

I. Introduction

Review of Selected Land Laws and the Governance of Tenure in the Philippines: A Discussion Paper in the Context of the VGGT

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 Committee on World 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 governance 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.²

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?

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1 The VGGT was negotiated under the Committee on World 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 was formally adopted at the 38th (Special) Session of the Committee on Food Security convened by FAO 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.

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?

This discussion paper on the “VGGT and National Policies on the Governance of Tenure”³ 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).⁴ 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.

3 Original title of this initiative.

4 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.

Objectives, Scope and Limitations, Methodology

The study aims to compare 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 discussion, advocacy and implementation of the VGGT in the country.

Overview of the Review

This study examines the *Philippine Constitution* and 10 other laws related to the governance of tenure over land, water and forests, as follows:

Overall policy framework	1. <i>Philippine Constitution of 1987</i>
Tenure reforms in the rural sector	2. <i>Indigenous Peoples Rights Act of 1997 (RA 8371)</i> 3. <i>Philippine Fisheries Code of 1998 (RA 8550)</i> 4. <i>Comprehensive Agrarian Reform Program of 1988 (RA 6657) as amended by CARPER (RA 9700)</i>
Natural resource management, protection and use	5. <i>Agriculture and Fisheries Modernization Act of 1997 (RA 8435)</i> 6. <i>National Integrated Protected Areas System Act of 1992 (RA 7586)</i> 7. <i>Forestry Code of the Philippines (PD 305)</i> 8. <i>Philippine Mining Act of 1995 (RA 7942)</i> 9. <i>Public Land Act of 1936 (CA 141, as amended)</i>
Responses to climate change and risks	10. <i>Climate Change Act of 2009 (RA 9729)</i> 11. <i>Philippine Disaster Risk Reduction and Management Act of 2010 (RA 10121)</i>

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 areas, which is the focus of this study. The objectives and scope of this paper (including the above list of laws for this study) was reviewed by the Reference Group on the VGGT of the PDF-SRD.⁵

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

It should be further noted that other laws also have a bearing on the *overall* governance of tenure, but 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 tax administration, property valuation systems); the *Local Government Code* (on local administration, land classification, assignment of local tenure rights, local taxation); and *investment policies* which include the creation of *special development zones and authorities* that impact on tenure over land, fisheries and forests.⁶

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, an area which is seven times the size of its land and inland waters. In this sense, the physical attributes of the Philippines as an archipelagic country may be unique within the global context, and may not have been a factor in the international CFS negotiations over the Voluntary Guidelines.

Methodology

This strategic assessment of the major Philippine laws on land and resource governance 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 Voluntary Guidelines and the aforementioned laws was also conducted, and comments provided.

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

This process may be illustrated through the table below:

VGGT provisions	Natural Resource Laws	(+)	(-)	(?)	Comments
1. Principles	Constitution provision 1 provision 2, etc Forestry Code provision 1 provision 2, etc	x		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 (DA), 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* [DA-Bureau of Soils and Water Management, Quezon City; 20 March 2014]. This study has integrated the relevant feedback from the above consultations. Researchers also reviewed secondary materials as recommended by the Consultations. *Annex A* provides a list of references. *Annex B* provides a summary table of selected tenurial instruments in the Philippines.

Presentation Outline

This study is presented as follows:

- I. Introduction
- II. Summary of Main Findings and Recommendations
- III. Assessment of Philippine Laws on Land and Resource Governance vis-à-vis the VGGT
 1. General Matters/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

