and forests
 - Customary tenure
 - Informal tenure
- **Theme 4: Transfers and changes to tenure and duties:** addresses issues that may arise when existing tenure rights are transferred through private or public transactions. Tenure rights and duties are transferred through different forms:¹⁰
 - Markets
 - Investments
 - Land consolidation
 - Restitution
 - Redistributive reforms
 - Expropriation and compensation (state)
- **Theme 5: Administration of tenure:** refers to administrative systems in the management of tenure, as well as for resolution of disputes.
 - Records of tenure rights
 - Valuation
 - Taxation
 - Regulated spatial planning
 - Resolution of disputes
 - Transboundary issues
- **Theme 6: Responses to climate change and disasters:** focuses on addressing tenure issues that arise due to climate change, natural disasters and wide scale conflict.
 - Climate change
 - Natural disasters
 - Conflicts that involve tenure over land, fisheries & forests

¹⁰ Not discussed under Section 4 are other forms of intra-family and intra-community transfers of tenure rights and duties. These include systems of inheritance, intra-group transfers based on cultural practices, and tenurial transactions in the *informal economy* (including informal land use and occupation, rentals and sub-leases, informal pawning, credit systems that involve negotiated tenure and rights to future harvests, etc).

Quick Overview

Table 1 and Table 2 provide a quick overview of this assessment. Table 1 (below) compares 10 land and resource laws with the VGGT Principles. The colored areas indicate those “governance-of- tenure” principles that are addressed (in whole or in part) by the Laws under review.

Table 1. “Crowd Analysis” comparing Selected Land and Resource Laws with VGGT Principles

	Frame-work	Sector-based tenure reforms			Resource management, protection & use				CC and risks	
	CONSTI	CARPER	IPRA	FISH	AFMA	NIPAS	FOREST	MINING	CLIMATE	DRRM
A GEN MATTERS										
3 Principles	Blue	Green	Yellow	Blue		Orange	Brown			
4 Rights & responsibilities	Blue	Green	Yellow	Blue	Green	Orange	Brown			
5 Legal/ Org'l frameworks	Blue		Yellow	Blue	Green	Orange				
6 Delivery of Services		Green	Yellow	Blue	Green	Orange	Brown	Red		
B LEGAL RECOGNIT'N										
7 Safeguards	Blue			Blue						
8 Public, fishery & forestry	Blue	Green		Blue		Orange	Brown	Red		
9 Indigenous/ customary	Blue		Yellow			Orange		Red		
10 Informal tenure	Blue									
B TRANSFERS										
11 Markets	Blue	Green	Yellow							
12 Investments	Blue		Yellow	Blue	Green	Orange	Brown	Red		
13 Land consolidation		Green								
14 Restitution	Blue		Yellow							
15 Redistributive reforms	Blue	Green								
16 Expropriation	Blue									
C ADMINISTRATION										
17 Records			Yellow	Blue				Red		
18 Valuation		Green								
19 Taxation										
20 Spatial planning					Green		Brown			
21 Dispute resolution		Green	Yellow					Red		
22 Transboundary issues										
D. CLIMATE & RISKS										
23 Climate change			Yellow							
24 Natural disasters										Purple
25 Conflicts in tenure										

On the other hand, Table 2 (below) provides a *reverse image* of Table 1. The dark shaded areas indicate those “governance-of- tenure” principles where the Laws under review appear “silent”.

Table 2. “Silence” analysis comparing Selected Land and Resource Laws with VGGT Principles

	Frame-work	Sector-based tenure reforms			Resource management, protection & use				CC and risks	
	CONSTI	CARPER	IPRA	FISH	AFMA	NIPAS	FOREST	MINING	CLIMATE	DRRM
A GEN MATTERS										
3 Principles										
4 Rights & responsibilities										
5 Legal/ Org'l frameworks										
6 Delivery of Services										
B LEGAL RECOGNIT'N										
7 Safeguards										
8 Public, fishery & forestry										
9 Indigenous/ customary										
10 Informal tenure										
B TRANSFERS										
11 Markets										
12 Investments										
13 Land consolidation										
14 Restitution										
15 Redistributive reforms										
16 Expropriation										
C ADMINISTRATION										
17 Records										
18 Valuation										
19 Taxation										
20 Spatial planning										
21 Dispute resolution										
22 Transboundary issues										
D. CLIMATE & RISKS										
23 Climate change										
24 Natural disasters										
25 Conflicts in tenure										

From Tables 1 & 2, some quick observations can be made regarding the different laws:

- The *Constitution* provides the broad overall framework and principles on the governance of tenure. It covers most of the VGGT principles under General Matters, Legal Recognition and Transfers, but it does not deal with operational matters on Land Administration or address Climate Change and Risks.
- The three *sector-based tenure reforms* – CARP/ER, IPRA and the Fisheries Code – further elaborate on the tenure rights of disadvantaged sectors as guaranteed/ provided by the Constitution. Thus, they also deal with General Matters, Legal Recognition and Transfers. Each tenure reform law focuses on a *specific sector* such as: on tenants, farmworkers and landless farmers in private and public lands (CARP/ER), on indigenous cultural communities and indigenous peoples (IPRA), and on small-scale and artisanal fisherfolk (Fisheries Code).
- The four laws on resource management, protection and use – AFMA, NIPAS, Forestry Code and Mining – focus on the management of the country's natural resources. They support the general principles of tenure governance under General Matters, and provide some safeguards and Legal Recognition of tenure rights in public lands, forestry and fisheries, including the rights of indigenous peoples. However, under Transfers, their main focus is on *investments* rather than on tenure reforms.
- Finally, the two laws dealing with climate change and disasters – Climate Change Act and DRRM – do not appear to address VGGT guidelines on tenure issues.

Regarding the VGGT itself, the following are observed:

- Generally, the laws reviewed only partially address the VGGT guidelines on *Land Administration*. This is probably because Land Administration (including valuation, taxation, records, etc) is not covered by the laws under this Review.
- Meanwhile, none of the laws studied address the guidelines on: *Informal Tenure* (Sec 10), *Expropriation* (Sec 16), *Taxation* (Sec 19), *Trans-boundary Issues* (Sec 22), and *Climate Change* (Sec 23). However, this does not necessarily mean that these are “policy gaps”, as these guidelines may be covered or addressed by other legislations not included in this Study.

Sec 2. General Matters (3-6)

- Addresses rights and responsibilities; policy, legal and organizational frameworks; and delivery of (tenure) services
- Focuses on State obligations under international human rights instruments

3 Guiding principles for responsible governance

- Recognize legitimate tenure rights holders; identify, record & respect their rights whether formally recorded or not
- Safeguard legitimate tenure rights against threats & infringement, including forced evictions
- Facilitate the full enjoyment of tenure rights
- Provide access to justice to resolve disputes; provide just compensation where tenure rights are taken for public purposes
- Prevent disputes, violent conflict, corruption
- Role of business enterprises in respecting human rights and tenure rights. States should ensure that businesses are not involved in abuse of tenure rights
- Principles of implementation: (3B)
 - Human dignity
 - Non-discrimination
 - Equity & justice
 - Gender equality
 - Holistic & sustainable approach
 - Consultation & participation
 - Rule of law
 - Transparency
 - Accountability
 - Continuous improvement

- The 1987 Philippine Constitution declares as state policy “the protection of life, liberty and property, and the promotion of general welfare” (Art II, Sec 5). These rights are also upheld in the Bill of Rights (Art III) which uphold the full enjoyment of tenure rights and property.
- The 1987 Philippine Constitution is also known as a “reform Constitution”. It not just recognizes tenure rights, but also institutes “social reform” of tenure rights. The *Declaration of Principles* declares that the “State shall promote social justice” (Art 2, Sec 10), “promote comprehensive rural development and agrarian reform” (Art 2, Sec 21), and “recognize and promote the rights of indigenous communities” (Art 2, Sec 22). It further identifies & establishes tenure rights for three particular rural sectors where tenure is weak and often goes unrecorded:

- “*Farmers and farmworkers* shall be the focus of an agrarian reform program founded on the rights of landless to own directly or collectively the lands they till, or in the case of farmworkers, to receive a just share of the fruits of the land” (Art XIII, Sec 4 & 5)
- “*Subsistence fishermen* esp of local communities shall be given rights to preferential use of communal marine and fishing resources, both inland and offshore” (Art XIII, Sec 7)
- “*Settlers in public domains* shall enjoy prior rights in the disposition or utilization of natural resources and lands of the public domain suitable for agriculture, whether the lands are placed under agrarian reform or stewardship agreements. These include homestead rights of small settlers and rights of indigenous peoples to their ancestral lands.”
- These Constitutional mandates have led to subsequent legislations – IPRA, Fisheries Code and CARL/CARPER – that establish the tenure rights for the 3 sectors, and also establish the *tenure instruments* by which their rights are recorded and protected. The “sectoral reforms” seek to expand the ranks of tenure rights holders among vulnerable sectors, as well as to formalize & strengthen their tenure through different tenure instruments – from titling to usufruct rights.¹¹ These instruments seek to enlarge the base of tenure rights holders.
 - **IPRA**, (Sec 11) recognizes the ancestral domain rights of ICCs/IPs and grants formal recognition of these rights through *Certificate of Ancestral Domain Titles* (CADTs).
 - **Fisheries Code** (Sec 17, 18) grants fishing privileges/ rights in municipal waters to duly registered fisherfolk and their organizations. These rights are granted and protected through *municipal permits* which grant user rights.
 - **CARL/CARPER** seeks to address the tenure rights of landless farmers & farmworkers in both private lands and public domain lands. In private and A&D lands, beneficiaries are awarded *Emancipation Patents* and *Certificates of Land Ownership Awards* (CLOAs) which operate under the Torrens Title system (CARPER, Sec 24) and become full titles upon completion of amortization. Under Sec 22 of RA 6657, AR beneficiaries have usufruct rights over the awarded land as soon as the DAR takes possession of such land, even while their EPs and CLOAs are still pending. There is an award ceiling of 3 hectares per beneficiary. (RA 6657, Sec 25) Lands under an EP or CLOA cannot be transferred for a period of 10 years, unless through inheritance. (CARPER, Sec 12)
- On access to justice (VGGT 3.1-4), there are non-judicial systems for resolving disputes. For example, CARPER Section 18, gives quasi-judicial powers to DAR with a right to appeal and resort to Judicial Courts. Yet at the same time, DAR does not have the powers to resolve disputes for *non-AR cases*. Perhaps here lies one problem: what happens when the different land laws overlap and conflict with each other? What should happen when there are overlapping agency mandates? These matters are further discussed in this Paper under VGGT Section 21 (*Resolution of Disputes*) and VGGT Section 25 (*Conflicts that involve Tenure*).

¹¹ Refer to *Annex B* for a discussion of tenure instruments and their “bundle of rights”.

- The Constitution ensures rights against arbitrary evictions. Sec 9 of the Bill of Rights states that “private property shall not be taken for public use without just compensation. The Constitution further declares that “Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.” (ArtXIII, Sec 10)
- There are sectoral laws with provisions against evictions and infringements:
 - IPRA has a provision against unauthorized and unlawful intrusion (Sec10)
 - CARPER imposes prohibitions or restrictions on acts by which landowners try to circumvent agrarian reform, and/or evict farmers from their land. These include the “conversion of agricultural lands” (Section 22) and “Prohibited Acts and Omissions” (Section 24).
 - Also, UDHA (the Urban Development and Housing Act, which is not part of this review) has strong safeguard provisions against arbitrary eviction and housing demolition. Although the title mentions “urban”, it also applies to rural areas. De-criminalization of squatting is a form of recognition of informal tenure.
- The revised Forestry Code (Sec 38) also gives tenure holders (timber licensees & concessionaires) the exclusive control over forest concession areas based on multiple use and sustainable yield management (emphasis supplied). This tenure right gives licensees both the right of harvest and the right of exclusion (preventing entry by others), because holders of license agreements are also required to adopt conservation and protection over the resource. But what about the *existing forest users* who may lose access to such resources? In this case, the issue is more than just a discussion of “infringement” of so-called “exclusive” tenure rights and raises some question – i.e., How can we institute tenure based on *multiple use* of the same resource? How do we balance the exercise of a resource right with the right of exclusion?
- It is also noted that a *highly sectoral approach* to tenure reform and governance may also result in the fragmentation of land policy & possibly of land administration as well.
- All the VGGT principles of implementation under 3B are well enshrined in the Constitution, especially under *State Policies* (Art 2) and the *Bill of Rights* (Art 3):
 - **Human dignity:** “The State values the dignity of every human person and guarantees full respect for human rights” (Art 2.11)
 - **Non-discrimination:** No person shall be denied “equal protection of the laws” (Art 2.1)
 - **Equity & justice:** State shall promote social justice in all phases of national development (Art 2.10); Provisions on social justice and human rights (Art 13.1)
 - **Gender equality:** State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men (Art 2.14)
 - **Holistic & sustainable approach:** Covered under section on *National Economy and Patrimony* which covers lands of the public domain, and systems of land classification (Art 12.3).
 - **Consultation & participation**
 - **Rule of law:** Covered by the *Bill of Rights* (esp Art 3.1 and Art 3.14)

- **Transparency:** Right to information and access to official records (Art 3.7)
- **Accountability:** “Public office is a public trust”; public officers and employees “must lead modest lives” (Art 11.1)
- **Continuous improvement**
- These general principles are also reflected in the different legislations under this review.
- Furthermore, The Constitution stipulates “honesty and integrity in the public service and (to) take positive and effective measures against graft and corruption”. (Art 2.7)
- On the role of non-state actors and businesses in respecting human rights: This is reflected in the general principles and safeguards provided by the Bill of Rights (Art 3). However, other specific provisions of VG 3.2 need further review. These include: requiring businesses to establish internal grievance mechanisms and to establish non-judicial mechanisms to provide remedy, and a state policy to respond to human rights violations by transnational corporations/TNCs – both as destination state and as home country. There appears to be no policy, for instance, that require Philippine companies to implement Philippine laws on human rights when they expand operations or invest abroad.

4 Rights and responsibilities related to tenure

- Governance of tenure towards the realization of human rights, food security, poverty eradication, sustainable livelihoods, etc (4.1)
 - State actions on tenure & governance are consistent w/ existing international obligations (4.2)
 - No tenure right is absolute, including private ownership. Tenure rights are balanced by duties, the rights of others & public purposes (general welfare, environment & human rights) (4.3)
 - Protection against arbitrary eviction & infringement of rights (4.5)
 - No discrimination related to tenure rights – related to change in marital status, lack of legal capacity, lack of access to economic resources, right to inheritance. (4.6)
 - Non-discriminatory & gender-sensitive assistance (4.7)
 - Timely, adequate & affordable means for resolving disputes through access to judicial & administrative bodies (4.9)
 - Participation in policy formulation & implementation (4.10)
-
- The Philippine Constitution states that “the use of property bears a social function” (Art 10, Sec 6). It further states that “all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.”
 - This overriding principle of rights and responsibilities related to tenure is reflected in the sectoral land laws and tenure instruments, including:
 - IPRA, Sec 9 stipulates the responsibilities of indigenous peoples/ cultural communities IPs/ICCs in protecting and managing their ancestral domains;¹²
 - Fisheries Code, Sec 2 which declares fishers not just as privileged beneficiaries, but as partners in fisheries conservation & management;
 - CARPER, Sec 1 mentions the obligation of farmers to cultivate or administer labor on their awarded lands;
 - Finally, there is a variety of tenure instruments for private individuals and families, communities and the private sector for the conservation, use and management of forests, mangroves and resources in the public domain.¹³

¹² Ancestral Domain Sustainable Development and Protection Plans, or ADSDPPs.

¹³ See Annex B.

- As mentioned in the previous section, the Constitution ensures rights against arbitrary evictions. Specific provisions include the Bill of Rights (Art 3.9 on private property), and policy against arbitrary eviction and demolition of homes. (Art13, Sec 10) These rights are reflected in the different laws.
- Regarding non-discrimination, Art 2.14 of the Constitution states that “the State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.” With regards to non-discrimination in relation to changes in marital status (marriage) and equal right to inheritance, these are rights covered under the Civil Code or RA 386, which is not included in this Review.
- This policy of equal rights for women and non-discrimination is reflected & strengthened in other tenure laws. IPRA, Sec 21 on the *Equal Protection and Non-discrimination of ICCs/IPs* stipulates that the State shall “accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry” and “extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society”. Furthermore, it declares that “fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women.”
- **Recommendation:** The issue of discrimination against women on tenure rights is not just a matter of law or policy, but also of culture and institutional practice. Women’s tenure rights, and equal access to tenure security should be reviewed, for example, by examining whether official titles, licenses, permits and tenure instruments actually reflect equal rights of women.
- The review should also “consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide them adequate protection and these are implemented and enforced” (in line also with VGGT 5.4).

5 Policy, legal & organizational frameworks related to tenure

- Ensure that policy, legal & organizational frameworks are consistent w/ international obligations (5.2)
 - Policy ... recognize & respect legitimate customary rights. Frameworks are non-discriminatory. Promote social equity & gender equality (5.3)
 - Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration (5.3)
 - Women's tenure rights (legal contracts, legal services) (5.4)
 - Decentralization & devolution - responsibility at levels of gov't that can most effectively deliver services; coordination of line agencies w/ local gov'ts, indigenous peoples & communities w/ customary tenure systems) (5.6)
- Some general observations regarding the “interconnected relationships between land, fisheries and forests and their uses”, as well as on “the need for an integrated approach to their administration”:
- *First*, unlike some Asian countries that have a comprehensive and consolidated Land Law¹⁴ or a Land Code, tenure governance in the Philippines today is founded on *numerous legislations* that define the policy, legal and organizational frameworks related to tenure and governance of land, forests and fisheries.
 - *Secondly*, while new laws or amendments are continually being passed by the legislature, the old laws are often *not repealed*. Sections of old laws are merely superceded, replaced or amended by the new laws, and this system allows the old laws to retain their *residual* validity in whole or in part. The overall result is a complex system of legal jurisprudence that often only lawyers can navigate.
 - *Thirdly*, the country has taken on a highly *sectoral approach* to land/ resource policy, tenure reforms, and land/ resource administration. There is CARP/ER for agrarian reform covering public A&D and private agricultural lands, Fisheries Code covering municipal waters, and IPRA for ancestral domains. In addition, there is the Mining Act, NIPAS, Forestry Code, and others. Each law has its own set of working assumptions and objectives; hence, while some laws emphasize *tenure rights* of sectors and communities, some focus on the conservation and management of the resource, while others emphasize efficient use and productive utilization of the resources.
- Each law may have its own system – for issuing tenure instruments, undertaking land valuations, and even for undertaking extra-judicial settlement of disputes. Each part of the landscape appear to be managed as a separate entity or ecosystem – agricultural lands, mangroves, municipal waters, forests, mines, concessions, etc. Some of the land and waters are managed through the local government; others through a line agency or a specialized institution.

¹⁴ Examples are: the Cambodian Land Law of 2001; the Thailand Land Code of 1954 as amended in 2008; the Malaysia Land Code of 1965. Indonesia also has a Basic Agrarian Law of 1960 (which is similar to the Philippines' Public Lands Act/ CA 141) that defines the different categories of land and forms of land title.

In reality, however, tenure systems overlap. Ancestral domains lands do not just cover upland forests, but also lowlands and foreshores, including coastal waters. There are mining concessions within ancestral domains. The management of foreshore lands, mangroves and coastal areas fall under different agencies and the LGUs; these agencies and units also issue different types of tenure instruments such as contracts, licences, concessions and permits. The result is a complex and fragmented landscape of laws.

- A major finding especially on VGGT 5.3 is that sectoral approaches to land policy may lead to fragmented laws, overlapping boundaries, and functional overlaps among agencies. Examples:
 - For IPRA, a major contention has been on jurisdiction over forest lands, as the revised Forestry Code of 1975 stipulates that “all lands above 18 degrees slope automatically belong to the state and classified as forest lands”. Moreover, some ancestral domains have overlapping boundaries with national parks and protected areas, land concessions, and agrarian reform areas covered by titles and stewardship agreements.
 - There are some 77,000 hectares of untitled private agricultural lands (UPAL) under agrarian reform that cannot be transferred, and need to be resolved under the DENR
- How are jurisdictional and substantive disputes resolved when different sectors are involved? There are both administrative and judicial responses:
 - **Joint administrative orders.** A case in point is the *Joint DAR-DENR-LRA-NCIP Administrative Order No 1, Series of 2012* which seeks to resolve jurisdiction and operational issues among the agencies in relation to the implementation of CARL, IPRA and the Public Lands Act/ CA 141 particularly with regards to the issuance of titles covered by conflicting jurisdictions and claims.¹⁵
 - **Technical Working Groups (TWGs)**
 - **National Convergence Initiative.** Programmatic approach aimed at improving overall inter-agency coordination and efficiency in the delivery of rural development services.
 - **Judicial courts**
- However, while these measures seek to address disputes, they do not necessarily lead to the synchronization of policy.
- **Recommendation?**

¹⁵

6 Delivery of services

- Ensure prompt, accessible & non-discriminatory services to protect tenure rights. Eliminate unnecessary legal & procedural requirements (6.1)
- Policies and standards for sharing of information, including spatial info for use by state, implementing agencies, communities, private sector, academia (6.5)
- Have additional measures to support vulnerable & marginalized groups, including legal support & mobile support to reach remote communities (6.6)
- Prevention of corruption & arbitrary use of power. Checks and balances (6.9)

- *Note: VGGT 6 refers to policies regarding the overall delivery of services in relation to tenure – including administrative & legal services, as well as access to information. The more specific discussions on this are found under the Theme on “Administration of Tenure” – Sections 17-22 of this Paper.*
- Article 2, Section 28 of the Constitution stipulates “a policy of full public disclosure of all its transactions involving public interest.” However, this policy of *full public disclosure* does not appear strongly in most of the Land Laws reviewed for this Paper. One exception is under NIPAS:

NIPAS, Sec 5 stipulates that all DENR records on protected areas (maps, natural boundaries, rules and regulations, public notices, legal documents and reports shall be made available to the public in the respective DENR regional, provincial and community offices where NIPAS areas are located;
- During the Consultations for this Paper, it was clarified that the issue is not just whether information is being disclosed or being made accessible, but also whether certain types of tenure-related information actually exists. And even if information is available and disclosed, there are often questions raised as to their accuracy and reliability.
- A case in point is the availability and sharing of *spatial information* (VGGT 6.5) Are maps being made available? Are they being updated? And are spatial data being consolidated?
- **Recommendation:** Examine how the pending *Freedom of Information Act/ FOI* is likely to impact on the delivery of tenure services and improve the overall governance of tenure. Also examine the types of tenure-related information that need to be publicized in order to improve governance (properties, licenses, public concessions, fees, valuations, contracts, payments, maps, spatial information, public investments & property procurement, etc)
- **Recommendation:** VGGT 6 also largely concerns the issues of land administration, and thus there may be need to review the pending *Land Administration Bill* regarding its role in ensuring prompt, accessible & non-discriminatory services to protect tenure rights, eliminating unnecessary legal & procedural requirements; reaching remote communities to support vulnerable tenure groups.

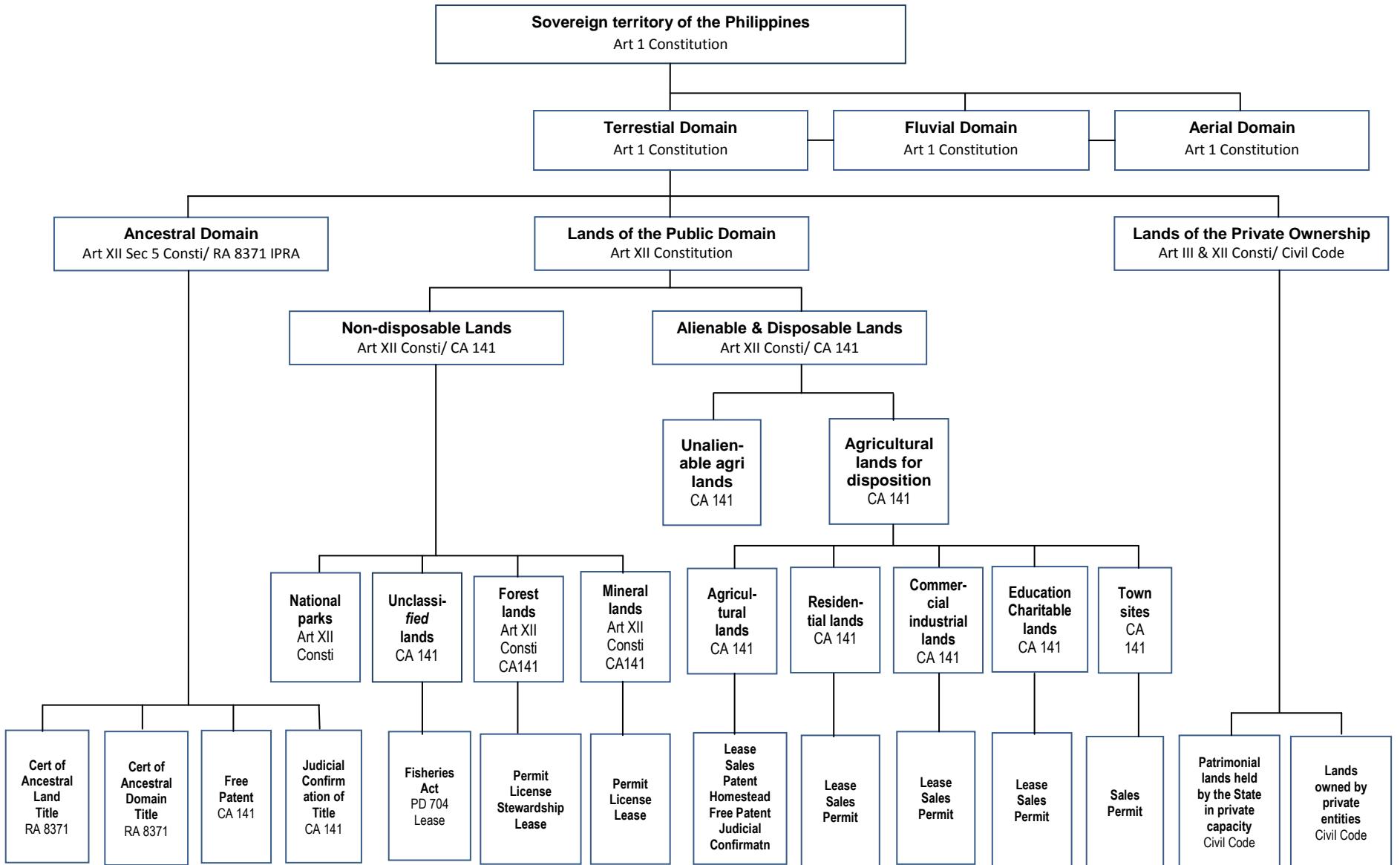
Legal recognition & allocation of tenure rights & duties (7-10)

- Addresses the legal recognition of tenure rights of indigenous peoples and other communities with customary tenure systems, as well as of informal tenure rights; and the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the *public* sector.

7 Safeguards

- When states reallocate tenure rights, they should establish safeguards especially for women & the vulnerable who hold subsidiary rights (7.1)
- (procedural) when states (re)allocate tenure rights, they should identify first all existing rights holders whether legal or customary (7.3)
- Where it is not possible to provide legal recognition of rights, state should prevent forced evictions (7.6)
- The Diagram (next page) shows the overall land tenure system in the Philippines – and how the different tenure laws define the major land classifications. This is taken and adapted (slightly edited) from a 2001 DENR Study “*Land Laws and Regulations Policy Study: Final Report, Volume 1*” under Land Administration and Management Project (LAMP).
- The Diagram shows the legal basis by which rights holders gain legal recognition of tenure rights, as well as the range and types of different tenure instruments.
- Description:
 - The Constitution defines the national territory and patrimony
 - The territory covers terrestrial, fluvial and aerial domains. (Note: subterranean resources are assumed to be part of the terrestrial domain, even though subterranean rights might be treated as distinct from surface rights in terms of tenure)
 - The Terrestrial domain is divided into three “tenure” domains covered by respective domain laws – Ancestral Domain (IPRA), Public Domain (CA141) and Private Ownership (Civil Code)
 - The Public domain (covered by) is further divided into “non-disposable” (remains with the state) and “alienable and disposable/ A&D”
 - The Public domain is further divided according to their designated uses
 - There is a range of tenure instruments that cover all three types of domains -- Ancestral Domain, Public Domain and Private Ownership.
- It should be further noted that the tenure instruments listed here refer only to the *initial* holders of tenure. Tenure rights are also further extended to others, through other tenure instruments which include through rentals and leases and permits.
- Holders of legal tenure instruments have secure tenure, while those with *informal* tenure tend to have insecurity of tenure.

LAND TENURE SYSTEM IN THE PHILIPPINES



Source: Department of Justice, Land Laws and Regulations Policy Study: Final Report, Volume 1. Philippines-Australia Land Administration and Management Project, July 2001.

8 Public land, fisheries and forests

- Recognize tenure rights, including customary rights of individuals & communities (8.2)
- Recognize *collective* rights and *collective* management systems (8.3)
- Ensure updated public land & resource inventories, including those with customary tenure & the private sector (8.4)
- Develop policies covering the use of public lands & resources. Develop policies that promote equitable distribution of state-owned land, fisheries & forests. Public participation, transparency & accountability in the fulfillment of these policies. (8.6)
- Monitor impacts; gender-differentiated (8.11)

- The Constitution (Art XII) on National Economy & Patrimony establishes the public domain & state ownership over waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources
- Revised Forestry Code (Sec 13) establishes the *System of Land Classification* over forest lands. (“Forests” as a designation of state ownership, not as an ecosystem.)
- Proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes
- Constitution (Art XII)
- Allows small-scale utilization
- Exclusive for Filipinos, but foreigners may participate through financial or technical agreements
- Allocation of public land; questions of overlapping rights
- NIPAS: “outstandingly remarkable areas and biologically important public lands” as protected areas
- Mining Act, Sec 2, 5, 6, 18, 19: mineral extraction licenses
- CARP/ER: “lands of the public domain suitable for agriculture”
- IPRA: ancestral domain
- Fisheries Code:
- Revised Forestry Code, Sec 15, 19, 20
- Single mapping system?

9

Indigenous peoples & other communities w/ customary tenure

- Ensure IP rights, including institution of collective tenure systems (9.2)
- States should meet their int'l obligations, including ILO 169, Biodiversity Convention & UNDRIP (9.3, 9.4)
- No forcible eviction from ancestral lands (9.5)
- Recognize of women's rights in customary tenure systems (9.6)
- Ensure participation of affected peoples in developing & drafting tenure policies (9.7)
- Protection of customary lands; if possible, formal documentation of customary lands to prevent competing claims. (9.8)
- Free, prior and informed consent /FPIC (9.9)
- Respect for use of customary approaches to resolve tenure conflicts (9.11)
- Prevent corruption; ensure consultation & participation (9.12)

- The legal recognition and protection of tenure rights of indigenous peoples is largely covered under IPRA. "Ancestral lands/ domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds"
- IPRA is a leading example of recognition of IP rights, one of the strongest legal frameworks that recognizes the rights of indigenous peoples, and the policy has somehow been used as a model for other countries. IPRA addresses four substantive rights: (i) the right to ancestral domains and lands, (ii) the right to self-governance and empowerment; (iii) the right to cultural integrity; and (iv) social justice and human rights. The definition of ancestral domains covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and include lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. ICCs/IPs comprise an estimated 13% of the population (about 12-13 million people). As of December 2012, the National Commission on Indigenous Peoples (NCIP) reported that 158 certificates of ancestral domain titles (CADTS) had been issued, covering about 4.2 million hectares and benefiting 918,000 rights claim-holders.¹⁶ It is projected that two million hectares more need to be processed; hence, a total of 6-7 million hectares is expected to be covered under ancestral domain titles or claims.
- Under the principle of self-determination, IPRA provides for IP communities to document and delineate their own ancestral domain claims, and to formulate their own sustainable development and management plans (ADSDPs). The law further states that contracts, licenses, concessions, leases and permits within the ancestral domains shall not be renewed or allowed without the free and prior informed consent (FPIC) of the IP community. This is defined as the "consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion." (Chap 2, Sec.3)

¹⁶ This 4.2 million hectares under ancestral domain titles constitutes 14% of the country's total 30 million hectares of land.

- However, the implementation of IPRA has been hindered by contradictory legislations, conflicting boundaries and overlapping agency mandates. These have eroding effects on the application of IPRA.
- A major contention has been on jurisdiction over forest lands, as the revised Forestry Code of 1975 stipulates that “all lands above 18 degrees slope automatically belong to the state and classified as forest lands”. Moreover, many ancestral domains have overlapping boundaries with national parks and protected areas, land concessions, and agrarian reform areas covered by titles and stewardship agreements. An inter-agency agreement sought to address this problem by issuing a Joint Administrative Order¹⁷, but the net effect has been to freeze the issuance of new titles for ancestral domain due to conflicting claims.
- There are also other operational issues that have implications on governance of tenure. Two are cited here:
 - The formal recognition of Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs) and their integration into LGU & national plans
 - The proper conduct of FPIC (that should seek “consent” rather than just “consultation”)
- Today, mining is the main large-scale intrusion into ancestral domain lands. Studies show that 67% of IP lands are affected by mining concessions.

¹⁷

10 Informal tenure

- Ensure legal recognition of informal tenure (10.1)
 - Special attention to tenants, farmers & small scale producers w/ informal tenure (10.3)
 - Where legal recognition is not possible, prevent forced evictions of those under informal tenure (10.6)
- **Explanatory note:** “*Informal property (or tenure) rights*” are those that lack official recognition and protection. In some cases, informal property rights are illegal, i.e., held in direct violation of the law. A common example is “squatting”, also known as “informal settlers”. (Other examples may include the non-registered selling of “rights” to land, or the sub-leasing of lands awarded under agrarian reform which may be prohibited by law.) Yet in many countries, illegal property holdings arise because of inappropriate laws. Property rights may also be deemed illegal because of their use, e.g., the illegal conversion of agricultural land for urban purposes... In other cases, property may be “extra-legal”, i.e., not against the law, but not recognised by the law, and customary property held in rural indigenous communities falls into this category. Hence a distinction is also often made is between statutory rights or “formally recognized rights” on the one hand and customary rights or “traditional rights” on the other hand.¹⁸
- In the Philippines, perhaps the most direct recognition of *informal tenure rights* is expressed through RA 8368 which de-criminalizes squatting.¹⁹ Related to this is the Urban Development and Housing Act (UDHA, or RA 7279) which discourages the practice of forced evictions and demolitions, and requires that adequate relocation be provided in cases involving eviction and demolition of poor settlers. (UDHA, Sec 28) Although these laws are intended for the urban poor, they apply to rural settlers as well. The two laws – RA 8368 and RA 7279 – are not covered by this Study.
 - Some of the laws studied give recognition to informal tenure rights. Several laws emphasize *tenure reforms* – or an attempt to move families and communities away from unrecognized/ informal tenure into more *formal* and legal tenure arrangements. This is achieved through different *tenure and policy instruments*, especially involving public lands, waters and forests. A partial list of tenure instruments may be found in Annex B, and include:
 - Different forms of stewardship contracts for forest and upland dwellers
 - Fishing/ harvest rights for municipal and artisanal fisherfolk
 - Ancestral domain titling for indigenous communities and peoples ICC/IP
 - **Recommendation:** There is need for a separate, thorough review of the different tenure instruments, especially for public lands, waters and forests. Also, a key question is: how to deal with widespread “informal tenure” that still exists, where people still have no tenure security?

¹⁸ Edited and based on FAO. “What is Land Tenure?” <http://www.fao.org/docrep/005/y4307e/y4307e05.htm> (accessed 7 March 2014). The VGGT discusses “informal tenure” separately from “customary tenure of indigenous peoples”.

¹⁹ Title of RA 8368 is the “Act repealing Presidential Decree 772, entitled ‘Penalizing Squatting and Other Similar Acts’”

Transfers and other changes to tenure rights and duties (11-16)

- Addresses governance of tenure when existing rights and duties are transferred or reallocated through markets, investments, land consolidation, restitution, redistributive reforms or expropriation

11 Markets

- Facilitate efficient & transparent markets (on land). (11.2)
 - Prevent impacts from land speculation, land concentration & abuse of customary tenure
 - Transparency on market transactions & information on market values (11.4)
 - Appropriate & reliable land registries that provide accessible info on tenure rights (11.5)
 - Protection of spouses, family members who are not listed holders of tenure rights (11.6)
 - Ethical standards in the operation of markets, & the monitoring of these standards (11.7)
 - Protect tenure of smallholders (food production) (11.8)
-
- “Markets” to be efficient need common & uniform tenure systems & instruments, as well as transparency & information, & reliable land registries
 - To balance markets with the reform agenda, sectoral policies have adopted different approaches, e.g.
 - Existing limitations on the transferability of AR lands (Sec 27, CARP)
 - IPRA, Sec 12, provides the option to secure an ancestral domain title. Q is still whether titling is the best option to protect ancestral lands
 - Key issue is still more efficient land registries, and the Land Administration Bill is still pending
 - There is also a question of pro-active information disclosure, transparency in the marketplace and access to information

12 Investments

- Support responsible investments – to support broad economic, social, environmental objectives (12.1)
- Support investments by smallholders, & investments that favor/ are sensitive to smallholders (12.2)
- Transparency of land investments (12.3)
- Responsible investments should not cause dispossession, environmental damage & should respect human rights (12.4)
- Instead, investments should support poverty reduction, food security, sustainable land/ resource use, diversify livelihoods, etc
- Institute rules on scale, scope & nature of allowable transactions in tenure rights (12.5)
- Safeguards to protect tenure, livelihoods, environment from large-scale transactions. (12.6)
- Consider other options (partnership models, contract farming etc)
- Protection of IPs; in line with international obligations (12.7)
- State guidelines for transactions on tenure rights incl. acquisitions & partnership agreements. Information on tenure rights, capacity for participating in consultations, professional assistance (12.9)
- In large-scale transactions, the need for prior impact assessments (social, environmental & affected rights of people) (12.10)
- Comprehensive prior information disclosure among those involved in negotiations as well as by those affected by the investment (12.11)
- Requirement of due diligence on the part of consultants & service providers (*does this refer to negotiation period?*) (12.13)
- Effective impact monitoring of the implementation and impacts. Corrective actions taken (12.14)
- State investments abroad should also protect legitimate tenure & be consistent with national & international law & obligations (12.5)

- Constitution, Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.
- Investments mentioned in AFMA, Fisheries Code, CARPER – to serve broader objectives of dispersal of industry, resource management, poverty reduction.
- Key issue esp in large scale transactions is information disclosure & accessibility of information to the public & especially to communities likely to be affected
- FPIC is required for IPs, but not as policy for other sectors. Quality of FPIC is crucial.
- VG 12.9 itself also seems weak: only “consultation” & “participation”

- Some positive developments, ex. Philippines joining the EITI initiative in mining industry may improve information disclosure & access
- Some existing safeguard provisions for environment:
 - Forestry ,Sec 21: balance between growth and harvest for use of forest products in forest lands
 - NIPAs : EIAs for activities protected areas
 - Mining: royalty payments for IPs/ICCs
 - IPRA, Sec 9: right of IPs/ICCs to develop lands & natural resources
- Recommendation Need to strengthen monitoring of land investments. Improved information disclosure,
- Unclear systems for resolving disputes in the case of investments, except through the judicial courts. Poorer sectors likely to lose out in court settlements.

13 Land consolidation

- Where fragmentation of smallholder farms & forests exists, states may consider land consolidation & land banks (13.2, 13.3, 13.4)
- Land consolidation should be accompanied by support programs for farmers (e.g., roads, irrigation). It should not be done where fragmentation provides benefits, such as risk reduction or crop diversification. (13.4)
- Safeguards for people & communities likely to be affected by land consolidation. Technical & legal support. Environmental safeguards. (13.6)
- Explanatory note: Land consolidation refers to the “planned readjustment and rearrangement of land parcels and their ownership”²⁰ The objective of consolidation is to provide a more rational distribution of land to improve the efficiency of farming, and it involves a process of renegotiating tenure arrangements. The earlier land consolidation programs were undertaken to address the fragmentation of properties by consolidating these into parcels in order to improve agricultural production. However, today’s land consolidation projects (such as those in Eastern and Central Europe) take on much broader concepts of rural development to include environmental objectives, as well as more balanced landscapes – for transportation, recreation, conservation and village renewal.²¹*
- From an overall policy perspective it appears that there is no pro-active government program or law on large-scale land consolidation in the Philippines. Instead, from the set of laws reviewed, the current policy is land redistribution, tenure reforms and the registration of tenure rights. Under CARP/ER, there is a land ceiling of 5 hectares for private agricultural lands, although the law also provides for the distribution of collective land titles (CARPER, Sec 10).
- In CARP, Section 39 on *Land Consolidation* states: “The DAR shall carry out land consolidation projects to promote equal distribution of landholdings ... infrastructure in agriculture, and to conserve soil fertility and prevent erosion.” In this context, DAR undertakes “land consolidation” by developing a land use plan and redistributing land in equal parcels, while engaged in the process of breaking-up large estates. The objective in this case is to *avoid the further fragmentation of farms*, rather than to consolidate fragmented plots into single, contiguous farms.
- Part of the rationale for land consolidation seems to appear in AFMA (*Chap 1, Secs 6-12*), under the concept of the SAFDZs (Sustainable Agricultural and Fisheries Development Zones). However, the concept of the SAFDZ itself does not involve the renegotiation of tenure arrangements as in *land consolidation*.
- Land consolidation is likely to emerge as a next generation issue after the institution of land reforms. If not managed and directed by the State with a development vision, then this is likely to be undertaken by the *private sector* under market arrangements where lands are simply bought up for commercial purposes.

²⁰ http://en.wikipedia.org/wiki/Land_consolidation

²¹ FAO (2003). *The design of land consolidation pilot projects in Central and Eastern Europe*. FAO Land Tenure Studies 6. <ftp://ftp.fao.org/docrep/fao/006/Y4954E/Y4954E00.pdf>

14 Restitution

- State may consider restitution for loss of legitimate tenure rights. Ensure that all actions are consistent with existing obligations under national and international law (14.1)
- Original parcels should be returned where possible; otherwise, just compensation in money or alternative landholdings (14.2)
- Restitution for indigenous peoples at national context (... rather than case-by-case) (14.3)
- Gender-sensitive policies & processes that provide clear transparent processes; adequate legal assistance for claimants; support services for successful claimants

- *Explanatory note: "Restitution" means "the act of giving back something that has been lost or stolen" or "the act of restoring to the rightful owner something that has been taken away, lost, or surrendered"*²².
- *In the review of land reform programs, analysts often refer to the "5 Rs" in terms of approaches used, i.e. – Recognition of tenure, Registration of rights, Redistribution, Restitution, and Resettlement.*
- In the Philippines, IPRA is the main measure of *restitution*, or the return of tenure rights. In a reversal of the Regalian doctrine, IPRA recognizes the *prior rights*, including the *pre-conquest* rights of indigenous peoples, thus superseding the land and resource claims of other entities.²³
- IPRA is discussed under VGGT Section 9 of this paper – *Indigenous Peoples and other Communities with Customary Tenure*

²² <http://www.thefreedictionary.com>

²³ This is called the Cariño Doctrine which is based on a 1909 ruling of the US Supreme Court which upheld the legality of "native title" which involved Ibaloi clan leader Mateo Cariño in Baguio City.

15 Redistributive reforms

- States may consider allocation of public land, voluntary & market based mechanisms as well as expropriation of private land... (15.1)
- States may consider *land ceilings* as a policy option.
- Redistributive reforms may be considered for social, economic & environmental reasons ... ie, where a high ownership concentration is combined w/ a high level of rural poverty (15.3)
- Ensure that reforms are consistent with int'l obligations & law. Develop partnerships w/ civil society, private sector, communities, farmers & small-scale producers, fishers, forest users. (15.4)
- Beneficiary contributions should be reasonable and not leave them with unmanageable debt loads. Those who give up their tenure rights should receive equivalent payments without undue delay (15.4)
- Clearly define the intended beneficiaries – i.e., families, women, informal settlement residents, pastoralists, historically disadvantaged, marginalized groups, youth, indigenous peoples, gatherers & small-scale producers
- Develop policies and laws, through participatory processes
- Conduct assessments of positive & negative impacts of reforms on tenure rights, food security, livelihoods & environment
- Provide the full support required by beneficiaries (access to credit, crop insurance, inputs, markets, technical assistance in rural extension, farm development & housing).
- Implement through transparent, participatory and accountable approaches and procedures. All affected parties should be accorded with due process and just compensation (15.9)
- Monitor and evaluate the outcomes of redistributive reform programmes (15.10)

- CARP is the main redistributive reform.
- General overall convergence & agreement between CARP/ER and Section 15 of the Voluntary Guidelines
- Main issue are meeting the set targets for redistributive reforms for 2014, and the continuation of functions of the program after 2014, which are likely to continue
- Second- and third- generation issues?
- How to ensure tenure security for those left out of the CARP program?

16 Expropriation and compensation

- Expropriate only where rights to land, fisheries or forests are required for a public purpose. Clearly define the concept of public purpose in law, in order to allow for judicial review (16.1)
- Respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation.
- Ensure that the planning & process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, properly informed & consulted at all stages.
- Ensure a fair valuation and prompt compensation (16.3)
- Where the acquired land/ resource is no longer needed, States should give the *original right holders* the *first opportunity* to re-acquire these resources.
- Prevent corruption particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.
- Where evictions are considered to be justified for a public purpose, treat all affected parties in a manner consistent with relevant obligations to respect, protect, and fulfil human rights.
- Explore feasible alternatives in consultation with the affected parties, with a view to avoid, or at least minimize, the need to resort to evictions. (16.8)
- Evictions and relocations should not result in individuals rendered homeless or vulnerable. (16.9)

- The Constitution states: “Private property shall not be taken for public use without just compensation” (Art 3, Sec 9)
- Among the laws reviewed, *state-led expropriation* involving private lands is included in the agrarian reform laws (CARP/ER, RA 6657 & RA 9700). Relevant provisions in relation to VGGT Section 16 are:
 - Public purpose and coverage: “more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation...” (CARP, Sec 2). Coverage of private agricultural lands above the 5-hectare retention limit (CARP, Sec 6 and CARPER, Sec 4)
 - Fair value and prompt compensation (CARP, Sec 17-21); support services to landowners (CARPER Sec 16)
 - Transparent valuation: Valuation to include several factors: “cost of land acquisition by the owner, current value of like properties, value of standing crop, nature, use and income, sworn valuation by the owner, tax declarations, appraisal by government assessors, 70% of the zonal value of BIR”... and “social and economic benefits contributed by farmers & by the Government to the property, and non-payment of taxes or loans on the land.” (CARPER, Sec 6-7)
 - Processes of acquisition, prior notice and right to appeal (CARP, Sec 16). Eviction (or “compulsory acquisition”) is considered as a last option.
- The overall laws that cover the legal provisions on state-led expropriations and compensation are *not included* in the Laws reviewed for this paper.
- **Recommendation:** As this topic is covered under other laws, it needs a separate review.

Administration of tenure (17-22)

- Related to records of tenure rights, valuation, taxation, regulated spatial planning, resolution of disputes over tenure, and trans-boundary matters.

17 Records of tenure rights

- Provide systems (registration, cadastre and licensing systems) to record individual and collective tenure rights... including those held by the State and public sector, private sector, indigenous peoples & communities w/ customary tenure. (17.1)
- Develop and use socio-culturally appropriate ways of recording rights of indigenous peoples and communities with customary tenure systems. (17.2)
- Develop *integrated recording system & spatial systems* of tenure rights of the State and public sector, private sector, and indigenous peoples and other communities with customary tenure systems (17.2)
- Ensure that everyone is able to record their tenure rights and obtain information without discrimination on any basis
- Adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. Records should be indexed by spatial units as well as by holders to allow competing or overlapping rights to be identified. Broad public info sharing...
- Ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not prevent public scrutiny to identify corrupt and illegal transactions

- **Recommendation:** Review the pending Bill on Land Administration Reform Act (LARA) in the context of VGGT 17.

18

Valuation

- Ensure fair and timely valuation of tenure rights for specific purposes, i.e., operation of markets, security for loans, ... investments, expropriation and taxation (18.1)
 - Ensure that valuation systems consider non-market values, i.e., social, cultural, religious, spiritual and environmental values where applicable.
 - Transparency in valuing tenure rights. Sale prices and other relevant information should be recorded, analysed and made accessible to provide a basis for accurate and reliable assessments of values.
 - Develop and publicize national standards for valuation for governmental, commercial and other purposes.
 - Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. Prevent corruption in valuation through transparency of information and methodologies, in public resource administration and compensation, and in company accounts and lending.
-
- Outside of the agrarian reform program (CARP/ER), land valuations are covered by other laws, including the Tax Code and other implementing guidelines, and not covered by this assessment.

19

Taxation

- Taxation may contribute to broader social, economic and environmental objectives (e.g., encourage investments, prevent speculation or concentration of ownership) (19.1)
- Develop policies, laws and organizational frameworks for regulating all aspects pertaining to taxation of tenure rights (19.2)
- Administer taxes effectively & transparently. Taxes should be based on appropriate values. Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations. Prevent corruption in tax administration, through increased transparency in the use of objectively assessed values. (19.3)
- *Note of interest: In the Philippines, the collection of the basic land tax (realty) falls under the local government. But in other countries (South Asia), land taxes are managed by Land Ministries. This practice was first introduced by the British colonial administration, where the land tax was the main source of revenue to support empire-building. The right to collect land taxes was publicly auctioned, and this brought about a complex system of tax collection (zamindari) that was abolished after Independence in 1947.*
- In the Philippines, land taxation is covered by other laws, including the Tax Code, and therefore is not covered by this assessment.
- **Recommendation:** There is need for a separate assessment and discussion on taxation policy as an administrative measure for land tenure governance, in line with VGGT Section 19. In particular, there is need to assess:
 - The goals of land-related taxation; how it contributes to broader development goals (aside from just revenue-creation), and in particular to improving the governance of tenure
 - The effectiveness & transparency of land/resource-related tax administration (including objective systems of valuation, the prevention of corruption).

20

Regulated spatial planning

- Conduct regulated spatial planning, monitor and enforce compliance with those plans... spatial planning should reconcile and harmonize different objectives of the use of land, fisheries & forests. (20.1)
 - Develop gender-sensitive policies on regulated spatial planning ... also consider methods of planning and territorial development used by indigenous peoples & communities with customary tenure systems
 - Reconcile & prioritize public, community and private interests and accommodate various uses such as rural, agricultural, nomadic, urban and environmental ... Consider all tenure rights, including overlapping & periodic rights. (20.3)
 - Ensure wide public participation in planning & in the review of draft spatial plans (20.4)
 - Spatial planning should meet the challenges of climate change and food security (20.5)
- A number of the legislations reviewed by this Study call for *spatial planning* for different purposes (i.e., productivity, protection, risk reduction). They cover land under different *classifications* (agricultural lands, forestlands, waters) and *tenure status* (public, private). Also, spatial planning is carried out under different *implementation arrangements* (by national agency, special body, LGUs). These include, among others:
- a) **Land Use Plans and Zoning Ordinances that incorporate the SAFDZ²⁴** – required for all cities and municipalities – and updated every four (4) years or as may be deemed necessary upon the recommendation of the Housing and Land Use Regulatory Board. SAFDZs shall serve as “protected areas” for the development of agriculture, fisheries and agro-industries, identified on the basis of their: (i) favorable agro-climatic conditions; (ii) strategic location; (iii) market access; and (iv) dominant presence of small farmers and producers. (AFMA, Chap 1, Secs 6-12)
 - b) **System of Forest Land Classification and Survey** – by the DENR to “study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate *classification and survey of all lands of the public domain* into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands,, and others provided by law ... (Revised Forestry Code, Sec 13, emphasis supplied)
 - c) **Risk assessment and vulnerability mapping** (national and local) – as provided for under the Disaster Risk Reduction and Management Act of 2010 (Secs 6, 9, 12-13)
 - d) **Ancestral Domain Sustainable Development and Protection Plans** – to be developed by indigenous cultural communities/ indigenous peoples (ICC/ IPs) for the management and protection of their ancestral domains, based on indigenous knowledge systems and governance systems. (Based on IPRA, Chap IV, Right to Self-Governance and Empowerment, and Chap VI, Cultural Integrity)
- It is observed, however, that: (i) there is need to harmonize systems of spatial planning that incorporate and reconcile different objectives on the use of land, fisheries and forests; and (ii) some of the laws do not

²⁴ The SAFDZ refers to “Strategic Agriculture and Fisheries Development Zones” which are also considered as *protected areas* for agriculture and agro-industrial development.

prescribe specific *processes* needed for spatial planning (i.e., consultations) in ways that seek to reconcile public, community and private interests, accommodate various spatial uses and priorities, and consider all tenure rights that may be overlapping or in conflict with each other.

- **Recommendation:** Regulated spatial planning is the major focus of a proposed new legislation – the National Land Use Act, or NLUA. It is recommended that discussions on the NLUA should take into account the principles of VGGT Section 20, as well as the need to reconcile and harmonization the different existing laws and to negotiate among overlapping and competing interests.

21

Resolution of disputes over tenure rights

- Provide access through impartial and competent judicial and administrative bodies to timely, affordable & effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes. Provide right to appeal.
- Consider introducing specialized tribunals or bodies (21.2)
- Strengthen and develop alternative forms of dispute resolution, especially at the local level (21.3)
- Consider using implementing agencies to resolve disputes within their technical expertise (21.4)
- Prevent corruption in dispute resolution processes
- Provide legal assistance to vulnerable and marginalized persons to ensure access to justice without discrimination
- Alternative systems of dispute resolution exist, and are provided for under different laws, some with the right to elevate cases to judicial courts
 - CARP/ER: Extra-judicial powers of DAR w/ exclusive jurisdiction over agrarian cases under the program; farmers may represent themselves in extra-judicial proceedings
 - IPRA, Sec 7(h): Resolution of conflict through customary laws; Quasi-judicial powers of NCIP (regional office) after exhausting all other means; appeal to Court of Appeals
 - Mining Act of 1995, Sec 77: Panel of arbitrators at regional level, with possible appeal to the Mines Adjudication Board
- Alternative, extra-judicial dispute mechanisms are relevant when particular types of disputes and parties are involved. However questions about jurisdiction and relevance arise when different sectors and sets of laws are involved. An example is when conflicting tenure rights given by different agencies over the same land or resource, resulting in conflicting claims.
- **Recommendation?**

22 Trans-boundary matters

- Where trans-boundary matters related to tenure rights arise, parties should work together to protect such tenure rights, livelihoods and food security of the migrating populations (22.1)
- Learn more about trans-boundary issues (seasonal migration of pastoralists, fishing grounds of small-scale fishers) (22.2)
- Coordinate with relevant regional bodies and with affected parties; strengthen international measures to administer tenure rights that cross international boundaries (22.3)
- **Commentary/note:** *This Section 22 of the VGGT on trans-boundary issues may be more relevant to countries with adjacent land-based territorial boundaries. The tenure of communities along the borders, are often subjected to different tenure and legal systems, access rights and prohibitions, and well as resource conflicts on both sides of the border. Most affected are usually pastoralists, nomadic tribes, indigenous peoples, traditional fishers and minority ethnic communities living along boundaries, and whose livelihoods are often dependent on farming, fishing, herding, forest gathering or trading. In many cases, these communities suffer from discrimination of lack of tenure rights. In countries with open borders, people and groups with no land certificates may be denied their rights and entitlements of citizenship.*
- As an archipelagic country, trans-boundary issues in the Philippines consist mainly of territorial disputes with foreign countries over the open sea (as well as islets & reefs). There is also the intrusion by foreign fishermen into Philippine waters and conflicts over traditional fishing grounds especially in the North and Western Philippine Sea. There is also a strong historical and ethnic link between the peoples of Sulu and Tawi-Tawi with Sabah, Malaysia.
- The 1987 Constitution establishes the Philippine patrimony and territory. None of the laws covered by this Study discusses trans-boundary issues as they relate to tenure rights.

Responses to climate change and emergencies

- The governance of tenure of land, fisheries and forests in the context of climate change, natural disasters and conflicts.

23 Climate change

- Ensure legitimate tenure rights of people likely to be affected by climate change, especially the poor & vulnerable
- Prepare and implement strategies/ actions with participation of people likely to be affected by climate change
- The provision of alternative land, fisheries, forests and livelihoods for displaced persons should not jeopardize the livelihoods of others
- Mobilize participation of people, especially the poor & vulnerable in the negotiation and implementation of mitigation and adaptation programmes

- The **Climate Change Act of 2009** or **RA9729** articulates the country's general policy on climate change, and establishes a Climate Change Commission for this purpose. The focus of the law is on creating the *institution* – defining its composition, office bearers, roles and tasks, relation with other agencies and LGUs, and funding. A major task of the Commission is the formulation of a "Framework Strategy and Program on Climate Change" and "National Climate Change Action Plan".
- In relation to VGGT, Sec 23, the Climate Change Act states in its Declaration of Policy (Sec 2):
 - a) Part of the State's objectives is "ensuring that food production is not threatened"; and
 - b) A State policy to incorporate a "gender-sensitive, pro-children and pro-poor perspective in all climate change and renewable energy efforts, plans and programs".
- However, the law does not provide a *clear link* between climate change and the need to *secure the tenure rights* of affected peoples over land, fisheries and forests.
 - a) The Declaration of Policy (Sec 2) refers to the *general* objectives as addressing climate change – mitigation and adaptation, including the integration of risk reduction into all programs and initiatives.
 - b) The Law mentions an initial list of components that should be the focus of the "National Climate Change Action Plan" (Sec 13), but this list does not include *tenure issues*.
- Meanwhile, *none* of the other laws studied address the potential impacts of climate change on people's tenure rights to land and resources. Perhaps this is because all the other major laws on land and resource rights (under this Study) were legislated *before* climate change came to be recognized as a national concern. Only IPRA mentions the tenure rights of IPs in case of displacement due to natural catastrophes –

i.e., the right to temporary resettlement, the right to return, and security of tenure in cases where permanent resettlement is necessary.

- As an archipelago, the Philippines is highly vulnerable to the potentially dangerous consequences of climate change – rising seas, changing landscapes, increasing frequency/ severity of storms and floods, droughts, fires, climate related illnesses and diseases, damage to the ecosystem (e.g. erosion, inundation) and biodiversity loss. An estimated 60% of the Philippine population lives in the coastal zone.²⁵ It should be noted that climate change will affect overall land availability, land use & tenure.
- While *mitigation* is driven nationally or globally, *adaptation* is largely *local*. And in climate change adaptation, poorer sectors without secure tenure rights are most vulnerable.
- Recommendations:** Ensure the security and protection of peoples' tenure rights affected by climate change. There is need to further explore and discuss the actual issues and the relevance of policies as they apply to *climate change and tenure rights*, especially in the light of recent events – i.e., risk reduction and prevention measures, disaster responses and recovery and rebuilding efforts for communities affected by Typhoon Yolanda.

For instance, as discussed during the consultations, many of those severely affected by Typhoon Yolanda are coastal communities where residents have no legal security of tenure. This has raised many tenure-related issues and policies – including:

- a) *Pre-emptive measures* – explore “no-build zones” and/or expanded coastal easements, review tenure systems that are based geo-hazard mapping, etc;
- b) *Recognizing the informal rights of settlers* – ensure access and usufruct rights to coastal areas for livelihoods (fishing); and ensure tenure security for homelots with provisions for housing;
- c) *Addressing tenure issues during reconstruction and resettlement* – assisting families to return to and rebuild their homes; finding alternative land for housing and homelots in cases where resettlement is necessary.
- There is also need to review the existing “National Framework Strategy and Program on Climate Change” and the “National Climate Change Action Plan” to determine if tenure issues are discussed, and how tenure-related issues are to be addressed.

Policies should be holistic and pre-emptive, and should address the whole range of actions in relation to ensuring security of tenure for people and communities – i.e., building resiliency to climate change, reducing risks, responding when disaster events occur, and ensuring recovery and rebuilding efforts. Policies should address the tenure rights of people likely to be affected by climate change, as well as of host communities when cases of resettlement are involved.

²⁵ <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> (accessed 6 March 2014)

24

Natural Disasters

- Address tenure in disaster prevention and preparedness. Design regulatory frameworks for tenure, including spatial planning. (24.1)
- Ensure that all actions are consistent w/ int'l obligations (i.e., UN Principles on Housing & Property Restitution for Refugees and Displaced Persons, & Humanitarian Charter and Minimum Standards in Disaster Response). (24.2)
- Systems for recording rights should be resilient to disasters, including off-site storage of records. Identify areas for temporary resettlement, with rules for tenure security in such areas (24.3)
- During *emergency response phase*: protect tenure rights of displaced persons, as well as of others
- During *reconstruction phase*: provide systems to resolve disputes when people return to their place of origin; and negotiate with host communities where resettlement is involved.
- The **Philippine Disaster Risk Reduction and Management Act of 2010 (DRRM)** was instituted to strengthen the country's response and management system to address the risks posed by natural disasters. Its main focus is the creation of an *institutional* framework – starting with the creation of the National Disaster Risk Reduction and Management Council (NDRRMC) as well as Regional and Local DRRM Councils. It defines the composition of such Councils at different levels, as well as their roles, powers, responsibilities and prohibitions.
- In a *limited* way, the DRRM addresses certain features of VGGT Sec 24:
 - 1) It provides a stronger focus on “disaster prevention” and “risk reduction” in addition to the past emphasis on “disaster response”.
 - 2) It includes *spatial planning* in preventive/risk reduction measures, i.e.:
 - a) Developing information systems and assessment tools to assess vulnerable areas and ecosystems (Sec 6 – J). This includes government initiatives on risk assessment and vulnerability mapping thru the preparation of geo-hazard maps.
 - b) Ensuring that local DRRM plans are incorporated into the local Comprehensive Development Plan (CDP) and Comprehensive Land Use Plan (CLUP) (Sec 9-e); and
 - c) Developing local disaster risk information and “local risk maps” (Sec 12-3)
 - 3) It emphasizes coordinative approaches needed for effective risk reduction – i.e., preparedness and pre-planning, multi-agency & multi-sector involvement, consultative & participatory processes with different sectors and localities, decentralized responses, etc.
- However the DRRM law itself remains *silent* about the *link* between “disaster prevention/ risk reduction” and *tenure rights*. For example, while the law provides measures for spatial planning (preparation of risk and hazard maps), it does not articulate how such spatial plans are to be used, for example, as regulatory frameworks for tenure. Neither does it give the NDRRMC the regulatory powers on spatial planning.

- DRRM is also *silent* on policies regarding the need to address tenure issues during emergency response or at the reconstruction phase. This includes resolving disputes over tenure rights and boundaries, provision of temporary shelters, returning people to their places of origin and rebuilding, and providing permanent resettlement as may be necessary. Resettlement areas should be negotiated with host communities to ensure that “people who are displaced are provided with secure access to alternative land ... and livelihoods in ways that do not jeopardize the rights and livelihoods of others” (VGGT, Sec 24.5)
- Further, it provides that one role of the Office of Civil Defense is to “Ensure that all disaster risk reduction programs, projects and activities requiring regional and international support shall be in accordance with duly established national policies and aligned with international agreements” (Sec 9, emphasis supplied). While this policy establishes the standards for risk reduction programs in accordance with VGGT 24.2, it *limits* the application of standards only to those projects and activities “requiring regional and international support”.
- In the Philippines, poor people are the most prone to disaster risks. They are the first to be hit when disasters strike, and the last to recover as victims. Many of the rural poor live in highly vulnerable areas (coastal areas, riversides and slopes), forced to eke out a living from lands that are too steep, too dry, prone to erosion or susceptible to flooding. And as many have no security of tenure over their homes, farms and livelihoods, they are often displaced from their places of origin when disasters strike – finding it difficult to return or having to face disputes over tenure rights or over boundaries of parcels. Those without formal or registered tenure rights are also unable to claim entitlements (i.e., housing, credit assistance) during rebuilding and reconstruction.
- **Recommendation:** The need to address *tenure rights* and *issues* in “disaster prevention/ risk reduction/ response/ rehabilitation” – is an area that requires further policy review and study. There is also need to ensure that *all* actions on natural disaster risk reduction and response are consistent with obligations under national and international law, and meet the minimum standards for disaster response and in consideration of relevant international principles. (in accordance with VGGT, Sec 24)
- **Recommendation:** The regulatory framework (including spatial planning) for disaster preparedness & prevention should be addressed in the pending bill on the National Land Use Act (NLUA).
- Among the other laws, it is worth noting that only IPRA mentions the tenure rights of indigenous peoples/communities in cases of displacement due to natural catastrophes – i.e., the right to temporary resettlement, the right to return, & security of tenure in the case of permanent resettlement.

25

Conflicts in respect to tenure of land, fisheries and forests

- Take all steps to prevent conflict over tenure rights, but if conflict happens, address tenure issues during & after the conflict, including situations of occupation
- Ensure that actions taken are consistent with international obligations & int'l law
- Use peaceful means to resolve conflicts. Consider using customary and local mechanisms, as appropriate
- When conflicts arise, protect people's tenure; states should not recognize tenure acquired through force or violence. Respect tenure rights of refugees & displaced persons. Protect official records of tenure rights.
- Procedures for restitution, rehabilitation and reparation should be non- discriminatory, gender sensitive and widely publicized
- Special protection for vulnerable, especially widows & orphans
- Institute policies to address discrimination

- *This section refers to larger-scale conflicts rather than disputes (VGGT 21). The conflicts may focus on land and territorial issues, or on other issues. The concern is about the tenure of people who may be affected or displaced, whether or not they are a direct party to the conflict. These conflicts include tribal wars, insurrections, and rebellions. A recent event cited during the Consultations is the Zamboanga conflict where many houses were destroyed. Until today, many of those affected remain homeless as "internally-displaced people". Some are prevented from returning to their homes or else are deemed to be non-qualified for housing assistance because of their lack of formal tenure rights.*
- None of the laws studied deals with conflict. An exception is IPRA which states the right IPs/ICCs to return and be reinstated on their lands in cases of post-conflict.
- Meanwhile, the prevention of conflict is related more to programs, rather than to land laws
- **Recommendation:** This needs a separate review, and the policies on conflict and tenure should be studied in light of recent experiences, especially the recent Zamboanga conflict.

Annexes

Annex A: Selected References

Official documents: Policies, Legislations & Decrees

The 1987 Constitution of the Republic of the Philippines

Indigenous Peoples Rights Act of 1997 / Republic Act 8371

Agriculture and Fisheries Modernization Act of 1997 / Republic Act 8435

National Integrated Protected Areas System Act of 1992 / Republic Act 7586

Forestry Reform Code of the Philippines (as amended) / Presidential Decree 705 of May 19, 1975

Philippine Mining Act of 1995 / Republic Act 7942

Climate Change Act of 2009 / Republic Act 9729

Philippine Disaster Risk Reduction and Management Act of 2010 / Republic Act 10121

Comprehensive Agrarian Law of 1988 / Republic Act 6657 as amended by Republic Act 9700 of 2009

Presidential Decree 27 of 1972: Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor

The Public Land Act / Commonwealth Act 141 of 1936 (as amended)

FAO-UN Document

FAO (2012). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Rome: Food and Agriculture Organization of the United Nations.

Related research studies

Borras, Saturnino and Jennifer Franco. "From Threat to Opportunity? Problems with the Idea of a 'Code of Conduct' for Landgrabbing". *Yale Human Rights and Development L.J.*, Vol 13.

FAO (2003). *Multilingual Thesaurus on Land*, Rome: Food and Agriculture Organization.

Guiang, Ernesto and Gem Castillo. "Trends in Forest Ownership, Forest Resources Tenure and Institutional Arrangements in the Philippines: Are they Contributing to Better Forest Management and Poverty Reduction?"

University of the Philippines Law Centre and Land Equity International (2002). "Land Laws and Regulations Policy Study - Final Report: Volume 1". Study prepared for the Philippines-Australia Land Administration and Management Project. July 2002.

Land Equity International (2002). "Institutional Arrangements Policy Study". Study prepared for the Philippines-Australia Land Administration and Management Project. July 2002.

Melana, Dioscoro (2008). "Private Tools for Mangrove Conservation in the Philippines".

Pulihin, Juan M, Josefina Dizon and Rex Victor O. Cruz (2008). "Tenure Reform and Its Impacts in the Philippine Forest Lands". Paper presented at the 12th Biennial Conference of the International Association for the Study of the Commons (IASC) held on 14-18 July at the University of Gloucestershire in Cheltenham, England, UK.

Rudinas, Joel S., Esteban C. Godilano and Alicia G. Ilaga (2013). Implementing Climate Smart Agriculture: Ridge-River-Reef: The Philippine Adaptation and Mitigation Initiative for Agriculture. Paper presented at the ASEAN-FAO-GIZ Regional Expert Forum on Climate Change: Agriculture and Food Security in ASEAN. 2-3 May 2013, Bangkok, Thailand.