



# Land Watch Asia

ISSN: 2 244-1360

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

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

**Abridged Version<sup>1</sup>**

*Antonio B. Quizon*  
*Jose Ignatius Pagsanghan*



Developed as a result of negotiations among different groups of stakeholders, the voluntary guidelines set out principles and internationally-accepted practices that may guide the preparation and implementation of policies and laws related to tenure governance. Land Watch Asia (LWA) believes that this will be possible with the strong commitment and cooperation of governments and other stakeholders. LWA will contribute in the process of building multi-stakeholder partnerships to enforce and monitor the implementation of the voluntary guidelines in several Asian countries.

In the Philippines, ANGOC has partnered with Philippine Development Forum - Working Group on Sustainable Rural Development (PDF-SRD), National Convergence Initiative (NCI), Food and Agriculture Organization-Philippines and GIZ to identify existing gaps in policies and programs on the governance of land and resource tenure in the Philippines, and to familiarize stakeholders on the voluntary guidelines.

This national initiative is also part of the national engagement strategy (NES) of the International Land Coalition (ILC), with the objective of creating conditions for inclusive and people-centered land-related policy change.

## Selected acronyms used

<b>ADSDPP</b>	Ancestral Domain Sustainable Development and Protection Plan
<b>A&amp;D</b>	alienable and disposable (land)
<b>AFMA</b>	Agriculture and Fisheries Modernization Act of 1997
<b>ANGOC</b>	Asian NGO Coalition for Agrarian Reform and Rural Development
<b>CA</b>	Commonwealth Act
<b>CADC</b>	Certificate of Ancestral Domain Claim
<b>CADT</b>	Certificate of Ancestral Domain Title
<b>CARP</b>	Comprehensive Agrarian Reform Program
<b>CARPER</b>	Comprehensive Agrarian Reform Program with Reforms or RA 9700
<b>CARL</b>	Comprehensive Agrarian Reform Law or RA 6657
<b>CFS</b>	Committee on World Food Security
<b>CLOA</b>	Certificate of Land Ownership Award
<b>DA</b>	Department of Agriculture
<b>DAR</b>	Department of Agrarian Reform
<b>DENR</b>	Department of Environment and Natural Resources
<b>DILG</b>	Department of Interior and Local Government
<b>DRRM</b>	Disaster risk reduction and management
<b>EP</b>	Emancipation Patent
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FPIC</b>	free, prior and informed consent
<b>GiZ</b>	Deutsche Gesellschaft fuer Internationale Zusammenarbeit
<b>ICCs</b>	indigenous cultural communities
<b>IPs</b>	indigenous peoples
<b>IPRA</b>	Indigenous Peoples Rights Act of 1997
<b>LGU</b>	local government unit
<b>LRA</b>	Land Registration Authority
<b>NCIP</b>	National Commission on Indigenous Peoples
<b>NDRRMC</b>	National Disaster Risk Reduction and Management Council
<b>NIPAS</b>	National Integrated Protected Areas System Act of 1992
<b>NLUA</b>	National Land Use Act (a proposed bill)
<b>PD</b>	Presidential Decree
<b>PDF-SRD</b>	Philippine Development Forum – Working Group on Sustainable Rural Development
<b>PDRRM</b>	Philippine Disaster Risk Reduction and Management Act of 2010
<b>RA</b>	Republic Act
<b>SAFDZ</b>	Strategic Agriculture and Fisheries Development Zone
<b>UDHA</b>	Urban Development and Housing Act
<b>UN</b>	United Nations
<b>UPAL</b>	untitled private agricultural lands (UPAL)
<b>VGGT</b>	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

## I. INTRODUCTION

The *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, 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.<sup>2</sup> The guidelines (hereafter referred as VGGT) are intended to provide a framework for responsible tenure governance that supports food security, poverty alleviation, sustainable resource use and environmental protection. The VGGT 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.<sup>3</sup>

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

On 10 June 2013, The Philippine Development Forum – Working Group on Sustainable Rural Development (PDF-SRD), United Nations - Food and Agriculture Organization Philippine Resident Office (FAO-Phils), Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ) GmbH, and the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) co-organized the “*Stakeholder Briefing on the Voluntary Guidelines and other Land Governance Mechanisms*” to provide an overview of the VGGT. Participated in by 124 representatives from government, CSOs and development partners, the forum: a) discussed the relevance of the VGGT in the Philippines, b) raised awareness on the state of governance of land, forests, fisheries, and ancestral domains in the Philippines, and c) highlighted initiatives to improve agricultural venture agreements in agrarian reform communities. Following this event, from August 2013 to October 2014, ANGOC implemented the project “Promoting Responsible Land Governance for Smallholders in the Philippines” in partnership with the PDF-SRD, NCI, FAO-Philippines and GIZ.



A major component of this Project was the preparation of three desk studies to identify existing gaps in policies and programs on the governance of land and resource tenure in the Philippines, and to familiarize stakeholders on the VGGT. The three desk studies were presented and discussed in several forums: experts' meetings, three regional consultations and a national conference participated in by a total of 314 representatives from government agencies, policy-makers, CSOs, academic institutions and international development organizations.

This paper "*Review of Selected Land Laws and the Governance of Tenure in the Philippines: Discussion Paper in the context of the Voluntary Guidelines on the Governance of Tenure (VGGT)*" 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).<sup>4</sup> It examines national policies as embodied in the 1987 Philippine Constitution and the major land and natural resource laws passed by the Philippine legislature. This research is supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

## Objective of the Review

The study aims to compare the VGGT 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.

## Scope and Limitations

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

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



*Responses to climate change and risks*

10. Climate Change Act of 2009 (RA 9729)

11. Philippine Disaster Risk Reduction and Management Act of 2010 (RA 10121)

The 1987 Philippine Constitution provides the broad legal framework on land and resource governance. The other legislations listed above cover the major laws governing land and natural resource tenure in the rural areas, which is the focus of this study.

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.

## II. SUMMARY OF MAIN FINDINGS

### Context

The Philippines consists of 7,107 islands covering 30 million hectares, with 29.8 million hectares of land and 1.83 million hectares of inland waters.<sup>5</sup> Moreover, it has a coastline of 36,289 kms, and 2.2 million square kilometres of territorial waters that include its exclusive economic zone (EEZ).<sup>6</sup> With 98 million people, it ranks as the second most densely populated country in Southeast Asia (with 346 persons per square kilometer of land).<sup>7</sup> Yet as an archipelago with rugged and mountainous interiors, only 4.9 million hectares (or 16% of the land area) is arable. Land distribution is uneven and highly skewed, and resources suffer from erosion, deforestation and pollution.

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



## Overview

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

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

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

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

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

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



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

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

Regarding the VGGT itself, the following are observed:

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

## Summary of Findings

### Principles of governance

The 1987 Philippine Constitution provides the overall *policy framework for responsible governance of tenure*.

All the VGGT principles of implementation – “human dignity, non-discrimination, equity & justice, gender equality, consultation & participation, rule of law, transparency and accountability” – are well enshrined in the 1987 Philippine Constitution, especially under State Policies (Art 2) and Bill of Rights (Art 3).

Moreover, the 1987 Philippine Constitution not just recognizes tenure rights, but also institutes “social reforms” particularly for three rural sectors – (i) *farmers and farmworkers* as the focus of an agrarian reform program; (ii) *subsistence fishermen* with “preferential use of communal marine and fishing resources”; and (iii) *settlers in public domains*, including *small settlers* and *indigenous peoples* with “prior rights in the disposition or utilization of natural resources and lands of the public domain suitable for agriculture ...” These Constitutional mandates have led to subsequent legislations – i.e., the Comprehensive Agrarian Reform Law (CARL/CARPER), the Fisheries Code and the Indigenous Peoples Rights Act (IPRA).

The Philippine Constitution states that “the use of property bears a social function” ... To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.” It also ensures people’s rights against arbitrary evictions, and demolition of homes. These rights are also reflected in the different laws reviewed.

The fundamental equality before the law of women and men is upheld under the Civil Code or RA 386 (not included in this Review) which upholds equal property rights for women regardless of changes in marital status (marriage), as well as equal rights to property inheritance. However women’s tenure rights and equal access to tenure security should be reviewed, i.e., by examining whether official titles, licenses, permits and tenure instruments actually reflect equal rights of women.

### Legal recognition and allocation of tenure rights and duties

**Legal framework and safeguards.** Philippine laws lack an integrated approach to the governance of tenure, making land administration complicated. Unlike some Asian countries that have a comprehensive and consolidated Land Law or a Land Code, the Philippines has *numerous legislations* that define the different policy, legal and organizational frameworks related to tenure and governance of land, forests and fisheries. And while new laws and amendments are passed by Congress, the old laws are *not repealed*. Sections of old laws are merely superceded, replaced or amended in part by the new laws, and this system allows the old laws to retain their *residual* validity. These factors result in a complex system of legal jurisprudence that only lawyers can navigate.





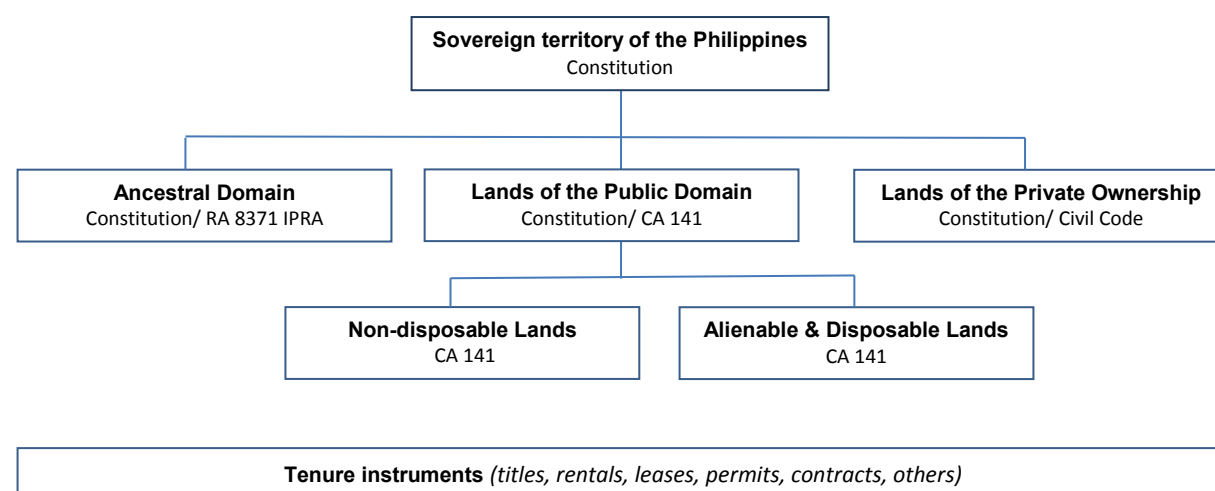
The country has taken on a highly *sectoral* or *landscape approach* to land/natural resource policy, tenure reforms, and land administration. There is CARP/ER for agrarian reform covering *public* alienable and disposable (A&D) lands and *private* agricultural lands, the Fisheries Code covering municipal waters, and IPRA for ancestral domains. In addition, there are the Mining Act, NIPAS, Forestry Code, AFMA and others.

The lack of synchronization of policy has resulted in a complex and fragmented landscape of laws. Sectoral approaches to land policy lead to overlapping jurisdictions and functional overlaps among agencies. For example, the revised Forestry Code of 1975 stipulates that “all lands above 18 degrees slope automatically belong to the state and classified as forest lands”. Also, ancestral domains overlap with national parks and protected areas. Ancestral land rights are further eroded by mining and land concessions, and by agrarian reform titles and forestry stewardship agreements.

Conflicting policy and jurisdictional issues are often addressed by government through *administrative action* (Joint Administrative Orders, inter-agency Technical Working Groups), *national programs* (National Convergence Initiative) and by *judicial courts*. But while these measures seek to address disputes, they do not necessarily lead to the synchronization of policy.

**Public domain.** Figure 1 shows the overall land tenure system in the Philippines.<sup>8</sup> It shows that the terrestrial domain is divided into three *tenure domains* covered by respective domain laws – *Ancestral Domain* (IPRA), *Public Domain* (Public Lands Act or CA141) and *Private Ownership* (Civil Code). The Public Domain (about 16 million has) is further divided into “non-disposable” (remains with the State) and “alienable and disposable/ A&D” lands.

**Fig 1: Land tenure system in the Philippines (abridged version)**



Some tenure instruments are issued by national agencies; others are issued by local government units. Holders of legal tenure instruments tend to have secure tenure, while those with *informal* tenure tend to have insecurity of tenure. However, tenure rights are secure only if such rights are *enforceable*.

Tenure rights are further extended to other users, through *tenure instruments* that include rentals, leases, permits, contracts and others.

The Public Lands Act of 1936 (CA 141) remains the framework law that defines the coverage of the *public domain*, as well as its management, use and disposition. The Revised Forestry Code (Sec 13) then establishes the *System of Land Classification* over forest lands.

The legal framework for management of the public domain: (i) includes *utilization and management* by smallholders – whether by individual households or through their collectives/ cooperatives; (ii) requires *Filipino control* in the exploitation and use of natural resources; (iii) places *limits* on the scope (1,000 ha) and duration (25 years, renewable) of lease agreements; and (iv) gives legal recognition to the *customary tenure rights of indigenous peoples*.

However, the reality is that governance of the public domain lands is complicated by overlapping laws and tenure rights, as well as land conflicts. The demarcation of the public domain and its different land classifications have yet to be completed.

**Customary tenure.** The tenure rights of indigenous peoples is legally recognized and protected under the Indigenous Peoples Rights Act (IPRA). It recognizes the rights of indigenous peoples to their “ancestral lands/ domains (which) shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds.”

As a leading policy among Asian countries, IPRA addresses four substantive rights of IPs: (i) the right to ancestral domains and lands, (ii) the right to self-governance; (iii) the right to cultural integrity; and (iv) the right to social justice and human rights. The definition of ancestral domain covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and include lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators.

Under the principle of self-determination, IPRA recognizes the right of IP communities to document and delineate their own ancestral domain claims, and to formulate their own Ancestral Domain Sustainable Development and Management Plans (ADSDPs). The law further states that contracts, licenses, concessions, leases and permits within the ancestral domains shall not be allowed or renewed without the free and prior informed consent (FPIC) of the IP community, in accordance with their respective customary laws and practices – free from any external manipulation, interference or coercion.



However, the implementation of IPRA has been hindered by contradictory legislations, conflicting boundaries and overlapping agency mandates. These have had eroding effects on the application of IPRA.

**Informal tenure.** In the Philippines, the protection of *informal tenure rights* is provided under RA 8368 which de-criminalizes squatting.<sup>9</sup> Further, the Urban Development and Housing Act (UDHA, or RA 7279) discourages the practice of forced evictions and demolitions, and requires that adequate relocation be provided in cases involving eviction and demolition of poor settlers. Although these laws are intended for the urban poor, they apply to rural settlers as well.<sup>10</sup>

In the *rural* areas, however, the numbers of informal settlers remains largely unknown. The governance of tenure is focused mainly on the governance and management of *landscapes* where people and communities are treated as part of the landscape. The land laws provide for land classification and for resource inventories, but little data is generated about the landless and about the households with informal/insecure tenure.

### Transfers and changes to tenure and duties

**Markets.** To function effectively, markets need common and uniform tenure systems and instruments, as well as transparency in information and reliable land registries. However, the (land) market in the Philippines is still fraught with many problems. These include: multiple laws and agencies dealing with land administration, inadequate management of records, unreliable registries, limited access to market information, inadequate cadastral information, among others. On the policy level, there is need to review the proposed Land Administration Reform Act (LARA bill) long pending in Congress.

**Investments.** The need for responsible agricultural investments has grabbed global attention in light of recent trends, i.e.: (i) the overall decline in public investment spending in agriculture; and (ii) the growing global phenomena of large-scale land acquisitions in poor and food insecure countries. Thus, while there is a need to promote investments in agriculture, this must be balanced off by the interests of smallholders, and the protection of their tenure rights. A key issue especially in large-scale land transactions is the overall lack of a policy on information disclosure and access to information by the public, especially by communities whose tenure and livelihoods are likely to be affected. There are many cases where local communities are caught unaware, or else misinformed, about an investment or project that is likely to affect their tenure.

The IPRA law provides some safeguards. It states that contracts, licenses, concessions, leases and permits within the ancestral domains shall not be renewed or allowed without the free, prior and informed consent (FPIC) of the indigenous community. The quality of FPIC thus becomes important. FPIC is defined under IPRA as the “consensus of all members of the IPs/ICCs [indigenous peoples] to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion.”



But while FPIC is required for ancestral domains, FPIC is not required as a policy for other non-IP sectors.

Moreover, environmental impact assessments are required for large investment projects. In reality, however, many EIAs are often undertaken in behalf of investors rather than by independent parties.

**Land consolidation** refers to the “planned readjustment and rearrangement of land parcels and their ownership”. It aims to provide a more rational distribution of land to improve the efficiency of farming, and it involves a process of renegotiating tenure arrangements.

From an overall policy perspective it appears that there is no law or program on land consolidation in the Philippines.

DAR undertakes so-called “land consolidation” by developing a land use plan while engaged in the process of breaking-up large estates or plantations. The DAR’s objective is to avoid the *further fragmentation of farms*, rather than to reconsolidate fragmented plots into single, contiguous farms.

Under AFMA, the concept of the SAFDZ focuses on land use planning and zoning, but it does not involve the renegotiation of land tenure rights as in *land consolidation*.

**Restitution** means “the act of giving back something that has been lost or stolen” or “the act of restoring to the rightful owner something that has been taken away, lost, or surrendered”.

In the Philippines, IPRA is the main measure of *restitution*, or the return of tenure rights. In a reversal of the Regalian doctrine, IPRA recognizes the *prior rights*, including the *pre-conquest* rights of indigenous peoples. This right supersedes the land and resource claims of the State and other entities.

The definition of ancestral domain covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and include lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators.

**Redistribution.** The Constitution devotes a section to *Agrarian and Natural Resources Reform*. It states: “The State shall apply the principles of agrarian reform or stewardship ... in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.”

The Comprehensive Agrarian Reform Program (CARP) is the Philippines’ main redistributive reform. At the level of policy, there appears to be a general convergence and agreement between CARP/ER and Section 15 of the Voluntary Guidelines.



However, there are second-generation policy issues with CARP in relation to the VGGT, i.e.:

- (i) One, the unfinished task of land transfer after the CARPER-set deadline of June 2014; (ii) Two, the tenure security for those left out of the CARP program, such as *seasonal agricultural laborers* and *informal settlers* who were not primary target beneficiaries of the program; and (iii) Three, the continuing need for land redistribution, as the forces of market reconsolidation begin to erode the redistributive effects of land reform.

### Administration of tenure

**Records.** The land information system in the Philippines remains generally poor and inadequate. There is a general lack of systematic, reliable and accurate information about landownership, tenure, boundaries, location, actual land uses and land valuation – including at the local government levels. Cadastral information is generally inadequate. There is no complete delineation of the boundaries of public, private and forest land parcels. There is no set of cadastral maps that show titled and untitled properties, and land parcels that are under different types of tenure instruments. Several agencies and LGUs issue different tenure instruments, but there is no consolidated information on the tenure status of land parcels; each agency maintains separate land records with different systems of recording and mapping.

The existing management of land records remains generally poor. Many records are missing due to flooding, war, theft, and damage from fire. Information is not easily accessible. Moreover, there are instances of fraudulent land titling, altering of records and illegal activities that causes land conflicts, and this may take years to resolve. LGUs continue to issue tax declarations even for lands under the public domain that are inalienable.

**Valuation.** Overall, there appears to be no national standard and common method for valuating real property. Different agencies apply several systems and methods in the valuation of properties, depending on the purpose for which land is being assessed. These include: (i) land valuation by provincial, municipal and city assessors for purposes of taxation, based on the *Tax Code*; (ii) valuation for compensation of land acquired or expropriated for public investment; (iii) valuation under CARP by the Land Bank of the Philippines; and (iv) valuation by the private sector for the purposes of bank lending, insurance, purchase and sale of real property by investors.

Land valuation systems and actual sale prices not made accessible to the public. The laws do not set standards for transparency of information and methodologies. Where land administration is poor, and where record-keeping is weak, the system is prone to corruption and manipulation.

**Taxation.** The collection of the private land tax (realty tax) falls largely under the local government, while other agencies collect different fees (permits, licenses, leases). Land taxation is covered by other laws, including the *Tax Code* and the *Local Government Code*, and therefore is not directly covered by this assessment.



**Spatial planning.** The laws covered by this review require *spatial planning* for different purposes (i.e., for productivity, resource management and protection, disaster risk reduction). Different agencies carry out their own spatial planning and mapping systems, and yet their plans and maps are not consolidated or harmonised. AFMA focuses on land use and zoning for agriculture; the revised Forestry Code provides for the classification and survey of all lands of the public domain; the DRRM law provides for risk assessment and vulnerability mapping; while IPRA requires the formulation of ADSDPP plans for the management and protection of ancestral domains.

It should be noted that regulated spatial planning is the major focus of a legislation that has been pending for many years – the proposed *National Land Use and Management Act*, or NLUA. It is recommended that discussions on the NLUA bill also take into account the principles of VGGT Section 20 – i.e, the need to reconcile and harmonize the different existing laws, and to negotiate among overlapping and competing interests.

**Resolution of disputes.** Some of the laws reviewed provide for special grievance mechanisms and alternative systems for resolving disputes over tenure. They also provide parties with the right of appeal, and the right to elevate cases to judicial courts. Some laws (i.e., Mining Act) recognize the need for a speedy disposition of cases, and therefore stipulate the period by which decisions should be made.

These extra-judicial dispute mechanisms help provide timely, affordable & effective means of resolving disputes over tenure rights, in accordance with VGGT Sec 21. However questions arise when different sectors have conflicting claims over the same resource, and their tenure rights are invoked under different laws. The multiplicity of laws, and the lack of harmonization among different tenure policies has led to conflicting claims among sectors, and functional overlaps among implementing agencies.

### Responses to climate change and disasters

**Climate change.** The Climate Change Act of 2009 articulates the country's general policy on climate change, and establishes a Climate Change Commission for this purpose. The focus of the law is on creating the Commission whose major task is the formulation of a "Framework Strategy and Program on Climate Change" and "National Climate Change Action Plan".

However, the Climate Change Act itself does not provide a *clear link* between climate change and the need to *secure the tenure rights* of affected peoples over land, fisheries and forests.

There is need to further explore and discuss the actual issues and the relevance of policies as they apply to *climate change and tenure rights*, especially in the light of recent events – i.e., Typhoon Yolanda. These include risk reduction and prevention measures, disaster response, recovery and rebuilding efforts for affected communities. As noted during the consultations, many of the areas most severely affected by Typhoon Yolanda were coastal communities where residents have no legal tenure.





**Disasters.** The Philippine Disaster Risk Reduction and Management Act of 2010 (DRRM) focuses on the creation of an *institutional* framework – starting with the creation of the National Disaster Risk Reduction and Management Council (NDRRMC) as well as Regional and Local DRRM Councils.

However the DRRM law itself remains *silent* about the *link* between “disaster prevention/risk reduction” and *tenure rights*. For example, while the law provides measures for spatial planning (preparation of risk and hazard maps), it does not articulate how such spatial plans/maps are to be used, for example, as regulatory frameworks for tenure. Neither does it give the NDRRMC the regulatory powers on spatial planning.

DRRM is also *silent* on policies regarding the need to address tenure issues during emergency response or at the reconstruction phase. This includes resolving disputes over tenure rights and boundaries, provision of temporary shelters, returning people to their places of origin and rebuilding, and providing permanent resettlement as may be necessary. Resettlement areas should be negotiated with host communities to ensure that “people who are displaced are provided with secure access to alternative land ... and livelihoods in ways that do not jeopardize the rights and livelihoods of others”.

The need to address *tenure rights* and *issues* in “disaster prevention/risk reduction/response/rehabilitation” – is an area that requires further policy review and study.

**Conflict.** The concern here is about the tenure of people who may be affected or displaced, whether or not they are a direct party to the conflict. These conflicts include tribal wars, insurgencies, and rebellions. A case-in-point is the Zamboanga City Crisis of September 2013 where thousands lost their homes. Until today, many remain homeless as “internally-displaced people”.

None of the laws studied deals with tenure rights and issues in cases of conflict. Only IPRA clearly states the right IPs/ICCs to return and to be reinstated on their lands in cases of post-conflict. ■



## List of References

### Official documents: Policies, Legislations & Decrees

- The 1987 Constitution of the Republic of the Philippines*
- Indigenous Peoples Rights Act of 1997/Republic Act 8371*
- Agriculture and Fisheries Modernization Act of 1997/Republic Act 8435*
- National Integrated Protected Areas System Act of 1992/Republic Act 7586*
- Forestry Reform Code of the Philippines (as amended)/Presidential Decree 705 of May 19, 1975*
- Philippine Mining Act of 1995/Republic Act 7942*
- Climate Change Act of 2009/Republic Act 9729*
- Philippine Disaster Risk Reduction and Management Act of 2010/Republic Act 10121*
- Comprehensive Agrarian Law of 1988/Republic Act 6657 as amended by Republic Act 9700 of 2009*
- Presidential Decree 27 of 1972: Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor*
- The Public Land Act/Commonwealth Act 141 of 1936 (as amended)*

### FAO-UN Document

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

### Related research studies

- Borras, Saturnino and Jennifer Franco. “From Threat to Opportunity? Problems with the Idea of a ‘Code of Conduct’ for Landgrabbing”. *Yale Human Rights and Development L.J.*, Vol 13.
- De Janvry, Alain and Elisabeth Sadoulet (2001). *Access to Land and Land Policy Reforms*. Helsinki: UNU World Institute for Development Economics Research (UNU/WIDER).
- FAO (2003). *Multilingual Thesaurus on Land*, Rome: Food and Agriculture Organization.
- Guiang, Ernesto and Gem Castillo. “Trends in Forest Ownership, Forest Resources Tenure and Institutional Arrangements in the Philippines: Are They Contributing to Better Forest Management and Poverty Reduction?”
- University of the Philippines Law Centre and Land Equity International (2002). “Land Laws and Regulations Policy Study - Final Report: Volume 1”. Study prepared for the Philippines-Australia Land Administration and Management Project. July 2002.
- Land Equity International (2002). “Institutional Arrangements Policy Study”. Study prepared for the Philippines-Australia Land Administration and Management Project. July 2002.

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

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

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

## Endnotes

- <sup>1</sup> This abridged paper is one of the studies prepared for the ANGOC-implemented project “*Promoting Responsible Land Governance for Smallholders in the Philippines*” undertaken in partnership with the PDF-SRD, NCI, FAO-Philippines and GIZ. The full paper can be found at [www.angoc.org/portal](http://www.angoc.org/portal)
- <sup>2</sup> 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>
- <sup>3</sup> “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.
- <sup>4</sup> 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 project. The project intends to facilitate the formulation of an implementation plan of the VGGT 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 GIZ and FAO and other sectors.
- <sup>5</sup> Data from [faostat.fao.org/](http://faostat.fao.org/) (accessed 6 March 2014)
- <sup>6</sup> <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> (accessed 6 March 2014)
- <sup>7</sup> Philippines ranks second to Singapore in population density in Southeast Asia.
- <sup>8</sup> This diagram is taken and adapted (slightly edited and abridged) from a 2001 DENR Study “*Land Laws and Regulations Policy Study: Final Report, Volume 1*” under Land Administration and Management Project (LAMP).
- <sup>9</sup> Title of RA 8368 is the “Act Repealing Presidential Decree 772, entitled ‘Penalizing Squatting and Other Similar Acts’”
- <sup>10</sup> The two laws – RA 8368 and RA 7279 – are not covered by this Study.



The reprinting of this briefing paper is made possible with the support of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Foundation for the Philippine Environment (FPE), International Land Coalition (ILC), and MISEREOR. The views and the information provided in this publication do not necessarily reflect the views or policies of GIZ, FPE, ILC, and MISEREOR.



Founded in 1979, ANGOC is a regional association of 15 national and regional networks on non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC member networks and partners work in 14 Asian countries with an effective reach of some

3,000 NGOs and community-based organisation (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (NGOs), and international financial institutions (IFIs).

ANGOC is a founding member of the International Land Coalition (ILC), regional convener of the Land Watch Asia (LWA) campaign and the Asian Alliance Against Hunger and Malnutrition (AAAHM-Asia). ANGOC is also a member of the Global Land Tool Network (GLTN) and the Indigenous Peoples' and Community Conserved Territories and Area (ICCA).

Asian NGO Coalition for Agrarian Reform and Rural Development  
73-K Dr. Lazcano St., Barangay Laging Handa,  
1103 Quezon City, Philippines  
P.O. Box 3107, QCCPO 1101, Quezon City, Philippines  
Tel.: +63 23510581 Fax: +63 2 3510011  
E-mail: [angoc@angoc.org](mailto:angoc@angoc.org)  
URL: [www.angoc.org](http://www.angoc.org)



Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves

civil society organizations in seven (7) countries – Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments: undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences on coalition-building and actions on land rights issues.



Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH is an international development organization of the Federal Government of Germany working in more than 130 countries

worldwide. The organization is guided by the concept of sustainable development with areas of expertise in economic development and employment promotion; governance and democracy; security, reconstruction, peacebuilding and civil conflict transformation; food security, health and basic education; and environmental protection, resource conservation and climate change mitigation. Know more about GIZ at [www.giz.de](http://www.giz.de).



FPE is the first and largest grant-making organization for civil society environmental initiatives in the Philippines.

Its support goes primarily to protecting local conservation sites and strengthening community and grassroots-led environmental efforts in more than 65 critical sites through more than 1,400 projects. The establishment of FPE on January 15, 1992 was meant to abate the destruction of the country's natural resources. As many as 334 NGOs and grassroots organizations, along with 24 academic institutions, helped set its course through a process of nationwide consultations. Subsequently, Philippine and United States government agencies and NGOs raised the foundation's initial \$21.8-million endowment through an innovative "debt-for-nature" swap. Today, FPE remains committed to fulfilling its roles as a catalyst for cooperation, grantmaker, and fund facilitator for biodiversity conservation and sustainable development. Know more about FPE at [www.fpe.ph](http://www.fpe.ph).



ILC is a global alliance of intergovernmental, governmental and civil society organizations working together with the rural poor to increase their secure access to natural resources, especially land. Know more about ILC at [www.landcoalition.org](http://www.landcoalition.org)



As the overseas development agency of the Catholic Church in Germany, MISEREOR works in partnership with all people of goodwill to

promote development, fight worldwide poverty, liberate people from injustice, exercise solidarity within the poor and persecuted, and help create "One World". MISEREOR supports projects and promotes local initiatives in Africa, Asia and Latin America, irrespective of nationality, religion or gender. Know more about MISEREOR at [www.misereor.org](http://www.misereor.org).

