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The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security & the Proposed National Land Use and Management Act

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

Abridged Version¹

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Background

In the Philippines, as in much of Asia, food is produced mainly by smallholders who rely heavily on land, water and other natural resources for their livelihoods. Securing their access to these resources is therefore synonymous to securing food. Ultimately, the eradication of hunger and poverty will depend on tenure systems that guarantee equitable access to and control over these natural resources for all.

In May 2012, 98 countries in the Committee on World Food Security (CFS) officially endorsed the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* in Rome, Italy. The said voluntary guidelines, hereafter referred as VGGT, contain a set of principles and recommendations for governments that may be applied in different national contexts towards improving the governance of land and other resources along the areas of: legal recognition and allocation of tenure rights and duties; transfers and other changes to tenure rights and duties; administration of tenure; responses to climate change and emergencies; and promotion, implementation, monitoring and evaluation. These guidelines are intended for adoption by national governments; however, they are voluntary or non-binding, unlike a treaty or convention.

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 voluntary guidelines. 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 studies were presented and discussed in several forums: experts’ meetings, three regional consultations and a national conference participated in by 314 representatives from government agencies, policy-makers, CSOs, academic institutions and international development organizations.

While the VGGT does not establish binding applications as a national policy, the project partners examined the potential of these guidelines as applied to proposed and existing policies governing land governance. In particular, this study focused on how the proposed National Land Use and Management Act (hereafter to referred to an NLUA)² filed in Philippine Congress complemented the principles and standards enunciated in the Voluntary Guidelines. The results of the study, specifically the policy and program complementation/gaps identified, can serve as input for enhancing the proposed NLUA while it undergoes deliberations in Congress, particularly in the Senate.

The methodology used for this study is secondary literature review using two (2) major documents, namely the VGGT and House Bill (HB) 108. However, reference to the 1987 Philippine Constitution and the Local Government Code (LGC), as they apply, was also done to elaborate on the analysis.

The VGGT and the NLUA

COMMON GOALS

The VGGT and the proposed NLUA both aim to provide a general framework in the utilization, management of land and natural resources. They have the overarching objective of improving the lives of the marginalized sectors and ensuring sustainable development in the use of land, fisheries and forest resources. Specifically, the VGGT “seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.”³

This is reflected in the Declaration of Policies of the proposed NLUA⁴ where it is specified that it is the policy of the State to institutionalize land use and physical planning as a mechanism for identifying, determining, and evaluating appropriate land use and allocation patterns that promote and ensure:

- Maintenance and preservation of environmental integrity and stability;
- Sustainable and just management and utilization of natural resources;
- Disaster risk reduction and climate risk-based planning;
- Protection of prime agricultural lands for food security, with emphasis on self-sufficiency through efficient and sustainable use of land resources consistent with the principles of sound agricultural development, natural resources development, and agrarian reform;
- Protection and conservation of the country’s natural heritage, permanent forest lands, natural forests, critical watersheds and key biodiversity areas to ensure adequate forest cover to maintain ecological processes in the country;
- Sustainable development and management of water resources;
- Settlements, transportation and other infrastructure development in support of inclusive growth and rural, urban and regional development;
- Improved access to affordable housing by increasing its supply through direct allocation, better access to unutilized lands, and multiple use and higher densities, where appropriate;
- Respect for and protection of the traditional resource right of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains; compliance with free and prior informed consent of ICCs/IPs; and recognition of customary laws and traditional resource use and management, knowledge, and practices in ancestral domains;
- Equitable access to land through State intervention that guarantees its affordability to the basic sectors;
- Energy security or energy self-sufficiency; and
- Meaningful participation of the basic sectors.

The proposed NLUA mirrors the overall objective of the VGGT in improving governance of tenure of land by instituting a national land use framework and policy for a *rational, holistic*

and just allocation, utilization, management, and development of the country's land and its resources. The Declaration of Policies stated in the proposed NLUA describes the HOW aspects of "improved governance" espoused by the VGGT.

SCOPE AND APPLICABILITY

The proposed NLUA is aligned with the overall objective of the VGGT which is *to improve governance of tenure of land, fisheries and forests*. Its primary objective of providing for a **rational, holistic and just allocation, utilization, management and development of the country's land and its resources** directly reflects the essence of instituting land governance reforms. As the proposed NLUA reflects the principles of the VGGT, its provisions are exemplified in the proposed bill. It thus can be said, that the realization of the VGGT's objectives is coursed through the implementation of the proposed NLUA with regard to governance of land, water and forest resources.

However, not all aspects of the VGGT are reflected in the proposed NLUA. In particular, Part 4 of the VGGT (Transfer and Other Changes to Tenure Rights and Duties) is not covered by the bill. As a proposed bill instituting a national land use framework, its main goal is to formulate, establish and enforce policies and regulations related to land use planning issues and conflicts arising from their implementation. It does not specifically delve on ownership/transfer/reallocation of specific tenure rights as a result of investment, land consolidation and other readjustment approaches.

AREAS OF CONVERGENCE

On General Matters

This part provides for Guiding principles on responsible tenure governance (Section 3); Responsibilities of States and stakeholders as well as the rights of all parties concerned in the implementation of policies, rules and regulations related to land governance (Section 4); Policy, legal and organizational frameworks related to tenure (Section 5); and Delivery of services (Section 6).

The proposed NLUA espouses the Principles of Implementation of the VGGT as ideals that contribute to responsible governance of tenure of land, fisheries and forests.⁵ Specifically the following principles are highlighted in the proposed bill:

a. Gender equality⁶

This is embodied in the composition of the National Land Use Policy Council (NLUPC)⁷ and other local land use boards where half of the Council/Board's sectoral representatives are required to be women. It provides for a structure that recognizes and reinforces the role of the Local Development Councils, of which half is composed of women. Furthermore the language of the bill is gender neutral. It applies to all regardless of gender.

b. Holistic and sustainable approach⁸

This is categorically stated in the bill's Declaration of Policies. It specifically mentions that it is the policy of the State to "provide for a rational, holistic, and just allocation, utilization,

management and development of the country's land and water resources so that their use is consistent with the principles of equity, social justice, environmental integrity and sustainable development for the common good."⁹

c. Consultation and participation¹⁰

Public participation is one of the salient features of the proposed NLUA. The bill proposes a structure that will increase people's participation in land use planning at all levels and applies the combined bottom-up top-bottom approach in the planning.

Participation of women in particular is given premium as the bill specifically provides that half of the sectoral representatives in all levels are women. Avenues for participation are provided through the planning process and planning structures.

Specifically, the proposed bill seeks to integrate and institutionalize people's participation in defining the framework of land utilization and management. It provides for the mandatory participation of stakeholders, particularly the basic sectors, in key decision making bodies on land use policy at all levels. This ensures meaningful opportunities for the different stakeholders to participate in the land use process.

The principle of consultation and participation is present in the various aspects/parts of the bill:

Sector/Theme	NLUA Provisions	Significance
Ancestral Domain (AD)	SECTION 7. Land Use Plans for Ancestral Domains <ul style="list-style-type: none"> Land use plans of ancestral domains shall be formulated by the ICCs/IP themselves 	The proposed NLUA recognizes the right of the IPs to self-determination. It recognizes and respects the traditional and customary methods/processes of the IPs in designating/allocating the use of lands in AD.
Forest Lands and Reservations of Watershed	Chapter 3 Special Areas of Concern, Article 5 (Forest Lands and Reservations of Watershed), Section 19, 20, 21 <ul style="list-style-type: none"> Reversion of Alienable and Disposable Lands to Forestlands Critical Watershed Areas Formulation and Implementation of Integrated Watershed Management Plans 	The proposed NLUA mandates the participation of concerned NGAs, the LGUs concerned, and/or concerned GOCCs (in the case of critical watershed areas), upon mandatory consultations with the concerned sectors and communities, in undertaking these activities in forest land and reservations of watersheds.
Coastal Zones	Chapter 3 Special Areas of Concern, Article 6 (Coastal Zones), Section 26 <ul style="list-style-type: none"> LGUs, in coordination with the DENR, the FARMCS, local fisherfolk organizations and other affected sectors such as women and youth, shall conduct the Coastal Zoning Resource Management Plan (CZRMP) which shall be incorporated in the CLUP. 	The proposed NLUA further institutionalizes public participation especially the fisherfolk sector including women and youth and further strengthens the FARMCS as a mechanism for these sectors to engage in CRM.

Sector/Theme	NLUA Provisions	Significance
Tourism Development Areas	<p>Chapter 3 Special Areas of Concern, Article 11 (Tourism Development Areas),</p> <p>Section 46: Criteria for Designating Tourism Development Areas.</p> <p>SECTION 47. Identification and Preservation of Cultural Heritage.</p>	These activities shall be done in consultation and coordination with the concerned LGUs, national government agencies, the private sector and the affected communities.
Infrastructure Development	SECTION 48. Allocation and Use of Land for Infrastructure Development.	The National Economic and Development Agency (NEDA), in consultation with the concerned national government agencies, LGUs, and the private sector shall identify and periodically review, update and/or revise the list of priority infrastructure projects.
Physical Framework and Land Use Plan	<p>Sections 50, 51, 54 Planning Process</p> <ul style="list-style-type: none"> The physical framework and land use planning process shall be participatory, following a combined bottom-up and top-down approach, with mandatory public hearings/ consultations conducted at all levels, and shall consider available and updated multidisciplinary scientific information of land uses. <p>Sections 56, 59 re Implementing structures: Composition of the NLUPC.</p> <ul style="list-style-type: none"> The NLUPC shall be headed by the Secretary of the NEDA as Chairperson. 	<p>The participation of the concerned stakeholders is highlighted in the formulation of the national policy guidelines.</p> <p>It is also important to note that in the local land use bodies, there are sectoral representatives and other stakeholders. (Please refer to Section 63 [Composition of the PLUPMB], Sec. 66 re Composition of the C/MLUPMB).</p> <p>Basic sectors are represented in the implementing structures. Two (2) representatives each from four (4) basic sectors directly involved in land use, namely: urban poor, peasants, fisherfolk, and indigenous peoples who shall be appointed by the respective National Anti-Poverty Commission (NAPC) sectoral councils (50% women).</p>
Physical Framework and Land Use Plan	<p>Training, Education and Values Formation: Section 78</p> <p>IEC and Capacity Building: Sec. 79</p> <ul style="list-style-type: none"> In order to develop a well-informed, responsible and committed citizenry who value the protection, conservation and development of the country's limited land, and other physical resources, the State shall mandate the inclusion of sustainable land use education or any subject related thereto in the curricula of primary, secondary and tertiary education. 	The proposed NLUA promotes the development of citizens' consciousness and collective values formation on the protection, conservation and development of land as a limited resource. Purposive development of capacities on land use planning and management for national and local government officials, community leaders, representatives of NGOs, POs, the religious sector, and the general public is also an area to be supported.

d. Transparency¹¹

The proposed bill contains a provision mandating access to information. It specifies that access to records and documents pertaining to official acts, transactions, or decisions as well as data used as basis for policy development by the NLUPC shall be made available to the public.¹²

e. Accountability¹³

The bill provides for sanctions and penalties which holds public agencies, individuals and other entities answerable for violation and non-compliance with the proposed NLUA.¹⁴ These are essential to the effective implementation of the proposed NLUA particularly with the formulation, implementation and/or enforcement of the CLUP and Zoning Ordinances. The provisions imposing sanctions and penalties aims to put in place measures that will ensure strict compliance with the proposed NLUA if enacted into law.

f. Continuous Improvement¹⁵

The principle of continuous improvement is reflected in various parts of the bill. As a national framework for the utilization and management of land resources, it needs to ensure that the plans and processes formulated and applied both in the national and local levels, are consistent with the established policies. In order that the proposed NLUA be implemented effectively, there is a need to regularly monitor and review these plans and processes to ascertain that they are aligned with the proposed NLUA. The following are examples of provisions related to monitoring and review processes/mechanisms referred to in the proposed bill:

Relevant Provisions	Content and Focus
Chapter 3, Special Areas of Concern, Art. 1, Sec. 9	Review of Land Classification – NLUPC to review the current land classification system & definitions used to reflect the actual use of lands in the country.
Chapter 3, Special Areas of Concern, Art. 1, Sec. 50	National Land Use Planning Process – The period of coverage (time frame) of the national, regional and provincial framework plans and the municipal/city. CLUPs shall be thirty years with regular review and updating every 10 years.
Chapter 8, Mapping and Data Management for Land Use Planning, Sec. 74	Ground Delineation – All maps shall be updated as new important information and data become available or as determined by urgent need. Updating should not be more often than every 10 years.
Chapter 8, Sec. 67	Approval and review of PFP and CLUPs of LGUs shall be submitted by the local land use board to the LDCs, for endorsement (transmission) to the local Sanggunian for approval.
Chapter 8, Sec. 68	Approval of RFP and NPFP by the RPLUPC and NLUPC respectively provided that such processes and guidelines shall be prepared and issued by the NLUPC within six (6) months from the effectivity of this Act.
Chapter 8, Sec. 77	Submission of Annual Report on the Implementation of CLUPs and ZOs. The Local Land Use Boards shall submit their annual report on the implementation of their LUPs to their respective Sanggunian.



Relevant Provisions	Content and Focus
Chapter 11, Sec. 91	Mandatory Review every Ten (10) years – The Congress shall undertake a mandatory review of this Act at least once every 10 years to ensure that land use policies and guidelines remain responsive to changing situations.
Chapter 11, Sec. 94	Congressional Oversight Committee on the Land Use Act – to be composed by 7 members from the Senate and 7 members from the House of Representatives. The OC shall function for a period of not more than 3 years to oversee the implementation of this Act.

On Rights and responsibilities related to Tenure

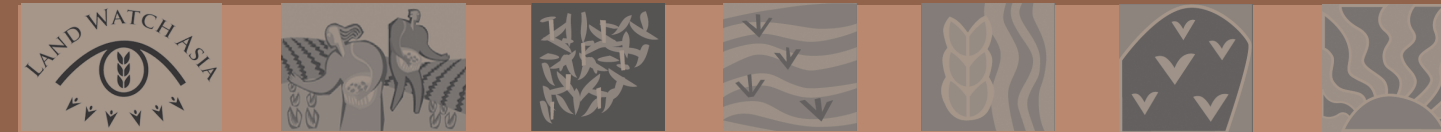
This section specifies the obligations of States and private stakeholders in ensuring responsible governance on land, fisheries and forest resources. This is essential given that access to resources have an impact in realizing human rights and attaining food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.¹⁶ In particular, Section 4.3 of the VGGT assert that:

“All parties should recognize that no tenure rights, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the measures taken by States necessary for public purposes. Such measures should be determined by law, solely for the purpose of promoting general welfare including environmental protection and consistent with States’ human rights obligations. Tenure rights are also balanced by duties. All should respect the long-term protection and sustainable use of land, fisheries and forests.

The proposed NLUA upholds this principle and is expressed in paragraphs 1 and 2, Section 2 (Declaration of Policies) of the proposed bill. It states that “it is the policy of the State to provide for a rational, holistic and just allocation, utilization, management, and development of the country’s land and water resources so that their use is consistent with the principles of equity, social justice, environmental integrity and sustainable development for the common good.¹⁷ In its Declaration of Policies, the proposed NLUA says that the State “holds owners and users of land responsible for developing and conserving their lands thereby making these productive and supportive of sustainable development and environmental stability in accordance with the principle that the use of land bears a social function and that all economic agents shall contribute to the common good.”¹⁸

On policy, legal and organizational frameworks related to tenure¹⁹ and Delivery of Services²⁰

These sections specify the responsibilities of States in formulating and/or implementing policies, legal and organizational frameworks on governance of tenure related to land, fisheries and forest resources. In instituting the mechanisms under this section, the VGGT present guiding principles to ensure the effective delivery of service to the people. Section 5.6 of the VGGT provide that “States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems.”



Chapter 5 of the proposed NLUA mandates the creation of the NLUPC. The NLUPC will act as the highest policy making body on land use and resolve land use policy conflicts between or among agencies, branches, or levels of the government. It shall integrate efforts, monitor developments relating to land use and the evolution of policies, and regulate and direct land use planning processes. It will be composed of the various heads of agencies, particularly those that are involved in land use. The NLUPC is tasked to ensure that the RPPF, PFP and CLUPs will be consistent with the NPPF.²¹

Sections 58 of the proposed NLUA creates the NLUPC Secretariat from the existing unit of NEDA in-charge of Land Use and Physical Planning Coordination, thus, building on accumulated experience and technical knowledge from the agency. On the other hand, Sec. 59 of the NLUA defines the functions of the NLUPC Secretariat that describe the wide-range and comprehensive support that the Secretariat stands to offer. This includes database development & build-up, coordination with agencies and LGUs, monitoring, technical assistance, assistance to LGUs, development of a long-term capability program on land use planning.

The proposed NLUA contain sections that provide for the necessary structure and mechanism that will have the necessary organizational mandate and the commensurate financial and technical capacities to carry out the roles and functions as defined.²² Gender and social equality is a consideration in the selection of membership of the NLUPC particularly in getting the basic sectors (farmers, fisherfolk, urban poor and indigenous peoples) as representatives.

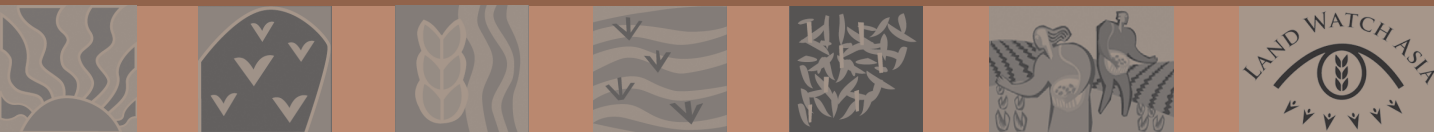
The implementing structures at the national, regional and local levels, including their powers, roles and responsibilities have been defined in proposed NLUA. The local land use policy boards will ensure the creation and implementation of the land use framework set forth in the proposed NLUA. In forest land use management, where a watershed area covers several municipalities across a number of provinces, an inter-LGU Task Force drawn from RLUPC and concerned MLGUs shall be formed to formulate the watershed management plan.²³

On Legal Recognition and Allocation of Tenure Rights and Duties

This part focuses on legal recognition of tenure rights of indigenous peoples and other communities with customary tenure system, including informal tenure rights and the initial allocation of tenure rights to land, fisheries and forests that are owned and controlled by the public sector.²⁴

The proposed NLUA recognizes the IPs/ICC’s right to self-determination and acknowledges their right to determine the use of their lands in accordance with their traditions and customs. Under the proposed bill, land use plans for Ancestral Domains (ADs) shall be formulated by the ICCs/IPs themselves in accordance with their needs and traditional resource and management systems with assistance from the NCIP, the LGUs and civil society concerned. Such plans shall be recognized and adopted in the barangay, city/municipal, provincial, regional and national physical framework plans.²⁵ The proposed NLUA further provides for additional guidelines in land use planning in ADs.²⁶

Chapters 2 (Framework for LU Planning) & 3 (Special Areas of Concern) of the proposed NLUA contain sections that reinforce the tenure rights of basic sectors emanating from existing policies that are related to asset reforms. Under the Special Areas of Concerns (SACs) the proposed NLUA pays special attention to protecting or reinforcing the tenure rights of the basic sectors that have been previously secured through other existing laws such as the IPRA, UDHA,



Fisheries Code and the CARPER. Areas covered under the SACs are: a) Land Classification; b) NIPAS Areas; c) Agricultural Lands; d) Ancestral Domain; e) Forest Lands and Reservation of Watershed; f) Coastal Zones; g) Mineral Lands; h) Energy Resources; i) Settlements Development; j) Industrial Development Areas/Sites; k) Tourism Development Areas; and l) Infrastructure Development.

The proposed NLUA adheres to the understanding of long-term comprehensive land use plan or CLUP of a city or municipality to be consistent with its higher level counterparts: the PCLUP/PPFP, RPPF, and finally, the NFPP, which represent the physical framework plans of the provincial, regional and national levels, respectively. These framework plans generally embody policies on settlements, protected areas, production areas, and infrastructure areas. With areas properly categorized, areas that are open to investments (production, settlements, infrastructure) are properly delineated and location of investments can be properly sited.

The four policy areas²⁷ correspond to the four generalized land use areas within any given political/administrative unit or territory, i.e. areas for living (settlements), areas for making a living (production), the areas taken up by infrastructures to connect and support the two areas (infrastructure), and the life support systems (protected areas). These four policy areas taken together would leave no part of the territory without appropriate policy cover. The life support systems or protected areas refer to those areas that are not built over but are left in their open character because they perform their function best in that condition, i.e. as a source of fresh food, clean air, safe water, and also as receptor of wastes generated in the settlements, infrastructure, and production areas.

On Administration of Tenure

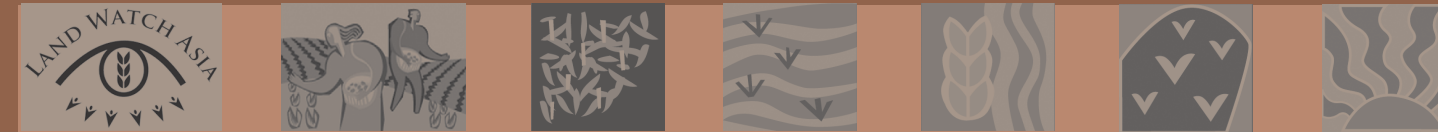
This portion of the VGGT covers the administrative aspects of effective governance of tenure involving records of tenure rights, valuation, taxation, regulated spatial planning, resolution of disputes over tenure rights and transboundary matters.²⁸

The guiding principles pertaining to records of tenure rights and regulated spatial planning are emphasized in the proposed NLUA.

Records of Tenure Rights

Section 17.2 of the VGGT specifies that:

States should provide recording systems appropriate for their particular circumstances, including the available human and financial resources. Socio-culturally appropriate ways of recording rights of indigenous peoples and other communities with customary tenure systems should be developed and used. In order to enhance transparency and compatibility with other sources of information for spatial planning and other purposes, each State should strive to develop an integrated framework that includes existing recording systems and other spatial information systems. In each jurisdiction, records of tenure rights of the State and public sector, private sector, and indigenous peoples and other communities with customary tenure systems should be kept within the integrated recording system. Whenever it is not possible to record tenure rights of indigenous peoples and other communities with customary tenure systems, or occupations in informal settlements, particular care should be taken to prevent the registration of competing rights in those areas.



Chapter 7 of the proposed NLUA contains provisions on Adoption, Approval and Review of Local Land Use and Physical Framework Plans, Compiling of Datasets, updating of Maps, Ground Delineation of Permanent Forest Line, Completion and Updating of Existing Cadastral Surveys.²⁹

The emphasis being placed on developing an integrated spatial database on information and mapping system is consistent with the VGGT's purpose to enhance transparency and compatibility of information needed for spatial planning.

The key features of the mentioned provisions include the establishment of the National Spatial Database Information and Mapping System (NSDIMS) to be led by NAMRIA and other supporting agencies. The system shall be responsible for creating a database for the production of base and decision maps for all planning levels of standard scales, and other indicators, based on Planning Guidelines and Standards approved by the NLUPC. In cases of ancestral domains, self-delineation by ICCs/IPs of their ancestral lands shall be employed to determine boundaries as provided for under IPRA. This is aligned with the VGs in establishing an integrated recording system and other spatial information system related to the land use planning process.

Regulated spatial planning

Section 20.1 of the VGGT provides:

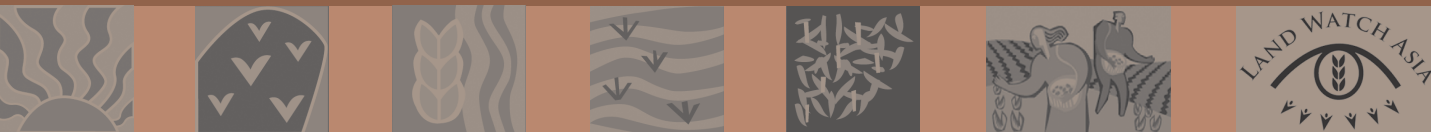
“Regulated spatial planning affects tenure rights by legally constraining their use. States should conduct regulated spatial mapping, and monitor and enforce compliance with those plans, including balanced and sustainable territorial development, in a way that promotes the objectives of these Guidelines. In this regard, spatial planning should reconcile and harmonize different objectives of the use of land, fisheries and forests.”

Article XII, Section 6, Philippine Constitution of 1987 establishes the fact that *“The use of property bears a social function, and all economic agents shall contribute to the common good ... subject to the duty of the State to promote distributive justice and to intervene when the common good so demands. The State shall then regulate the acquisition, ownership, use, and disposition of property and its increments.”*

It is from this context that the proposed NLUA serves as a key implementing policy in the administration of tenure, specifically in pursuing *Regulated Spatial Planning* provided in the VGGT. The State and its counterpart, the LGUs, have been given the mandate by the Local Government Code³⁰ through Section 447 (a) (2), which provides:

Section 447 (a) (2), RA 7160

- (vi) Prescribe reasonable limits and restraints on use of property within the jurisdiction of the municipality;
- (vii) Adopt a comprehensive land use plan for the municipality: Provided, that the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;
- (viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;
- (ix) Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan.

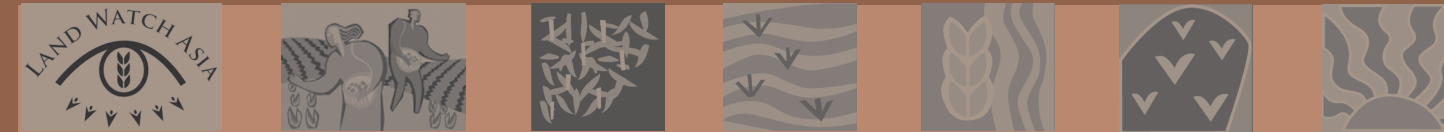


The proposed NLUA also proposes a set of Categories of Land Uses for planning purpose (Chapter 2, Section 6) particularly in determining and defining the national, regional and provincial framework and CLUP. In designating the use of land according to the 4 categories, the State through the NLUPC regulates and limits in that:

- a. Certain areas (lands classified under Protection Land Use) are generally restricted from being used for other purposes aside from their intended use or function, which are primarily for rehabilitation, conservation and protection purposes and the promotion of the country's ecological and life-support systems. Planning for protection land use intends to achieve environmental stability and ecological integrity, ensure a balance between resource use and the preservation of some areas with environmental, aesthetic, educational, cultural and historical significance, and protect people and human-made structures from the ill effects of natural hazards. Tenurial right of farmers to keep prime agricultural lands from conversion is part of the lands that are subject for protection land use. Caution is also provided, in the determination of the functional uses of lands within ancestral domains. The proposed NLUA emphasizes that other sub-categories of land uses in delineated ancestral domains *may be formulated by the concerned ICCs/IPs themselves in accordance with their particular needs and traditional resource and management systems*:
- b. Use of land through the land use planning process is guided by these 4 categories. Individual and entities who will violate these standards will be held liable under the proposed NLUA as provided for in stipulations of penalties and sanctions. This is consistent with the VGGT as it sees the role of the State in regulated spatial planning, to include monitoring and enforcement to ensure compliance with those plans, including balanced and sustainable territorial development.
- c. This regulation function of the State shall be aided by the use of a set of standards prescribed in the proposed NLUA (and prescribed by the NLUPC). The need for setting standards in the land use planning process is to ensure the protection of land and its resources as well as to eradicate unabated and indiscriminate use of land which lead to its destruction and displacement of affected stakeholders.
- d. The proposed NLUA through the NLUPC and the local land use bodies regulates and monitors the land use planning process and ensures that the standards set forth in the law will be followed in relation to allocation and use of land.

The adoption of the four (4) land use categories in the proposed NLUA, if implemented efficiently and effectively, will result in responsible use of land which will lead to sustainable use of our land and resources. This will ensure food security and abundance of resources for the future generation, as well as minimizing effects of natural calamities – the goal of regulated spatial planning.

The proposed NLUA's objectives of food security, sustainable use and conservation of resources are the primary considerations for the land use standards to be applied in the use of land, forests and fisheries. Sec. 2 of NLUA under the Declaration of Policies, highlights a policy of the State to ... *treat groups of islands, including parts of islands, interconnecting waters and other natural features which are so closely related as forming an intrinsic geographical, economic and political entity*. This policy describes its full recognition of the interconnected relationships between land, forest and water resources and addressed thru regulated spatial planning.³¹ In relation to this, the different provisions under the *Special Areas of Concern* that specify the guidelines in use of land, fisheries and forests further strengthens this inter-connectedness to achieve the objectives of the proposed NLUA.



The important function of the proposed NLUA in pursuit of the objective to reconcile and harmonize the different objectives of the various uses of land while considering all tenure rights as espoused in the VGGT, presents the most compelling reasons for the need to have a national policy on land use. This is in response to the common perception that existing land use policies are inadequate to address conflicting land use issues. The proposed NLUA hopes to address this gap by developing a framework that facilitates the process of determining priorities for land use across sectors while putting a premium on long-term sustainability, local productive capacity and over-all social equity.

On Responses to Climate Change and Emergencies

This section addresses the governance of tenure of land, fisheries and forest in relation to climate change, natural disasters and conflicts.³²

Sec. 6 of the proposed NLUA defines the areas to be placed under the *Protection Land Use Category*. These include geo-hazard prone areas and high risk/danger zones. Specifically identified and assessed extremely hazardous and high-risk/ danger zones should be protected and cleared from all forms of human-made obstacles, obstructions to ensure and secure public health and safety.

The proposed NLUA does not explicitly contain provisions on the implication of a land use protection policy covering high risk areas to the tenurial rights of the affected fisherfolk community. However, other existing policies such as the Climate Change Act of 2011 and the RA 10121 or the Disaster Risk Reduction and Management Act of 2012 would complement such apparent policy gap. The case of current policy on “no build zone” or the “no dwelling zone” policy envisioned to be applied in Yolanda stricken areas located along the coastlines, the application of these policies -- the Climate Change Act of 2011 and the RA 10121 or the Disaster Risk Reduction and Management Act of 2012 that require the formulation of the DRRM Plan and the Climate Change Action Plan factor in proper consultation and consideration of the tenurial concerns of the affected vulnerable sectors.

As required in the proposed NLUA, (and by the Local Government Code) LGUs need to formulate their respective CLUPs. Areas subject to protection policy will be properly identified including the so called high-risk/danger zones. Concerns as to the capacities of the LGUs as well as those of the concerned agencies and key stakeholders in the implementation of the approved CLUPs and the corresponding investment plans and programs have been consistently raised.

Conclusions

1. **The proposed NLUA bill appears to serve as a key policy response to relevant provisions in the VGGT on administration of tenure especially pertaining to “Regulated Spatial Planning” section of the Guidelines.**

It had to be emphasized though that as a policy document, the proposed NLUA primarily focuses on the regulation of land use, and not on allocation, management and development functions of resources. Covering the function for land management (of the proposed NLUA) for example already collides with or encompasses the function of other agencies such the LRA, DOJ, etc.

2. **The proposed NLUA bill substantially reflects the objectives, principles and policies of the Voluntary Guidelines; these policies and principles are key to achieving the objectives of the VGGT which are to provide/secure tenure rights to land, forests and fisheries.**

This significance of this “substantial compliance” of the proposed NLUA to the provisions of the VGGT is important given the fact that the latter do not establish automatic and binding applications as a national policy. The proposed NLUA, if enacted, then effectively serves as a national policy that complements and concretizes the principles and standards enunciated in the VGGT.

3. **There are specific areas and provisions of the VGGT (e.g., General Matters) that directly resonate with relevant sections of the proposed NLUA such as the implementation principles on gender equality, holistic and sustainable approach, consultation and participation, transparency and accountability, and provisions for continuous improvement. (Principles of Implementation)**

Also, the policy, legal, and organizational framework related to tenure governance are substantially covered/expounded in the proposed *Implementing Structure of NLUA* at the national, regional and local levels. This structure/mechanism is also complemented by commensurate financial and technical capacities being suggested to ensure that the roles and functions defined (NLUPC and its counterpart at the lower levels) and services are carried out faithfully. (Policy, legal & organizational framework; Delivery of Services).

4. **VGGT’s Administration of Tenure specifically the section on Regulated Spatial Planning, the significance of proposed NLUA as a NATIONAL policy that primarily focuses on land use regulation is furthermore highlighted as it addresses two major gaps in spatial planning namely:**
- Inadequacy of land use policies that address conflicting land uses; and**
 - Absence of a national policy that will guide/regulate land uses involving private domain.**

With the proposed NLUA in place, we can therefore look forward to a standard and consistent application of policies and planning standards at all levels that now include integration of tenure rights (that cover ownership, acquisition and disposition rights) with land use regulation (currently a devolved power/function) – which is the essence and the contention of the VGGT’s *regulated spatial planning*.

Thus, the proposed NLUA brings the realization of the vision of the VGGT closer, that spatial planning considers all tenure rights, including overlapping and periodic rights and coordinates national, regional and local spatial plans. ■

Endnotes:

- ¹ 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
- ² The NLUA is a proposed bill in Congress which seeks to institutionalize land use and physical planning as a mechanism for identifying, determining, and evaluating appropriate land use and allocation patterns in the country. It recognizes the need for a rational, holistic and just allocation, utilization, management, and development of our country’s land and the resources therein.
- ³ Sub-section 1.1, Part 1 (Preliminary) of the Voluntary Guidelines.
- ⁴ Section 2 (Declaration of Policies) of the NLUA Bill
- ⁵ 3B (Principles of Implementation), Part 2 of the VGGT
- ⁶ No. 4, 3B of the VGGT
- ⁷ The NLUPC is the highest policy making body created under the proposed. Its composition includes heads of government agencies directly involved in land use issues, basic sector representatives, and other private stakeholders representatives.
- ⁸ No. 5, 3B of the VGGT
- ⁹ Section 2 (Declaration of Policies), par.1 of the proposed bill.
- ¹⁰ No. 6, 3B of the VGGT
- ¹¹ No. 8, 3B of the VGGT
- ¹² Section 98 of the proposed NLUA
- ¹³ No. 9, 3B of the VGGT
- ¹⁴ Chapter 10 of the proposed NLUA
- ¹⁵ No. 10, 3B of the VGGT
- ¹⁶ Section 4.1 (Rights and Responsibilities related to Tenure), Part 2 of the VGGT
- ¹⁷ No. 1, Section 2 of the proposed NLUA.
- ¹⁸ No. 2, Section 2 of the proposed NLUA.
- ¹⁹ Section 5, Part 2 of the VGGT.
- ²⁰ Section 6, Part 2 of the VGGT.
- ²¹ Sections 55 to 59 Chapter 5 of the proposed NLUA.
- ²² The implementing structure of the proposed NLUA is elaborated in Chapter 5 of the said proposed bill.
- ²³ Sections 60 to 66 Chapter 6 of the proposed NLUA.
- ²⁴ Introductory section of Part 3 (Legal recognition and allocation of tenure right and duties) of the VGGT.
- ²⁵ Section 7 of the proposed NLUA.
- ²⁶ Sections 14-16 of the proposed NLUA (Special Areas of Concern pertaining to Ancestral Domain).
- ²⁷ Originally conceptualized by E.M. Serote for the National Land Use Committee, the four policy areas became the basic substantive content of the national, regional, and provincial physical framework plans. The same were also used as a basis for drafting the proposed National Land Use and Management Act which is pending in Congress as of this writing.
- ²⁸ Introductory section of Part 5 (Administration of Tenure) of the VGGT.
- ²⁹ Sections 69 to 76 of the proposed NLUA.
- ³⁰ R.A. 7160
- ³¹ In relation to Section 20.3 of the VGGT, which provides that “States should ensure that regulated spatial planning is conducted in a manner that recognizes the interconnected relationships between land, fisheries and forests and their uses, including the gendered aspects of their uses. States should strive towards reconciling and prioritizing public, community and private interests and accommodate the requirements for various uses, such as rural, agricultural, nomadic, urban and environmental. Spatial planning should consider all tenure rights, including overlapping and periodic rights. Appropriate risk assessments for spatial planning should be required. National, regional and local spatial plans should be coordinated.”
- ³² Introductory portion of Part 6 (Responses to climate change and emergencies) of the VGGT.



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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).

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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, 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.



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