



DISCUSSION PAPER

Climate Change and Land Tenure in the Philippines:
A scoping of legislations, recent field experiences, and their implications for land tenure and climate change policies





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Founded in 1979, ANGOC is a regional association of national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC network members and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

ANGOC is the convener of the Land Watch Asia (LWA) campaign. ANGOC is also a member of the International Land Coalition (ILC), the Global Forum on Agricultural Research (GFAR) and the Global Land Tool Network (GLTN).

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*A scoping of legislations, recent field experiences,
and their implications for land tenure and climate
change policies^{1,2}*

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in behalf of

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List of Acronyms

| | |
|-------------------|--|
| AFMA | Agriculture and Fisheries Modernization Act |
| ANGOC | Asian NGO Coalition for Agrarian Reform and Rural Development |
| AO | Administrative Order |
| CADT | Certificate of Ancestral Domain Title |
| CARP | Comprehensive Agrarian Reform Program |
| CARPER | Comprehensive Agrarian Reform Program Extension with Reforms |
| CCC | Climate Change Commission |
| CCAP | Philippine Climate Change Action Plan (2011-2028) |
| CFS | Committee on World Food Security |
| CLUP | Comprehensive Land Use Plan |
| CRED | Center for Research on the Epidemiology of Disasters |
| CRI | Climate Risk Index |
| CSA | Core Shelter Assistance (program) |
| CSO | civil society organization |
| DA | Department of Agriculture |
| DAR | Department of Agrarian Reform |
| DENR | Department of Environment and Natural Resources |
| DRRM | disaster risk reduction and management |
| DSWD | Department of Social Work and Development |
| EM-DAT | Emergency Events Database |
| EO | Executive Order |
| FAO | Food and Agriculture Organization of the United Nations |
| FLUP | Forest Land Use Plan |
| GDP | gross domestic product |
| HB | House Bill |
| ICCA | Indigenous Community Conserved Areas |
| ICCs | indigenous cultural communities |
| IFAD | International Fund for Agricultural Development |
| IFPRI | International Food Policy Research Institute |
| IDMC | Internal Displacement Monitoring Centre |
| IPs | indigenous peoples |
| IPRA | Indigenous Peoples Rights Act |
| IRIN | Integrated Regional Information Networks |
| LGC | Local Government Code |
| LGU | local government unit |
| MILALITTRA | Miarayon–Lapok–Lirongan–Tinaytayan Tribal Association |
| MSA | Modified Shelter Assistance (program) |
| NDRRMC | National Disaster and Risk Reduction Management Council |
| NGAs | national government (line) agencies |
| NIPAS | National Integrated Protected Areas System |
| NLU | national land use |
| NLUA | National Land Use (Act) |
| OPARR | Office of the Presidential Assistant for Rehabilitation and Recovery |
| PAGASA | Philippine Atmospheric Geophysical and Astronomical Services Administration |
| PARC | Presidential Agrarian Reform Committee |
| PD | Presidential Decree |
| PES | Payment for Ecological (or Environmental) Services |
| PhP | Philippine Peso |
| PSF | People’s Survival Fund (Act) |
| RA | Republic Act |
| SEPO | Senate Economic Planning Office |
| UDHA | Urban Development and Housing Act |
| UNFCCC | United Nations Framework Convention on Climate Change |
| VGGT | Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security |

DISCUSSION PAPER

Climate Change and Land Tenure in the Philippines: *A scoping of legislations, recent field experiences, and their implications for land tenure and climate change policies*⁴

Introduction

The impacts that climate change bring upon human settlements and land use systems can bear heavily on people's land access and land tenure in ways that affect their livelihoods, well-being, sense of security, and prosperity. Yet despite the growing awareness on climate change, there is still limited understanding of the relationships between the impacts of climate change, social and policy responses, and land tenure (Quan and Dyer, 2008).

Moreover, in the Philippines, humanitarian efforts aimed at reducing disaster risks and responding post-disaster, have not directly dealt with land tenure rights and property issues (Eleazar, 2010). Such inadequate responses appear to be caused in part by a lack of clear understanding of tenure issues in the context of natural disasters.

In this regard, a 2017 Letter of Agreement was signed between the Food and Agriculture Organization (FAO) and the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) to carry out a series of activities “to raise awareness on tenure governance in the context of land rights and governance issues, climate change, natural disasters and fisheries” in the Philippines.⁵

Among the activities is the production of this Discussion Paper which aims to “deepen advocacy and awareness raising on (the links between) natural disasters, climate change and tenure governance issues ... to define an enhanced framework for action ...” This work is linked to the *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security* (VGGT), a document passed in May 2012 by the Committee on World Food Security (CFS) to guide government efforts in improving land governance.

This paper discusses and summarizes the key findings and recommendations of:

- ◇ A policy review paper on: *Scoping of Legislations on Natural Disasters and Climate Change vis-à-vis Tenure*;
- ◇ Two case studies on linking land tenure and climate change: (i) *The Case of Haiyan in Eastern Samar, Philippines*; and (ii) *The Case of MILALITTRA in Mt. Kalatungan, Bukidnon*; and,
- ◇ Three consultation reports: (i) Roundtable discussion with civil society organizations in Quezon City on 6 September 2017; (ii) Provincial consultation in Cagayan de Oro City on 7

September 2017; and (ii) Provincial consultation in Tacloban City on 28 September 2017

- ◇ Inputs from the National Multi-stakeholder Forum on Tenure and Climate Change in Quezon City on 10 November 2017.

In addition, this paper involves a review of literature to provide a discussion framework and broader context on the link between tenure and climate change/natural disasters in the Philippines.

The *working contexts* for the two case studies and provincial consultations were two of the deadliest typhoons to hit the Philippines in recent years – Typhoon Washi (*Sendong*) in 2011 and Typhoon Haiyan (*Yolanda*) in 2013. Super-typhoons are among the most recognized effects of climate change that bring about what are termed as “rapid impacts”—i.e., immediate and felt effects in terms of destruction to landscapes and property, and the internal displacement of people.

However, a *limitation* of this paper is that it does not examine the tenure-related impacts of other climate change events, including those that may bring about “gradual, long-term and more lasting impacts”—for example, sea level rise that may cause inundation of lands and increased soil salinity, or the effects of changing weather patterns on crop production, that may cause changes in land use or the migration of people over time. At best, these are subjects for future study.

Moreover, this paper does not examine the existing and potential links between tenure and climate change *mitigation*, which could be another subject for future study.

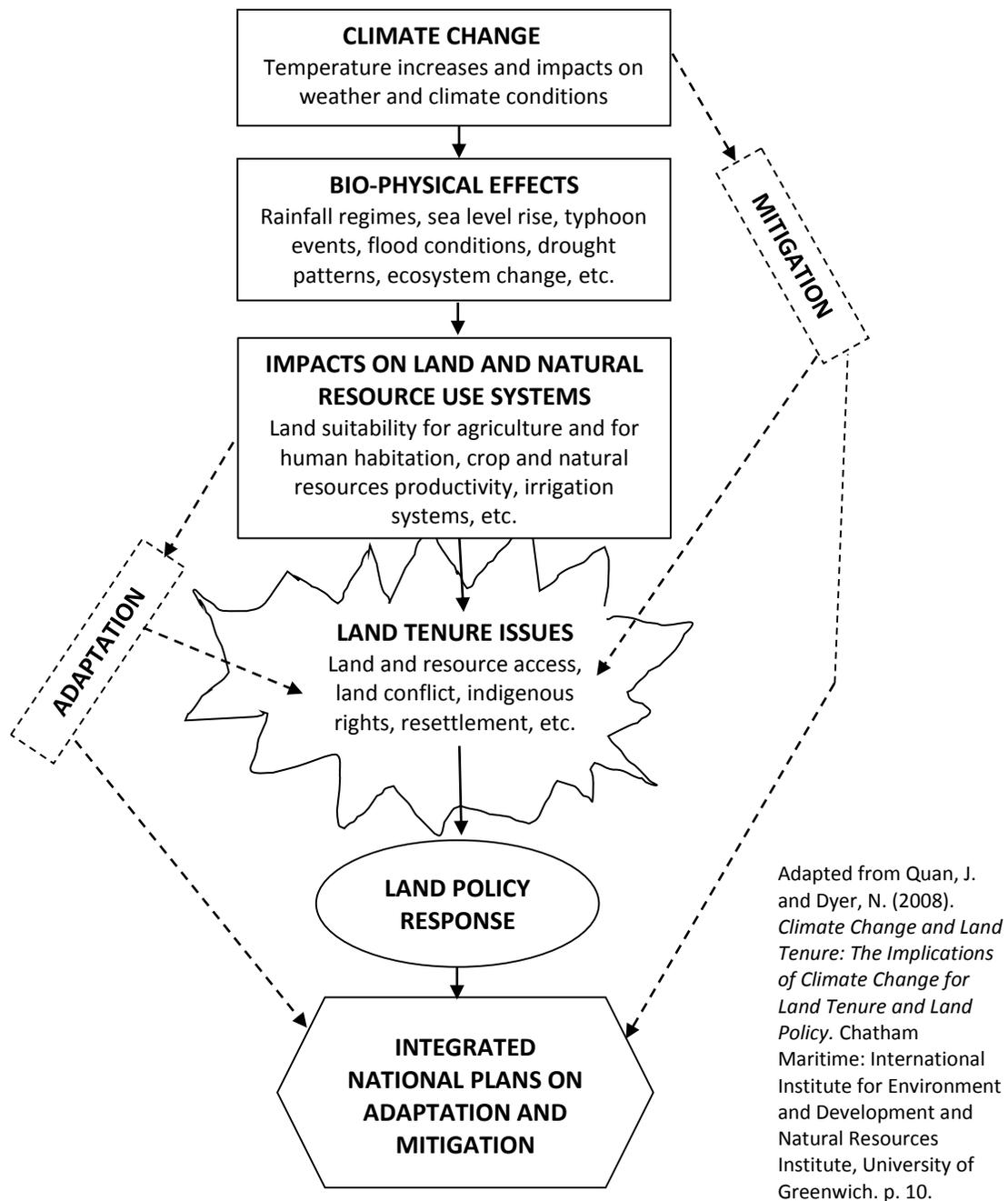
This paper is organized into six sections:

- ◇ *Framework* for understanding land and climate change linkages;
- ◇ *Philippine context* of natural disasters and internal displacements;
- ◇ *Local field experiences* (and cases) on climate change and land tenure issues;
- ◇ *Scoping of Philippine laws* on climate change and tenure;
- ◇ *Review of VGGT provisions* related to climate change and disasters; and,
- ◇ *Summary assessment and policy recommendations*.

A framework for understanding land and climate change linkages⁶

The linkages between climate change and land tenure are multiple, complex and indirect. *Figure 1* provides a framework to help us understand these linkages and their policy implications.

Figure 1. Framework for understanding land and climate change linkages



Based on the above diagram, certain observations are noted:

1. First, climate change involves increases in temperature that impacts on climate and weather systems.⁷
2. Second, there is a need to identify the main elements of climate change and its bio-physical effects on land and natural resource systems where the impacts will be felt most directly. In the Philippines, for instance, there is likely to be an increase in rainfall during the southwest and northeast monsoon seasons, and increases in the occurrence of tropical cyclones, with a

generally decreasing trend in rainfall in Mindanao, especially by 2050, due to climate change (Climate Change Commission, 2011).

3. Third is to consider the changes induced by climate change on *land and natural resource systems* that have implications on land tenure. These changes may be *abrupt*, resulting from extreme weather events such as typhoons and floods that may cause soil erosion, inundation of farmlands and changes in land-based production systems, or the disruption and displacement of human settlements. These changes may also be *long-term*, such as the unpredictability of weather events that affects agricultural productivity and the utilization of natural resources, leading to shifts in tenure systems or even human migration over time.
4. Next, the impacts on land and natural systems can lead to *land tenure issues* involving land access, land conflict and overlapping claims, displacement and forced resettlement, and other tenure rights issues.
5. Meanwhile, the *adaptation* measures undertaken by communities and resource users, and by government at different levels—whether these are spontaneous, or systematic and planned—may also affect land tenure systems. These measures may include zoning systems and regulated land use, spontaneous or forced migration to safer grounds, temporary relocation or forced resettlement, construction of new infrastructure such as dikes and canals, and protection measures for natural resources and human settlements. Such changes that affect land regulation, allocation and use are likely to impact on existing land tenure systems.
6. Similarly, *mitigation* measures may also affect existing land tenure systems. For instance, the policies of avoided deforestation and reforestation, the development of carbon sinks and the commercial trading of carbon rights, the promotion of alternative energy sources including biofuels could open up commercial opportunities for new land users, while affecting land access and tenure rights of traditional forest users and indigenous communities.
7. Finally, there should be better integration of *land policies* with adaptation and mitigation plans into broader *national development frameworks*.

As climate change is likely to affect land use and human settlements, climate change adaptation needs to be mainstreamed into national planning and policy frameworks, including land policy. In turn, land policy should aim to deliver adequate tenure security, as this is necessary to provide incentives for good land and resource management, and reduced vulnerability.

Moreover, climate change is likely to raise questions for land policy, not only in terms of providing tenure security, but also in terms of wider issues of land access and redistribution, population and urban growth, management of common property resources, land use regulations, environmental protection, resettlement in the face of natural calamities and hazards, and potential conflicts to which climate change may be contributing.

Basic Concepts and Terms

Climate change is defined by the Intergovernmental Panel on Climate Change as “any change in the climate over time, whether due to natural variability or [...] human activity.” However, the United Nations Framework Convention on Climate Change focuses specifically on climate change that is “attributed directly or indirectly to human activity” and is “in addition to natural climate variability.”

Mitigation refers to measures aimed at minimizing the extent of global warming by reducing emission levels and stabilizing greenhouse gas concentrations in the atmosphere.

Adaptation refers to adjustments in natural or human systems in response to actual or expected climate stimuli or their effects, which moderate harm or exploit beneficial opportunities. In other words, they are measures to reduce harm and strengthen the capacity of societies and ecosystems to cope with and adapt to climate change risks and impacts (as cited in Brookings Institution, 2014).

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land (and natural resources). Land tenure systems determine who can use what resources for how long, and under what conditions.

Tenure security is the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges. People with **insecure tenure** face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction (FAO, 2002).

Philippine situation: natural disasters and internal displacement

The Philippines is an archipelago located on the western rim of the Pacific Ocean, which is the hotbed of tropical cyclones. Owing to its geographic structure and location, the country is frequented by weather disturbances and natural hazards, and is highly vulnerable to their devastating effects (SEPO, 2017; Whiteman, 2014). A study by the World Bank concluded that the Philippines is a natural disaster hotspot—50.3 percent of the country’s land area and 81.3 percent of its population are vulnerable to natural hazards (Rincón and Virtucio, 2008).

Over the past decade, the Philippines has consistently ranked among the top five most disaster-hit countries according to the Center for Research on the Epidemiology of Disasters (CRED) (Whiteman, 2014). With a climate risk index (CRI) score of 21.33, Germanwatch ranked the Philippines the fifth in terms of having the greatest long-term climate risk based on extreme weather events from 1996 to 2015 (Kreft, et al., 2016).

The country experienced 283 climate-related events in the past 20 years, which is the greatest in frequency relative to the other countries in the long-term CRI top 10. These events resulted to an average death toll of 862 individuals, or around one per 100,000 inhabitants. These climate

hazards also led to economic losses averaging to 2.76 billion USD, or 0.63 percent per unit of the country's GDP (Kreft, et al., 2016).

The Philippines is often plagued by droughts, forest fires, and typhoons. Around 20 tropical cyclones visit the country each year. Among these cyclones, 10 will be typhoons, half of which will potentially be destructive (SEPO, 2017; de la Cruz, 2016). These extreme weather events lead to other natural calamities such as landslides and storm surges.

The Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) observed that the number and intensity of destructive typhoons which enter the country have been increasing. Hence, in 2015, PAGASA announced the inclusion of "super-typhoon" in its classifications of tropical cyclones (de la Cruz, 2016).

Natural disasters may cause injury, loss of lives, of property, and of livelihoods. Data from the Emergency Events Database (EM-DAT) of the Center for Research on the Epidemiology of Disasters (CRED) reveals that a total of 278 significant natural disasters occurred from 2000 to September 2017. These disasters have led to the death of more than 23,000 individuals, have affected⁸ around 128 million individuals, and have caused damage roughly equivalent to 19.9 billion USD. The destructive effects of various natural disasters through the past 18 years broken down by type are summarized in Table 1 (CRED, 2017).

Tropical cyclones have accounted for the majority of the damage to people and property. Tropical cyclones have caused eighty one percent (81%) of the total deaths, have caused detriment to seventy eight percent (78%) of the affected individuals, and have accounted for eighty six percent (86%) of the total value of damage.

Another main cause of damage are floods (coastal floods, flashfloods, and riverine floods), which are often triggered by high-precipitation events. Some landslides may also be prompted by heavy rains. Although the impacts of other geologic hazards (earthquakes, ash fall, etc.) are significant, they are not as severe as those of climate-induced disasters.

Table 1. Disaster profile of the Philippines, 2000-2017

| Usual origin of disaster | Type of disaster | Events count | Total deaths | Total affected | Total damage ('000 US\$) |
|--------------------------|-------------------|--------------|--------------|----------------|--------------------------|
| Climate-induced | Drought | 3 | - | 181,687 | 84,852 |
| Geologic hazard | Earthquake | 11 | 378 | 3,709,391 | 85,745 |
| Biological hazard | Epidemic | 1 | 1 | 664 | - |
| Biological hazard | Bacterial disease | 4 | 85 | 4,073 | - |
| Biological hazard | Viral disease | 3 | 772 | 130,729 | - |
| Climate-induced | Flood | 11 | 139 | 4,684,802 | 17,620 |
| Climate-induced | Coastal flood | 6 | 60 | 72,351 | 2,520 |
| Climate-induced | Flash flood | 28 | 310 | 4,024,954 | 281,364 |
| Climate-induced | Riverine flood | 47 | 651 | 14,308,330 | 2,383,695 |

| | | | | | |
|-----------------|-------------------------------|------------|---------------|--------------------|-------------------|
| Geologic hazard | Avalanche | 1 | 6 | 1,200 | - |
| Geologic hazard | Landslide | 11 | 1,540 | 238,328 | 9,281 |
| Geologic hazard | Subsidence | 1 | 287 | 2,838 | - |
| Geologic hazard | Dry mass movement (landslide) | 1 | 11 | - | - |
| Climate-induced | Storm | 8 | 119 | 645,119 | 8,643 |
| Climate-induced | Convective storm | 2 | 7 | 4,604 | 5 |
| Climate-induced | Tropical cyclone | 130 | 18,981 | 99,732,480 | 17,062,422 |
| Geologic hazard | Volcanic activity | 1 | - | 60,545 | - |
| Geologic hazard | Ash fall | 9 | - | 304,761 | 4,794 |
| TOTAL | | 278 | 23,347 | 128,106,856 | 19,940,941 |

Source: Emergency Events Database (EM-DAT), last updated 25 September 2017

Among the economic sectors, agriculture has been the most severely affected by natural disasters. From 2000 to 2012, agricultural damages reached approximately Php 106.85 billion, or 58 percent of the registered total damages (NDRRMC, as cited by SEPO, 2013).

Climate change and natural disasters are also expected to challenge existing tenure relationships to the disadvantage of vulnerable groups, and to result in extensive migration and displacement of populations. Communities may gradually be detached from former homes as a result of slow-onset environmental degradation, or may suddenly be uprooted by extreme weather events (Freudenberger and Miller, 2010).

People may move to other places in search of greater human security and improved economic opportunities. Yet displacement may also occur once again, when people move to urban areas that are already dense, or when relocation efforts turn out to be unsuccessful. Displacement may also be cyclical, as people move back to and fro communities of origin in search of better livelihood security (Brookings Institution, 2014).

The Internal Displacement Monitoring Centre (IDMC) estimated that more than 5.9 million out of 102 million Filipinos were displaced by natural disasters in 2016. Furthermore, around 740 thousand individuals were reported to be *newly displaced* by disasters from January to June 2017 (IDMC, 2017).

Since 2008, an average of 3.7 million Filipinos are being displaced by natural disasters annually. Eighty four percent (84%) of these yearly displacements are caused by typhoons, accompanied by storm surges, floods, and strong winds.

Field experiences (and cases) on climate change, natural disasters and land tenure issues

Discussion context

Two of the deadliest typhoons to hit the Philippines in recent years—Typhoon Washi (*Sendong*) in 2011 and Typhoon Haiyan (*Yolanda*) in 2013—provide the discussion and analytical contexts for the two case studies and two provincial consultations conducted on the link between climate change and land tenure issues. Moreover, a desk review was conducted regarding land and tenure issues brought about by these two typhoon events.

Typhoon Haiyan (November 2013) was the strongest typhoon to hit the Philippines in recorded history, packing winds at a speed of 315 kilometers per hour with gusts as strong as 380 kilometers per hour. It caused 6,300 deaths, with 1,062 missing (NDRRMC, 2013). It also prompted the largest single displacement in recent history, with some four million people reportedly displaced from their homes. Three years later, in 2016, more than 800 thousand individuals (200 thousand households) remained with no permanent housing, and thousands had erected temporary shelters in vulnerable coastal “danger zones” or “no-dwelling zones” (IDMC, 2017). Typhoon Washi (December 2011) meanwhile ranks as the third deadliest typhoon ever to hit the country, causing 1,286 deaths and 49 missing, with some 132,00 families rendered displaced or homeless (NDRRMC, 2012).

Summary of key findings and discussions

Tenure insecurity and vulnerability. The lack of tenure security of poor people increases their vulnerability and risks to the direct effects of climate change. Poverty forces people to cultivate marginal lands that may be too steep, too dry, too wet or prone to erosion, or else to occupy fragile public land, drainage systems, and easements beside waterways or coastal areas that are vulnerable to flooding, high tides, and storm surges. Moreover, informal settlements especially in urban areas are often densely packed, with housing made of temporary and semi-permanent materials, and with a lack of planned infrastructure which hampers reaction or response to emergencies. The lack of tenure reduces the incentives and capacity for people to invest in housing improvements or to modify their living environment to protect their homes against floods, landslides, etc. Thus, many poor households fall into a constant cycle of disrepair and rebuilding after each disaster. While most of the poor are aware of the risks of their homes to natural hazards, they choose to accept or ignore such reality, in order to live closer to their sources of livelihood.

In the case of Typhoon Washi, heavy rainfall in the highlands caused flash floods and landslides that sent mud and logs crashing down on communities near the river, mountain, and sea. Hardest hit were Cagayan de Oro and nearby Iligan City where at least 1,000 people were killed overnight. Those living near riverbanks and low-lying areas were most affected, including large numbers of informal settlers and neighborhoods that were part of Cagayan de Oro City’s socialized housing program (Franta, et al., 2016).

Limited choices, cycles of vulnerability. The lack of tenure security limits people’s choices and diminishes their capacity to recover and rebuild from a disaster. If not adequately addressed, the tenure of insecurity may create cycles of vulnerability, as displaced persons with no rightful claim to land are likely to: (i) fall deeper into poverty with unrestored livelihoods; (ii) move back into their former areas of displacement or relocate to unsafe land, or (iii) form residual caseloads of landless groups without access to land and permanent housing (Oxfam, 2014).

Reclaiming affected property. People with secure tenure are more confident about reclaiming their property if the damage is not permanent. In contrast, affected households with no secure tenure are likely to have greater difficulty in relocating or reclaiming their original occupied properties following a disaster (Eleazar, 2010). In the case of Haiyan and Washi, many of those with no secure tenure were prevented from returning to their areas, and from repairing and rebuilding their homes, as these were deemed to be “high-risk” areas.

Destruction of boundaries and land records. Disasters may cause the destruction of titles, land records and cadastral maps, and the shifting of physical and natural boundaries. Families also lose important documents that may be difficult or costly to reconstitute. Moreover, official reports regarding disaster losses focus more on public infrastructure, and do not include the loss of land records and boundaries. Disaster funds do not cover the expenses required by the agencies to reconstitute their records, conduct cadastral surveys or provide land title reconstitution services for affected families (Eleazar, 2010). This affects the work on rebuilding, as the tasks of delineation and rehabilitation of private parcels are left entirely to private owners. Boundary disputes may arise as parcels are re-delineated via new surveys.

Permanent shelter programs. People without secure tenure may lose out on permanent shelter assistance. Shelter programs in response to Typhoon Yolanda potentially excluded informal settlers and lessees, as the eligibility criteria under the *Omnibus Shelter Assistance* included the need for legal ownership or a guarantee of long-term occupation through the submission of a lease agreement covering a ten (10)-year minimum occupancy over the land to be used to build shelter⁹ (Alvarez, 2017).

No-build zones. In the aftermath of Typhoon Haiyan, the Office of the Presidential Assistant for Rehabilitation and (OPARR)¹⁰ and the Department of Environment and Natural Resources (DENR) declared a “40-meter no-build zone” along the coastlines of Eastern Samar and Leyte, two of the worst-hit areas. Given the absence of existing legislation on this matter, the declaration was based on protocols outlined in Article 51 of the *Philippine Water Code*, established in 1976 by virtue of PD 1067. This led to confusion in the policy’s interpretation and implementation—as noted by local government units (LGUs), line agencies, and humanitarian agencies—as it affected some 200,000 people who faced the prospect of prolonged displacement. The “no-build zones” was later changed to “no-dwelling zones,” meaning that structures can be built in the area, but not inhabited (IRIN, 2014).

Several questions were raised regarding these “no-build” zoning regulations:

- a. A 40-meter distance from the shoreline may not guarantee safety from a super-typhoon. But the usual predicament faced by government is: how does one find the right balance between

protecting tenure rights and livelihoods (especially for marginalized sectors), and the need to ensure public safety?

- b. Does the designation of “no-dwelling zones” mean that lands can be used (or leased out by government) for tourism, commerce and industry, but not for residential purposes? How will this affect other sectors, such as the fisherfolk?
- c. Finally, what is the basis for the 40-meter “no-build zone?” At best, local zoning and land use regulations should be based on scientific studies (such as geo-hazard mapping), and guided by a national policy.

Similarly, following the destruction brought by Typhoon Washi, some areas near the Cagayan River that had previously been occupied by informal settlements were declared to be “no-build” zones. However, some re-occupation occurred in spite of the restriction (Franta, et al., 2016).

Relocation and resettlement. Massive numbers of families needed to be relocated and permanently resettled elsewhere in the aftermath of major disasters. Following Typhoons Haiyan and Washi, relocation and resettlement programs in Eastern Visayas and Cagayan de Oro City encountered several tenure-related problems:

- a. *Lack of standard eligibility criteria for relocation.* In many cases, lessees and/or tenants of apartments and boarding houses were deemed ineligible for relocation assistance. In other cases, informal settlers living outside the “no-build zones” but who were nonetheless refused permission to rebuild, were also excluded from permanent resettlement sites (Oxfam, 2014).
- b. *Lack of safe public lands for relocation.* While funding for housing is available, there has been a lack of suitable and adequate public lands for the relocation of affected families in the wake of major disasters such as Typhoons Haiyan and Washi. LGUs have limited funds for the purchase of private lands (Alvarez, 2017). Thus, years after the disasters, hundreds of thousands still wait for permanent relocation, many remain in temporary shelters, and many remain in high-risk zones (IDMC, 2017).
- c. *Land conversion for resettlement areas.* To address the issue of lack of lands for resettlement sites, the Department of Agrarian Reform (DAR) issued Administrative Order (AO) No. 9 series of 2014 on “Special Rules on Application for Land Use Conversion Necessary for the Construction of Resettlement Areas for those Affected by Typhoon Yolanda.”¹¹
- d. *Lack of livelihoods and utilities in relocation communities.* For those living in the relocation sites, sources of income are rare. Other sites are located in hazardous areas or lack basic services like potable water. For those who travel to the core of the city to make their living, a significant portion of their income goes to transportation costs. Thus, many opt to remain in high-risk areas even if given a chance to relocate (Franta, et al., 2016).
- e. *Residual caseloads.* Finally, there is a danger of long-term residual caseloads of displaced persons. Displacement impacts on the ability of people to resume their livelihoods. Residual caseloads of displaced people often return to unsafe lands because to them, the advantages of

disaster-prone areas (i.e., being near sources of livelihood, low transport costs) are perceived to outweigh the risks (Eleazar, 2010).

Studies indicate that there are three main ways by which the tenure of internally-displaced persons are deemed as “permanently resolved:” (i) when they return to their homes and places of origin; (ii) when they are permanently resettled; or (iii) when they relocate or migrate to other places as an adaptation strategy. However, in reality, poor families often use combinations of these three approaches in their survival strategies. For example, a household head might return to high-risk areas for livelihood, while the rest of his/her family remains in the permanent resettlement site.

Eviction of tenants. In Guian and Quinapondan, Eastern Samar, tenants in coconut farms were being evicted by their landowners as they were unable to pay their lease rentals after Typhoon Haiyan had damaged their crops. Moreover, some landlords harvested the fallen coconut trees and sold them as lumber, without giving the tenants a share of the proceeds from the sale. Also, some landowners began to sell the lands without the knowledge of their tenants (Alvarez, 2017). (See box article: case study 1)

In response to the issue of evictions, DAR issued AO No. 2-2014 that states “no tenant shall be ejected, dispossessed or removed from his/her landholding due to non-payment of lease rentals as a result of a fortuitous event.” It also allowed the re-negotiation of new leasehold arrangements. Moreover, AO No. 2-2014 also specified that in the case of cut coconut trees, the net proceeds (after deducting expenses for cutting and hauling) shall be divided between tenant and landowner on a 75-25 sharing arrangement. Furthermore, in cases where the landowner decides to sell the land, the law gives tenants the “preferential right to buy the agricultural landholding.”

However, the question lies in the capacity of government to monitor and implement the legal rights of tenants and leaseholders. Even prior to Haiyan, the 50-50 share tenancy arrangement has been prevalent among tenanted coconut farms in Eastern Samar, instead of the 75-25 leasehold sharing in favor of tenants as required under The Agricultural Land Reform Code (RA 3844) and The Comprehensive Agrarian Reform Law (RA 6657). Moreover, many tenants have no written contracts. The DAR also seems to have no database or registry on the total lands that should be covered by leasehold contracts or agreements. Annual targets set by the local DAR are merely based on the *renewal* of existing contracts (Lim, 2016).

Displacement of fishing communities. Artisanal fisherfolk have been the sector hardest hit by Typhoon Haiyan. As most of them live near coastal areas, and have no formal and legal tenure to their homelots, they were summarily displaced and relocated after the typhoon. And as they were temporarily relocated, other people came forward to claim some of the coastal areas that the fisherfolk previously occupied, and subsequently applied for a Foreshore Lease Agreement with the DENR (Alvarez, 2016). Under Section 108 of the Philippine Fisheries Code of 1988 (RA 8550), fisherfolk are entitled not just access to fishing grounds, but they are entitled to be in designated fisherfolk settlement areas “where certain areas of the public domain, specifically near the fishing grounds, shall be reserved for the settlement of the municipal fisherfolk.”¹²

But while the establishment of fisherfolk settlements is mandated by RA 8550, there are still no clear guidelines how this can be implemented (Rodriguez, 2017).

Case Study 1: Linking Tenure and Climate Change: Haiyan in Eastern Samar

Issues of land rights and tenure often arise in the aftermath of major calamities and disasters, due to the displacement of communities and the need for relocation programs.

After Typhoon Haiyan/*Yolanda* hit the municipalities of Guian and Quinapondan, Eastern Samar, not only did the farmers and fisherfolk find themselves without their homes, crops and livelihoods, they were also being driven off the land. Tenants were being evicted by their landowners as they were unable to pay their lease rentals after the typhoon had damaged their crops. Moreover, some landlords harvested the fallen coconut trees to sell as lumber, without giving the tenants a share of the proceeds. Also, landowners began to sell the lands without the knowledge of their tenants.

Fisherfolk were the most vulnerable to displacement as their homes and livelihoods were destroyed. While they were temporarily relocated, other people came forward to claim the coastal areas that the fisherfolk previously occupied, and subsequently applied for a Foreshore Lease Agreement with DENR.

Meanwhile, many problems were encountered in resettlement. Public lands were limited but LGUs could not afford to acquire private lands for relocation sites. In Guian, prospective beneficiaries questioned the selection process for resettlement, citing that some of the beneficiaries were not residents of the municipality, while earlier beneficiaries had leased their awarded housing units and used the money to return to their original home sites.

For those seeking shelter assistance from the Department of Social Welfare and Development (DSWD), one eligibility criteria under the Core Shelter Assistance (CSA) and Modified Shelter Assistance (MSA) programs was the need for a guarantee of ownership or long-term occupation for at least 10 years for the land to be used as shelter, thus potentially excluding informal settlers and lessees.

The “no-build zones” policy covering 40 meters from the coastline left confusion among both the communities and the LGUs. Meanwhile, the Comprehensive Land Use Plans (CLUPs) in Eastern Samar were also found to be outdated.

Source: Alvarez, K. (2017). Linking Land Tenure and Climate Change: The Case of Haiyan in Eastern Samar, Philippines. Quezon City: ANGOC.

Overlapping tenure. Major disaster events have served to un-mask and expose the status of contested lands, as well as the pre-existence of erroneous surveys. For instance, in the island of Homonhon, Guian, Eastern Samar, it was discovered that tenant-tillers had been executing leasehold contracts with alleged landowners, even though the land was found to be classified as public “timberlands.” In Quinapondan, Eastern Samar, many cadastral surveys were found to be erroneous. In other cases, multiple tax declarations were discovered over the same property.

Land speculation and landgrabs. Calamities create opportunities for land speculation and landgrabs as a result of population displacement. In the aftermath of Typhoon Haiyan, reports of developers and powerful elites grabbing abandoned land were widespread. In Tacloban city, the local government headed by a prominent political family prevented reconstruction by informal settlers on land which it owned, supposedly because the site is disaster-prone. However, it was found out later that the national government had expressed interest in purchasing the land to

expand the runway of Tacloban's airport to accommodate international flights—a project that would ultimately work to the advantage of the political family (Bradshier, 2013).

In Sicogon Island, Iloilo, local elites in collaboration with a development corporation used the devastation of properties and livelihood of fisherfolks brought on by Typhoon Haiyan, to execute a long-standing plan to launch a high-end tourism hub on the island. After the typhoon, landlords reportedly offered cash incentives and zero-cost relocation for affected households to waive their rights to the land and to permanently vacate the island. The renouncement of rights to the land included the withdrawal of Comprehensive Agrarian Reform Program (CARP) application and the dropping of cases filed against landowners. Acceptance of these offers would allow them to receive relief goods. Majority of those who accepted these offers were those without titles to the land and those who were not eligible for the government's agrarian reform program (Uson, 2017).

LGU responsibilities. Under the Local Government Code of 1991, LGUs have the duty to carry out emergency measures in response to man-made and natural disasters and calamities. LGUs are also given the responsibility and powers: (i) to expropriate property “for public use, purpose, or welfare for the benefit of the poor or landless;” (ii) to prepare Comprehensive Land Use Plans (CLUPs), reclassify lands, and institute zoning; and (iii) to undertake programs and projects for low-cost housing and mass dwellings (for city and provincial LGUs).

Land use planning and LGUs. Questions have been raised on the capacity of LGUs to undertake CLUPs that integrate disaster risk-reduction measures, while making development plans risk-sensitive. LGUs in Eastern Samar were observed to have outdated CLUPs (Alvarez, 2017). In Cagayan de Oro City, the victims of Typhoon Washi included beneficiaries of the city's earlier socialized housing program that was found to be located in a flood-prone area (Franta, et al., 2016). Proper land use planning, if grounded on science-based assessments, will reduce the risk of future displacement or eviction of vulnerable communities.

Hazard mapping. Several initiatives have been started at the national and provincial and city levels to undertake hazard mapping and assessments for more effective disaster risk reduction and management. However, there is need for capacity building among LGUs and communities to integrate disaster risk management in local development planning, to include regulations on land use.

National land use policy. A national land use policy is needed to guide LGUs in updating their CLUPs. However, the legislative Bill on the National Land Use and Management Act (NLUA) has long been pending in Congress.

Protecting the watersheds. When Typhoon Washi struck in December 2011, torrential rains in the uplands led to the sudden swelling of the Cagayan River, bringing down mud and debris that caused catastrophic flooding downstream in Cagayan de Oro City. Illegal logging, small-scale mining, timber poaching, and quarrying in the uplands had triggered erosion, landslides and flooding (Ravanera, 2017). This case shows how watershed management remains a major challenge in the Philippines, as many cities are located on flat plains between the coast and upland water catchment areas. Watersheds extend across several political jurisdictions, making comprehensive management policies difficult to develop and enforce (Franta, et al., 2016).

Payment for Environmental Services (PES) approach. In Northern Mindanao, a working partnership was initiated in 2014 between citizens of Cagayan de Oro and the Talaandig indigenous community in Talakag, Bukidnon (through their association called MILALITTRA) for the protection of the Batang sub-watershed that feeds into the Cagayan de Oro river system.

Case Study 2: Linking Tenure and Climate Change: MILALITTRA in Mt. Kalatungan, Bukidnon

The Mt. Kalatungan mountain range spans 3 municipalities and Valencia City in Bukidnon. It is a key biodiversity area and supports the headwaters that feed into 35 river systems within the Cagayan de Oro River Basin. However, years of illegal logging, small-scale mining, timber poaching, and quarrying have degraded the forest ecosystem, resulting in uncontrolled soil erosion, landslides and flooding. Thus, when Typhoon Sendong struck in December 2011, torrential rains led to widespread and catastrophic flooding in the downstream cities of Cagayan de Oro and Iligan. This led to a public outcry for reforestation and better protection of the upland watershed areas.

The *Talaandig* indigenous community covers 4 barangays in Talakag, Bukidnon. Under an association called MILALITTRA, the community was earlier awarded 11,367 hectares of land under a Certificate of Ancestral Domain Title (CADT) issued in 2003. The headwaters from the MILALITTRA-controlled slopes of Mt. Kalatungan flows into the Batang sub-watershed of the Cagayan de Oro river basin, and was found to be the main source of floodwaters that hit Cagayan de Oro during Typhoon Washi/*Sendong*. Thus, the reforestation of the Batang sub-watershed was deemed crucial to prevent another catastrophe.

One partnership innovation was the Payment for Environmental Services (PES). Under the PES scheme, MILALITTRA would act as a “seller” of ecosystem services. It proposed to develop and protect 1,648 hectares (816 hectares for agroforestry and 832 hectares for reforestation). The “buyers” would be the beneficiaries from this scheme, i.e., downstream businesses, cooperatives, academic institutions, households, and individuals. Xavier Science Foundation would act as fund manager and intermediary for this scheme. Three years after its launching on May 2014, the project generated Php 4.2 million from 14 investors, and planted 61 hectares.

The recognition of MILALITTRA’s community land rights through a CADT enables the indigenous community to negotiate with, and enter into legal contracts with external partners. The traditional land governance system of the Talaandigs is anchored on their culture of protecting and regenerating the forest, as their ancestors have done for generations.

MILALITTRA’s spatial data on its traditional territory when it applied for a CADT in 2003, provides the baseline data for measuring impact with quantifiable indicators. A follow-up mapping done in 2013, 10 years after CADT, showed an improved net forest cover of 9 percent from 2003 to 2013:

| Area classifications | Percent change |
|-----------------------------|-----------------------|
| Remained as forests | 33 % |
| Non-forest to forest | 13 % |
| Forest to non-forest | 4 % |
| Remained as non-forest | 50 % |
| Total area | 100 % |

The MILALITTRA case could provide a compelling case for recognizing traditional land governance systems as an approach towards protecting the country’s remaining forests, and in adapting to climate change.

 Source: Ravanera, R. (2017). *Linking Land Tenure and Climate Change: The Case of MILALITTRA in Mt. Kalatungan*. Quezon City: ANGOC.

Under this Payment for Environmental Services (PES) scheme, MILALITTRA would act as a “seller” of its ecosystem services through reforestation and forest protection in the uplands. The “buyers” would be the downstream “beneficiaries” of this ecosystem service, consisting of businesses, cooperatives, academic institutions, households, and individuals. MILALITTRA was earlier awarded 11,367 hectares of land under a Certificate of Ancestral Domain Title (CADT) issued in 2003. The tribe manages its ancestral domain through indigenous traditional systems and governance. *(See box article: case study 2)*

Review of legislations on climate change and tenure¹³

A 2017 scoping study by La Viña and Tan reviewed selected Philippine laws and international instruments to determine whether or not they explicitly address the links between climate change and disasters, and tenurial rights to land, forests and fisheries.

Three sets of laws were reviewed, as follows:

a. Philippine laws on climate change and natural disasters:

- ◇ Climate Change Act of 2009 (RA 9729)
- ◇ Philippine Disaster Risk Reduction and Management Act of 2010 (DRRM)
- ◇ People’s Survival Fund (RA 10174)

b. Philippine laws with provisions on land tenure rights:

- ◇ 1987 Philippine Constitution
- ◇ Public Land Act of 1936
- ◇ Indigenous Peoples Rights Act of 1997 (IPRA)
- ◇ National Integrated Protected Areas System of 1992 (NIPAS Act)
- ◇ Comprehensive Agrarian Reform Program of 1988 (CARP), as amended by CARP Extension with Reforms of 2009 (CARPER)
- ◇ Urban Development and Housing Act of 1992 (UDHA)
- ◇ Agriculture and Fisheries Modernization Act of 1997 (AFMA)
- ◇ Local Government Code of 1991 (LGC)
- ◇ Revised Forestry Code of 1975 and Executive Orders on Community-based Forest Management and Sustainable Forest Management
- ◇ Fisheries Code of 1998, as amended in 2015

c. International agreements to which the Philippines is a party:

- ◇ Climate change agreements: (i) United Nations Framework Convention on Climate Change of 1992 (UNFCCC); and (ii) the Paris Agreement of 2015
- ◇ Sendai Framework for Disaster Management 2015-2030
- ◇ Voluntary Guidelines on the Governance of Tenure (VGGT)

The main findings of the review are summarized as follows:

- a. Philippine laws on climate change and natural disasters have strong linkages with each other, but their linkages to tenure rights remain abstract. They contain broad policy declarations that may be interpreted as recognizing the importance of property rights. However, the operational provisions of these laws lack clear protections for tenure rights in the event of disruptions of the enjoyment of these rights due to climate change and disasters. For instance, the Climate Change Act of 2009 mentions the need for “wise management of land and the environment” but does not discuss land rights or land governance. The DRRM Act recognizes improper land management as one of the underlying causes of disasters; however, it does not regulate tenure over land. Neither of these laws discusses tenure rights over forests and fisheries. It is surmised that perhaps these laws are intended to be read alongside other existing laws within a legal system.
- b. The Philippines has several laws governing land tenure rights. However, most of these tenure-related laws have no explicit references to climate change and to disasters. Many of these laws were enacted decades ago, before climate change and disasters became part of policy discussions. However, some laws are worth noting:
 - ◇ IPRA recognizes the rights of ownership and possess of indigenous cultural communities (ICCs) and indigenous peoples (IPs) over their ancestral domains. It also protects the tenure rights of ICCs/IPs in case displacement occurs as a result of natural catastrophes.
 - ◇ UDHA does not expressly mention climate change or disasters, although makes a reference to displacement, and mandates the LGUs to relocate and resettle persons living in danger zones.
 - ◇ AFMA mandates the Department of Agriculture (DA) to coordinate with PAGASA, the Philippine weather bureau, so that the effects of global climate change, weather disturbances, and annual productivity cycles are regularly monitored, and considered in the forecasting and formulation of agriculture and fisheries production programs.
 - ◇ The LGC: (i) imposes on the national government agencies (NGAs) the duty to minimize the adverse effects of projects and programs that may cause climate change and environmental degradation; and (ii) defines the powers and responsibilities of LGUs to include: protecting citizens from the harmful effects of disasters and calamities; carrying out emergency measures in the aftermath of man-made and natural disasters and calamities; and, providing relief and assistance during and after disasters and calamities.
- c. International instruments on climate change and natural disasters like the UNFCCC, Paris Agreement and the Sendai Framework also do not provide explicit references to tenurial rights. In contrast, the VGGT expressly mentions the need to protect tenure rights in the face of climate change and disasters (as discussed in the succeeding section).

The review also examined relevant bills pending in Congress, as follows:

- ◇ The bill on National Land Use (NLU) on which a consolidated House Bill (HB 5240) has been already been approved by the House of Representatives and was forwarded

to the Senate in May 2017. The bill provides for the allocation of certain land types to identified groups, e.g., allocating certain areas in the coastal zone for traditional fisherfolk, holders of stewardship contracts, titles to ancestral domains, and other property rights arrangements for participating in coastal resource management. It also defines the areas to be placed under the Protection Land Use Category, to include geo-hazard prone areas and high risk/danger zones and the identification of risk reduction measures to ensure the prioritization of life and safety.

- ◇ The bill on Indigenous Peoples and Community Conserved Areas (ICCA bill) which seeks to recognize and support the role of ICCs/IPs and local communities in the preservation of important ecosystems in the Philippines. The bill is meant to enhance the existing law on protected areas, or NIPAS, by strengthening the role of ICCs/IPs as recognized under IPRA.

Review of the VGGT principles on climate change and tenure

The Voluntary Guidelines on the Governance of Tenure (VGGT), endorsed by the Committee on World Food Security in 2012, contains a set of working principles to guide the efforts of governments to improve land governance, and to expanding it beyond the land sector. These 169 principles are drawn from internationally-accepted standards and good practice for the responsible governance of tenure.

The VGGT is one of the very few international documents that directly addresses the protection of tenurial rights in the event of climate change and disasters. It urges States to consider tenure aspects of land, fisheries and forests in preventing, preparing for, and responding to disasters, as well as in reconstructing and rehabilitating after the occurrence of disasters. (La Viña and Tan, 2017). The directly relevant provisions are Section 23 on *Responses to Climate Change*, and Section 24 on *Responses to Natural Disasters*. In addition, there are relevant provisions under Section 7 on *Safeguards* and Section 10 on *Informal Tenure*. These provisions are briefly summarized (and re-phrased) as follows:

Under Section 23 on *responses to climate change*:

- ◇ Respect and protect the legitimate tenure rights of people likely to be affected by climate change, especially the poor and vulnerable (23.1).
- ◇ Prepare and implement strategies with the participation of all people who may be displaced by climate change (23.2).
- ◇ Facilitate the participation of all people, especially the poor and vulnerable, who hold legitimate tenure rights, in the negotiation and implementation of mitigation and adaptation programs (23.3).

Under Section 24 on *responses to disasters*:

- ◇ Address tenure aspects in disaster prevention and preparedness. Design regulatory frameworks for tenure, including spatial planning, to avoid or minimize the potential impacts of disasters (24.1).
- ◇ Ensure that all actions are consistent with obligations in national and international law, including the *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons*, and the *Humanitarian Charter and Minimum Standards in Disaster Response* (24.2).
- ◇ Address tenure in disaster prevention and preparedness programs, i.e. –
 - a. Ensure resilient systems for recording legitimate tenure rights, including off-site storage of records (24.3).
 - b. Identify areas for the temporary settlement of displaced people, with rules to provide tenure security in such areas (24.3).
- ◇ Address tenure in the emergency response phase, i.e. –
 - a. Ensure that any provision of alternative land, fisheries, forests and livelihoods for displaced persons does not jeopardize the rights and livelihoods of others (23.2; 24.4).
 - b. Recognize, respect, and protect the legitimate tenure rights of displaced persons (24.4).
 - c. Disseminate information on tenure rights and unauthorized use to all affected persons (24.4).
- ◇ Address tenure during the reconstruction phase, i.e. –
 - ◇ Assist persons who are temporarily displaced to return to their place of origin—voluntarily, safely and with dignity.
 - ◇ Provide means to resolve disputes over tenure rights.
 - ◇ Where boundaries of parcels and other spatial units are to be re-established, undertake this based on the principles of consultation and participation.
 - ◇ Where people are unable to return to their place of origin, assist them to be permanently resettled elsewhere. Such resettlement should be negotiated with host communities (24.5).

Part 3, Sections 7 to 10 of the VGGT are devoted to the *legal recognition and allocation of tenure rights and duties*. However, particular provisions under Section 7 on *safeguards* are worth noting:

- ◇ Establish safeguards to avoid infringing on tenure rights of others. In particular, protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights (7.1).
- ◇ Where it is not possible to provide legal recognition of tenure rights, prevent forced evictions that are inconsistent with existing obligations under national and international law (7.6 and 10.6).

Section 10 on *informal tenure* is particularly important, as those without legally-recognized tenure are often most at risk on the impacts of climate change.

- ◇ Where informal tenure to land, fisheries and forests exists, acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. Promote policies and laws to provide recognition to such informal tenure (10.1).
- ◇ When providing legal recognition to informal tenure, undertake this through participatory, gender-sensitive processes, with particular regard for tenants, farmers, and small-scale food producers (10.3).

Summary assessment and recommendations

Summary assessment

Given its geographic location and archipelagic configuration, the Philippines is frequented by and is highly vulnerable to the devastating effects of weather disturbances and natural hazards. Over the past decade, the Philippines has consistently ranked among the top most disaster-hit countries. It also ranks among the top countries with the greatest long-term climate risk, based on analyses of extreme weather events from 1996 to 2015.

High poverty levels, along with the lack of tenure security, heighten the risks and vulnerability of people to the effects of climate change and natural disasters. This has led to rising casualties in terms of deaths and injuries, destruction to property, and people displaced by such events.

Two such natural disasters—Typhoons Haiyan and Washi—have been unprecedented in terms of their bio-physical effects, and their impacts on land and natural resource systems. The study of such events has served to highlight the relationships between the impacts of climate change, social and policy responses, and land tenure.

Climate change and natural disasters bring uneven impacts across regions and population groups. They disproportionately affect poor people, causing an increase in poverty & inequalities.

Sectors that are without security of tenure and who are politically weak, face the greatest risk to the impacts of climate change and natural disasters. They also have the least capacity to cope with, and are often last to recover and rebuild after disasters. Many displaced families whose needs are not addressed are likely to fall into cycles of vulnerability. Thus, the tasks of building disaster preparedness and resilience should also focus on ensuring tenure security for all. In a country like the Philippines, this may include the need to reassign tenure rights, towards broader development goals of ensuring greater land equity, redistribution, and tenure security.

Calamities also cause displacement *indirectly*, as land is eroded, landscapes are rearranged, known boundaries disappear, and legal documents are destroyed—thereby causing local land disputes or worsening existing ones. They create opportunities for land speculation and landgrabs

as a result of population displacement. Existing land tenure relationships, such as leasehold rights, are brought into question when crops and landscapes are completely destroyed. In some documented cases, this causes the eviction of tenants, or the sale of farmlands and produce without tenants' knowledge or agreement.

Humanitarian efforts aimed at reducing disaster risks and responding post-disaster, have not directly dealt with land tenure rights and property issues. Inadequate responses appear to be caused in part by a lack of clear understanding of tenure issues in the context of natural disasters, the lack of clear policy, the lack of allocated resources, and the limited capacity of LGUs and frontline agencies to deal with tenure issues. Oftentimes, the LGUs are disaster victims themselves.

There are often no fixed or designated/allocated spaces for temporary rehabilitation and permanent resettlement—crucial for a country prone to natural disasters. Permanent resettlement areas may be far from original locations, and away from former sources of livelihood and social services (especially among fisherfolk). Moreover, where needed, the tasks of re-survey, delineation and rehabilitation of private parcels are left entirely to private owners. Disaster funds do not cover the expenses required by the agencies to reconstitute their records, conduct cadastral surveys or provide land title reconstitution services for affected families.

There have been government efforts to respond to tenure issues in response to natural disasters. These include, among others, the declaration of 40-meter “no-build” and “no-dwelling zones” on unsafe foreshore lands, and the implementation of shelter assistance programs. However, the basis for blanket guidelines need to be reviewed.

For longer-term climate change adaptation and disaster preparedness, the government has also started initiatives such as geo-hazard mapping and establishment of new “climate proofing” standards for buildings and infrastructure. However, these will require greater capacities and guidance at the LGU level. For instance, comprehensive land use planning at local level should be guided by scientific hazard mapping studies and a national policy on land use.

Meanwhile, some long-term climate change adaptations, such as the task of protecting the upland watersheds, may extend across several political jurisdictions, and thus will require multi-stakeholder solutions that involve government, civil society, and the private sector. The MILALITTRA case could provide a compelling case for recognizing the role of ICCs/IPs and traditional land governance systems as an approach towards restoring the country's forests, and in protecting communities from the effects of climate change.

A review of Philippine laws on climate change and natural disasters (Climate Change Act, DRRM Act, People's Survival Fund Act) found that, while these laws contain broad policy declarations that may be interpreted as recognizing the importance of property rights, the operational provisions of these laws lack clear protections for tenure rights in the event of disruptions of the enjoyment of these rights due to climate change and disasters.

The Philippines has several laws relating to land governance, however, many of these laws do not contain express linkages to climate change and disasters. Many of these laws were enacted

long before climate change and natural disasters became part of policy discussions. Also, the multiplicity of laws and agencies dealing with tenure issues within their own specialized areas results in a fragmented and specialized approach. This results in the need for inter-agency coordination, yet there is no single agency that takes the lead in managing the nexus of the three fields: tenure rights, climate change, and disasters. And because each law identifies its own implementing agency, some overlaps have resulted with regards to their respective jurisdictions.¹⁴

Finally, with regards to implementation, there are numerous challenges in mainstreaming the three areas of tenure rights, climate change, and disasters. These include the lack of financial resources, of personnel with adequate and appropriate technical capacity, as well as of technological resources to fully implement these laws. Power imbalances between the national and local government may also adversely affect implementation at the local level.

Recommendations

ONE: *Promote and utilize the VGGT as a “mandate” to protect tenure rights in the event of climate change and disasters.* The VGGT is one of the few international documents that expressly mentions the linkages of tenure to climate change and natural disasters.

TWO: *Pursue reforms in tenure rights and DRRM legislations, particularly to link tenure rights to climate change and natural disasters.* Four pending legislations and legislative reviews provide opportunities for such reform: (a) bill on national land use; (b) bill on indigenous community conserved areas (ICCA bill), (c) ongoing review of the DRRM Act; and, (d) potential review of the People’s Survival Fund (PSF). To facilitate discussion and debate, advocates may submit their talking points, policy briefs, and specific policy recommendations to concerned legislative and executive government bodies.

- a. *National land use bill.* Use House Bill 5240 as a springboard for policy discussions, as this consolidated house bill has been submitted to the Senate. The current HB 5240 provides for zoning policies, with proposed provisions on the protection of prime agricultural lands, fisherfolk resettlement and participation of basic sectors in national, regional, provincial and local land use planning. Engage champions and advocates among civil society and the legislature to spur discussion, debate and proposals on crucial issues.
- b. *Indigenous community conserved areas bill.* The ICCA bill will serve to strengthen land rights of ICCs/IPs, as it will recognize and support their positive contributions to public goods and services—by way of biodiversity conservation, conserving the forests which are crucial for absorption of greenhouse gases and controlling hydrological flows, and providing ecological services such as providing protection from extreme conditions, including extreme floods and soil erosion. If passed, the ICCA policy will provide a vital link between the recognition of ICC/IP rights under IPRA on one hand, and the task of protecting and managing the environment under the national integrated protected areas system (NIPAS) on the other.
- c. In support of ICCA policy, monitor the experience of MILALLITRA in Bukidnon (and similar experiences), including changes in the forest cover within respective ancestral domains, over time—to support the vital role that ICCs/IPs play in the conservation and sustainable use

of the country's remaining forest areas. This may establish a better understanding of the linkages between land tenure and forest conservation, with the possibility of expanding the ICCA arrangement over other ancestral domains.

- d. Moreover, document and monitor the PES scheme between MILALLITRA and “service buyers” in Cagayan de Oro City as one potential multi-sectoral approach to risk reduction and climate change adaptation. Partnerships with civil society, academic and research institutions can be established for such review.
- e. *Ongoing review of the DRRM Act.* Engage in the ongoing review of the DRRM Act. Under the review process, government agencies are supposed to conduct public consultations to evaluate the DRRM Act and to propose measures to strengthen the law.
- f. *Review the People's Survival Fund.* The PSF is a facility for managing climate change impacts and disaster risks by focusing on adaptation measures by communities and LGUs. However, LGUs and CSOs have found it difficult to complete proposals and to access the facility based on the guidelines. There is a need to increase public awareness and critical discussion on adaptation measures and on the PSF facility.
- g. *Periodic review provisions.* Certain legislations contain provisions that provide for a periodic review. These provisions could provide an opportunity for discussion and amendment of the law.

THREE: *Engage with national government agencies (NGAs) in the Executive Department on discussions and feedback regarding the importance of linking tenure rights with climate change and disasters.* These agencies include, among others, the DENR and its Land Management Bureau (LMB), the National Commission on Indigenous Peoples (NCIP), the Climate Change Commission (CCC), Department of Agriculture (DA), Department of Agrarian Reform (DAR), and the NDRRMC (which collectively covers the NGAs). These NGAs could provide feedback on the implementation of laws. They could promulgate joint administrative orders (JAOs) that contain model provisions expressly recognizing and supporting tenurial rights and climate change/natural disasters which LGUs can adopt in local ordinances, for example, in their CLUPs and Forest Land Use Plans (FLUPs).

FOUR: *Engage with the Climate Change Commission (CCC) which has the power to “recommend legislation, policies, strategies, programs and appropriations for climate change adaptation and mitigation and related activities.”* The National Climate Change Action Plan, which is reviewed every three years, is presently being reviewed through a house-to-house consultation with select government offices.

- a. Lobby to include tenure security and tenure rights as an integral component in the Philippines' Climate Change Action Strategy in terms of risk reduction and climate change adaptation. Based on research findings, insecurity of tenure increases the vulnerability of people to the effects of climate change. On the other hand, tenure security increases the capacity of people to cope with, and adapt to climate change.

- b. Also, CSOs can lobby the CCC to formulate a climate, forest, and land use policy, and work to incorporate forest and land use in the “Nationally Determined Contribution (NDC)” that the government is preparing for submission to the UNFCCC in compliance of the Philippine government’s commitments under the Paris Agreement.

FIVE: *Engage with specific line agencies in the review of specific policies, guidelines and programs* in order to protect tenure rights of vulnerable sectors in the face of climate change and natural disasters. These include, among others:

- a. *Leasehold program under DAR.* Prioritize the leasehold program by declaring DAR annual targets on lands to be covered under leasehold contracts, and including it in staff performance audits, and in audits initiated by the Presidential Agrarian Reform Committee (PARC). Maintain and update annually a crop-based inventory of all tenanted landholdings. Ensure the issuance of formal tenure instruments (leasehold contracts) to tenants, including the mandatory registration with the Municipal Treasurer.
- b. *Review guidelines of shelter programs,* including the *Guidelines for Emergency Shelter Assistance* and *Omnibus Shelter Assistance*.
- c. *Registration of fisherfolk and protection of fisherfolk rights.* BFAR together with LGUs should ensure the full registry of municipal fisherfolk in their respective municipalities, and the complete delineation of all municipal waters, in order to protect fisherfolk tenure rights and eligibility for assistance programs in the event of natural disasters.¹⁵

SIX: *Engage with LGUs, especially those in areas and regions that are highly vulnerable to natural disasters and climate-induced calamities* in proposals and programs to improve tenure governance in their areas. It should be noted that the challenges of disaster risk reduction and climate change adaptation will be intensely local. Engagement with LGUs will involve:

- a. Designation of specific, safe sites for temporary relocation and permanent resettlement in the event of natural disasters.
- b. Integration of tenurial rights in local climate change response and DRRM initiatives and projects.
- c. Formulation of CLUPs with the participation of the basic sectors. CLUPs should be guided by a national land use policy, as well as by disaster risk assessments, in order to integrate disaster risk reduction in long-term local land use, while making subsequent investment and development plans risk-sensitive.
- d. Capacity-building for LGUs, civil society and local institutions, including in technical capacity and expertise, as well as in understanding the linkages between tenure rights, climate change and disasters.

SEVEN: Finally, engage with CSOs and local communities, specifically in the conduct of IEC (information, education, and communication) and advocacy campaigns to raise public discourse, and to demand action from officials. In line with the VGGT provisions, facilitate the participation of all people, especially the poor and vulnerable, in the discussion, negotiation, and implementation of mitigation and adaptation programs. □

Endnotes

- ¹ Quizon, Antonio (2017). *Climate Change and Land Tenure in the Philippines: A scoping of legislations, recent field experiences and their implications for land tenure and climate change policies*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). Prepared with assistance from Nathaniel Don Marquez and Denise Hyacinth Joy Musni, ANGOC.
- ² This study was finalized based on the inputs and recommendations from the National Multi-stakeholder Forum on Tenure and Climate Change (10 November 2017; Department of Agriculture, Quezon City, Philippines).
- ³ The views presented in this document do not necessarily reflect those of FAO.
- ⁴ This paper includes the key findings and recommendations from the following studies: (i) "Scoping of Legislations on Climate Change and Natural Disasters vis-à-vis Tenure" (La Viña and Tan, 2017); (ii) "Linking Land Tenure and Climate Change: The Case of Haiyan in Eastern Samar, Philippines" (Alvarez, 2017); and (iii) "Linking Land Tenure and Climate Change: The Case of MILALITTRA in Mt. Kalatungan" (Ravanera, 2017).
- ⁵ Under the project agreement: "Mainstreaming Voluntary Guidelines on Governance of Tenure (Philippines)," TCP/PHI/3505.
- ⁶ This section draws mainly from: Quan, J. and Dyer, N. (2008). *Climate Change and Land Tenure: The Implications of Climate Change for Land Tenure and Land Policy*. Chatham Maritime: International Institute for Environment and Development and Natural Resources Institute, University of Greenwich. <http://www.fao.org/3/a-aj332e.pdf>
- ⁷ The *Philippine Climate Change Action Plan (CCAP): 2011-2028* is premised on a mid-range projection that all areas of the Philippines will get warmer, with mean temperatures expected to rise by 0.9 °C to 1.1 °C in 2020 and by 1.8 °C to 2.2 °C in 2050.
- ⁸ Has left people in immediate need of aid, or has caused injury or homelessness.
- ⁹ See *Guidelines for Emergency Shelter Assistance*, December 2014. <http://tacloban.gov.ph/guidelines-for-the-emergency-shelter-assistance/#.Wf2xK4gRVc8>
- ¹⁰ The Office of the Presidential Assistant for Rehabilitation and Recovery (OPARR) was created for the rehabilitation and reconstruction work in response to the Typhoon Yolanda disaster. Its powers and functions were later transferred to the National Economic and Development Authority (NEDA).

- ¹¹ This Administrative Order applied only to affected Regions 4-B, 5, 6, 7, 8 and 13.
- ¹² The DENR representative said that Guian is a marine and protected area and that ownership is not permitted over the foreshore area. She said that DENR will review and validate the status of the area. ANGOC (2017a). "Provincial Consultation on Land Tenure and Climate Change," Tacloban City, 28 September 2017.
- ¹³ This section is taken from the main findings of the paper: "Scoping of Legislations on Climate Change and Natural Disasters vis-à-vis Tenure." (La Viña and Tan, 2017)
- ¹⁴ There has been a move to categorize major power plant projects as national government infrastructure projects. This could make it easier for lands to be expropriated—not just for the facilities themselves, but also for long stretches of land needed to connect the facilities to the national grid. The expedited grant of these rights of way could potentially conflict with the tenurial rights of small landowners in areas that may be affected by expropriation (La Viña and Tan, 2017).
- ¹⁵ Refer to the full recommendations under a parallel review conducted on small-scale fisheries entitled "Scoping Paper on the VGSSF and Philippine Policies and Laws on Fisheries" (Rodriguez, 2017).

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Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)

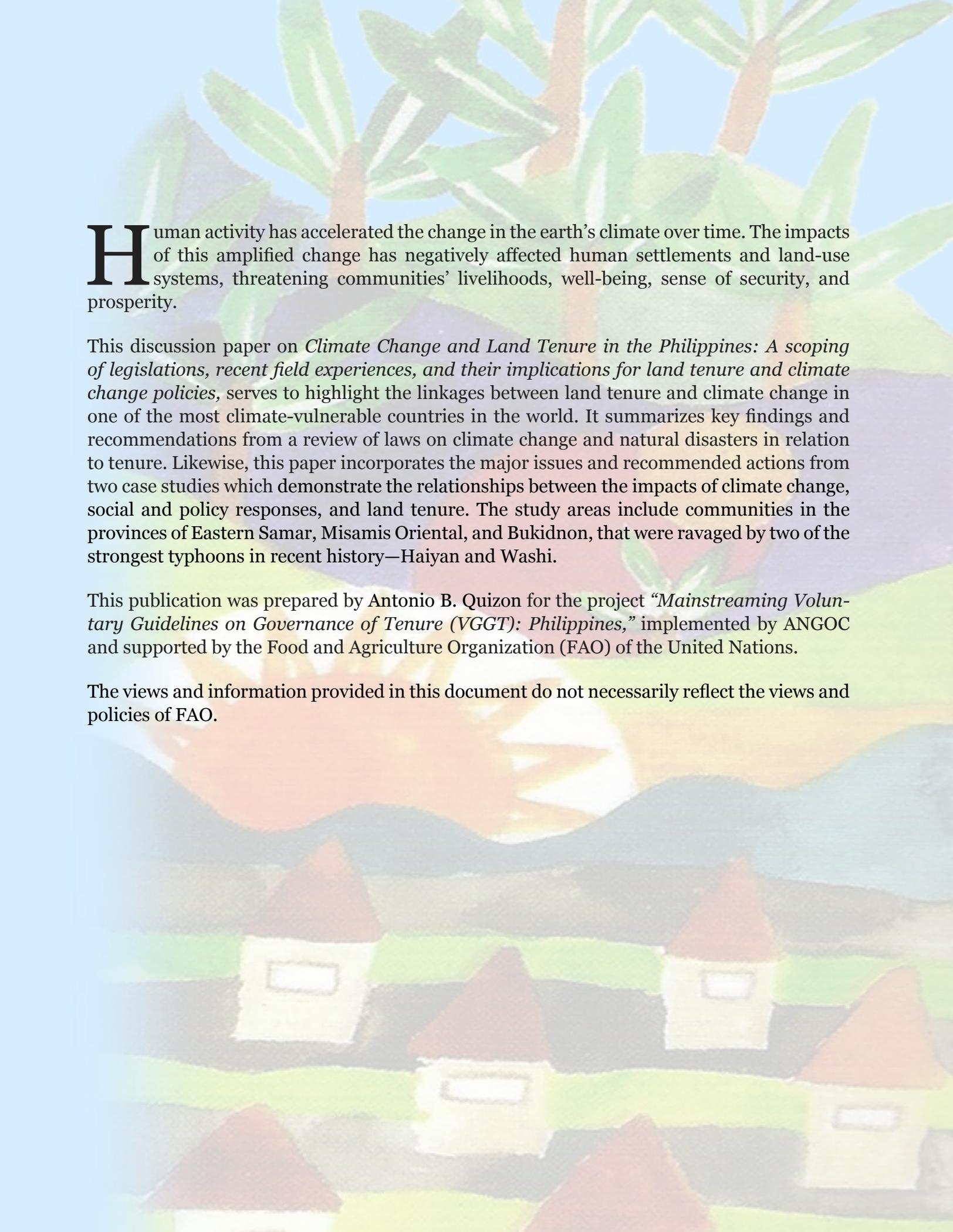
The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. This work builds on and supports the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines on the Right to Food), which were adopted by the FAO Council at its 127th Session in November 2004, and the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD).

The VGGT were endorsed by the Committee on World Food Security (CFS) in May 2012. The Guidelines were developed through a broad global partnership of international, regional and national organizations of different types that work together to achieve global changes in governance of tenure. The development followed an inclusive process involving a series of consultations and negotiations.

The VGGT provide a framework that States can use when developing their own strategies, policies, legislation, programs and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

The VGGT have 169 provisions, covering 23 topics encompassing five major themes: (1) General Matters (Principles); (2) Legal Recognition and Allocation of Tenure Rights; (3) Transfers and Changes to Tenure; (4) Administration of Tenure; and, (5) Responses to Climate Change and Disasters.

The VGGT is one of the very few international documents that directly addresses the protection of tenurial rights in the event of climate change and disasters. It urges States to consider tenure aspects of land, fisheries and forests in preventing, preparing for, and responding to disasters, as well as in reconstructing and rehabilitating after the occurrence of disasters. The directly relevant provisions are Section 23 on *Responses to Climate Change*, and Section 24 on *Responses to Natural Disasters*. In addition, Sections 7 to 10 provide for the *legal recognition and allocation of tenure rights and duties*. Section 10 on *informal tenure* is also particularly important, as those without legally-recognized tenure are often most at risk on the impacts of climate change.



Human activity has accelerated the change in the earth's climate over time. The impacts of this amplified change has negatively affected human settlements and land-use systems, threatening communities' livelihoods, well-being, sense of security, and prosperity.

This discussion paper on *Climate Change and Land Tenure in the Philippines: A scoping of legislations, recent field experiences, and their implications for land tenure and climate change policies*, serves to highlight the linkages between land tenure and climate change in one of the most climate-vulnerable countries in the world. It summarizes key findings and recommendations from a review of laws on climate change and natural disasters in relation to tenure. Likewise, this paper incorporates the major issues and recommended actions from two case studies which demonstrate the relationships between the impacts of climate change, social and policy responses, and land tenure. The study areas include communities in the provinces of Eastern Samar, Misamis Oriental, and Bukidnon, that were ravaged by two of the strongest typhoons in recent history—Haiyan and Washi.

This publication was prepared by Antonio B. Quizon for the project “*Mainstreaming Voluntary Guidelines on Governance of Tenure (VGGT): Philippines*,” implemented by ANGOC and supported by the Food and Agriculture Organization (FAO) of the United Nations.

The views and information provided in this document do not necessarily reflect the views and policies of FAO.