

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).