Improving governance of tenure: Enhancing guidance for the issuance of a unified tenure system

Final report
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<td>AD</td>
<td>Ancestral domain</td>
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<tr>
<td>A/D</td>
<td>Alienable and disposable land</td>
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<td>ADSDPP</td>
<td>Ancestral Domain Sustainable Development and Protection Plan</td>
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<tr>
<td>ANGOC</td>
<td>Asian NGO Coalition for Agrarian Reform and Rural Development</td>
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<tr>
<td>AR</td>
<td>Archival research</td>
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<tr>
<td>BMB</td>
<td>Biodiversity Management Bureau</td>
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<td>BMUB</td>
<td>German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety</td>
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<td>BMZ</td>
<td>German Federal Ministry for Economic Cooperation and Development</td>
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<tr>
<td>CA</td>
<td>Content analysis</td>
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<tr>
<td>CADT</td>
<td>Certificate of Ancestral Domain Title</td>
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<tr>
<td>CALT</td>
<td>Certificate of Ancestral Land Title</td>
</tr>
<tr>
<td>CBFM</td>
<td>Community-based Forest Management</td>
</tr>
<tr>
<td>CBMMA</td>
<td>Community-based Forest Management Agreement</td>
</tr>
<tr>
<td>CENRO</td>
<td>Community Environment and Natural Resources Officer</td>
</tr>
<tr>
<td>CLOA</td>
<td>Certificate of Land Ownership Agreement</td>
</tr>
<tr>
<td>CLUP</td>
<td>Comprehensive Land Use Plan</td>
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<tr>
<td>CPDO</td>
<td>City Planning Development Office</td>
</tr>
<tr>
<td>CRM A</td>
<td>Comprehensive Resource Management Agreement</td>
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<tr>
<td>CSC</td>
<td>Certificate of Stewardship Contract</td>
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<tr>
<td>CSO</td>
<td>Civil society organization</td>
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<td>DA</td>
<td>Department of Agriculture</td>
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<td>DAn</td>
<td>Document analysis</td>
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<td>DAO</td>
<td>DENR Administrative Order</td>
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<td>DAR</td>
<td>Department of Agrarian Reform</td>
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<td>DENG</td>
<td>Department of Environment and Natural Resources</td>
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<td>DILG</td>
<td>Department of the Interior Local Government</td>
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<td>DOE</td>
<td>Department of Energy</td>
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<tr>
<td>ECC</td>
<td>Environmental Compliance Certificate</td>
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<tr>
<td>EO</td>
<td>Executive Order</td>
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<tr>
<td>FGD</td>
<td>Focus group discussion</td>
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<tr>
<td>FLAG</td>
<td>Forest Land Use Agreement</td>
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<td>FLAGT</td>
<td>Forest Land Use Agreement for Tourism Purposes</td>
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<tr>
<td>FLGMA</td>
<td>Forest Land Grazing Management Agreement</td>
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<td>FLMA</td>
<td>Forest Land Management Agreement</td>
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<td>FLUP</td>
<td>Forest Land Use Plan</td>
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<td>FMB</td>
<td>Forest Management Bureau</td>
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<td>FPIC</td>
<td>Free, prior, and informed consent</td>
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<td>GEF</td>
<td>Global Environment Facility</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH</td>
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<tr>
<td>HEI</td>
<td>Higher education institution</td>
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<tr>
<td>HLURB</td>
<td>Housing and Land Use Regulatory Board</td>
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<tr>
<td>ICC</td>
<td>Indigenous cultural communities</td>
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<td>ICCA</td>
<td>Indigenous community conservation area</td>
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<td>IFMA</td>
<td>Integrated Forest Management Agreement</td>
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<td>IP</td>
<td>Indigenous people</td>
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<td>IPRA</td>
<td>Indigenous Peoples’ Rights Act</td>
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<td>JAO</td>
<td>Joint Administrative Order</td>
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<td>KAPAWA</td>
<td>Katilingban sang Pumuluyo sa Watershed sang Maasin</td>
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<td>KASAPI</td>
<td>Katutubong Samahan ng Pilipinas or National Coalition of Indigenous Peoples</td>
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<td>KII</td>
<td>Key informant interview</td>
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Enhancing guidance for the issuance of a unified tenure system

Acronyms

LARA Land Administration and Reform Act
LCA Locally conserved area
LERMA Land and Environment Resource Management Agreement
LGU Local government unit
LMB Land Management Bureau
LMP Land Management Plan
LRA Land Registration Authority
MENRO Municipal Environment and Natural Resources Officer
MF Mabuwaya Foundation
MGB Mines and Geosciences Bureau
MOA Memorandum of Agreement
MPDO Municipal Planning Development Office
MPSA Mining Production Sharing Agreement
NaLUA National Land Use Act
NAMRIA National Mapping and Resource Information Authority
NCIP National Commission on Indigenous Peoples
NGA National government agency
NGO Nongovernmental organization
NGP National Greening Program
NIA National Irrigation Administration
NIPAS National Integrated Protected Area System
NTFPP Non-timber forest products production
NTFP-EP Non-Timber Forest Products-Exchange Programme
PACBRMA Protected Areas Community-Based Resource Management Agreements
PAFID Philippine Association for Intercultural Development, Inc.
PAMB Protected Area Management Bureau
PASu Protected Area Superintendent
PCSD Palawan Council for Sustainable Development
PD Presidential Decree
PENRO Provincial Environment and Natural Resources Officer
PES Payment to ecological services
PO People’s organization
PPP Private–public partnership
RD Regional Directors
REDD+ Reducing Emissions for Deforestation and Forest Degradation, and the role of conservation, sustainable management of forests, and enhancement of carbon stocks
SAPA Special Agreement for Protected Area
SIFMA Socialized Industrial Forest Management Agreements
SLUP Special Land Use Permits
SP Special Permit
SPLULA Special Land Use Lease Agreement
TLA Timber License Agreement
UNDP United Nations Development Programme
VGGT Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security
WFR Watershed forest reserve
Foreword

Millions of Filipinos depend on forests, farmland, and fishing waters for livelihoods and food security. With continued economic and demographic growth, competition for land and natural resources is increasing. This often leads to unsustainable use, loss, and depletion of the country’s rich forest, soil, biological diversity, and water resources. Climate change and natural disasters further exacerbate these pressures. In this context, the governance of land and natural resources—their conservation, management, distribution, and use—is of vital importance for paving the way toward the country’s sustainable development.

Forests have an important role to play in the combat against climate change, both for mitigating greenhouse gas emissions and for adapting to the severe impacts of climate change. The Government of the Philippines recognizes this important linkage and implements a broad array of related programs and strategies. These include the National Greening Program and the Philippine National REDD-Plus Strategy, which are both implemented by the Department of Environment and Natural Resources (DENR)-Forest Management Bureau with the aim to reduce deforestation, to promote sustainable forest management, to rehabilitate the country’s forests, and to improve livelihoods of the Filipino people. The Government of the Philippines has also set forward the objective of closing all “open access” areas in forest lands by 2020.

Open access forest lands and contested land tenure are among the major drivers of deforestation and forest degradation in the country. In the Philippine upland areas, millions of people live illegally on public forest lands, without clear tenure rights or in situations where the same piece of land is claimed by different parties. This unclear governance of tenure is often at the root of unsustainable resource use practices and resource-related conflicts. By clarifying tenure rights, people will have more incentives to preserve and sustainably manage land, forests, and biodiversity. This benefits people and the environment alike.

The Philippine government has recognized the need to identify and close gaps in forest management and tenure regime as well as to provide clear guidance in the issuance of tenure and land use rights. In this context, the DENR, in cooperation with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, has conducted the study on the governance of tenure in the Philippines with the objective of elaborating a policy instrument for a unified tenure system. The establishment of such a system would improve the governance in natural resource management and enable broader access to forest land with positive impacts on environmental management and rural development.

The study has been implemented by the DENR-GIZ National REDD+ System Philippines Project, funded through the International Climate Initiative of Germany’s Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). It has been made possible with the support of the Forest Governance Programme, funded by Germany’s Federal Ministry for Economic Cooperation and Development (BMZ).

The innovative policy for harmonized land and environmental resources management has been presented to, and consulted with, various stakeholders from government, civil society, and the academe during the conduct of the study from May to October 2015, and presented in a National Consultation Workshop on September 22, 2015.

It is hoped that the proposed policy and the related recommendations are taken up by the relevant policy-making bodies and integrated within a unified tenure system that addresses the issues of land and forest governance, and leads the way toward sustainable land and resources management.
The team would like to thank the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH; the Department of Environment and Natural Resources, specifically the Forest Management Bureau; the Department of Agriculture; the Department of the Interior Local Government; the National Commission on Indigenous Peoples; the Department of Agrarian Reform; and the many national government agencies that have extended their support and cooperation to this commissioned study.

The team would also like to thank its respondents and participants for the time and effort they have invested to fulfill this study. Without their participation, this report would have not been possible. We would also like to thank Dir. Ricardo Calderon and the staff of the Forest Management Bureau for their untiring support to the project. Moreover, we would also like to show our appreciation to the following individuals whose facilitation had made this work possible: Dr. Bernd-Markus Liss, Mr. Bojan Auhagen, Mr. Shaleh Antonio, Ms. Toni Salas, Mr. Ferdinand Elica, Ms. Maricor Palapas, Ms. Jennilyn Daisog, Mr. Bernardo Agaloos, Mr. Emmanuel Salvosa, Mr. Rogelio Abalos, Ms. Cherry Lou Gutierrez, Ms. Emma Ruth Ramos, and Ms. Linda Dolatre.
Executive summary

This commissioned study “Improving the Governance of Tenure in the Philippines” was conceptualized in response to the continuing deforestation and degradation of forest ecosystems and communities in the Philippines. These problems are further compounded by the lack of clear land use rights, bringing forth the insecurity of tenure for the public lands and the various peoples dependent on them. The study has the following objectives:

1. To conduct stocktaking and assessment of existing tenure and management options;
2. To develop policy recommendations toward a unified tenure system; and
3. To enhance the development of harmonized guidelines for the issuance of a unified tenure system.

The assessment of the land tenure regimes in forest lands, including those in protected areas as well as those held by indigenous peoples, was done at two levels of analysis: at the policy level and at the implementation level. The assessment and the formulation of alternatives were done in the context of whether the country’s policies and practices adhere to the principles specified in the “Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security” (VGGT), developed by the Food and Agriculture Organization of the United Nations.

The general research strategy of this study rested heavily on archival research and fieldwork to generate both secondary and primary data. The research team carried out three major research activities from July to September 2015, namely: (1) extensive archival review of available literature, reports, and studies on various tenure instruments that have been operational across the country; (2) conduct of key informant interviews (KIIs) and focus group discussions (FGDs) with national policy actors; and (3) fieldwork on three case sites considered as representative of the forest lands covered by various tenure instruments. These case study sites included Davao Oriental, Iloilo, and Isabela.

The empirical data examined in the case studies and the results of the FGDs and KIIs lend support to the evidence from archival research on studies conducted on the ground on the issue of land tenure. A content analysis of the themes of the researches converges on the following issues:

- The Philippine tenure regime is based on a series of sector laws (more than 60) and policies, and a multiplicity of land tenure instruments, which are not consistent and leave space to contradictions and overlapping. The convergence initiatives among national government units (NGAs) were not able to process or manage conflicts and overlaps. This lack of clear decisions leads to the absence of land governance.
- With the absence of governance or efficient control, areas without legal tenure regimes have practically become areas where sustainable forest use and conservation is not guaranteed. Clear tenure arrangements are necessary on these lands to maintain the forest cover, the biodiversity, and the provision of environmental services.
- Many of these areas correspond to the land at present de facto managed by “informal settlers.” Approximately 22 million citizens living in the uplands have no written land tenure arrangement and are often considered as illegal or landless, many because their Certificate of Stewardship Contracts have expired and have not been renewed. This group lives mainly from natural resources on public forest land or on ancestral domain land. In order to secure their livelihoods, their tenure situation has to be regularized in the framework of a new unified tenure system.
- Much of the remaining forests (approximately 85% of the 6–7 million hectares) are located within ancestral domains. However, ancestral domain claims are being seen as a threat instead of an opportunity to be addressed by the unified tenure system.
- Land tenure is often not awarded according to land characteristics, as not all local government units (LGUs) have Forest Land Use Plans (FLUPs) and Comprehensive Land Use Plans (CLUPs) defining which use is appropriate for which area.
- A large part of public forest lands is without forest cover, but there is no management agreement available for parties that would like to protect forest areas. There is no systematic policy to address the issue of private lands with forest character, such as those falling within what are supposed to be watershed protection zones, or protected areas, and multiple use forestry is hardly operationalized within existing rigid management agreements.
- Existing tenurial instruments have not ensured livelihoods, economic development, and sustainable use, due to their narrow focus, insecurity, and conflicts with other titles and instruments.
The National Land Use Act, the Guidelines for CLUPs, the proposals for financing mechanisms in the framework of Reducing Emissions for Deforestation and Forest Degradation (REDD+), and the proposed land tenure policy are pieces that are to be linked in order to make sustainable forestry benefitting to the population and the climate. Tenure is the major factor to define which individuals and groups will gain from benefit sharing in climate financing. As argued above, it is also a major factor to reduce deforestation.

These themes from the ground and the literature reviewed provide a compelling justification to rationalize the governance of land tenure in the country, in particular, by developing a unified land tenure system.

The proposed policy on a tenure management system takes into account the more modern principles in the scientific management of forest and land resources. It considers forests in the public domain, the ancestral domain, and the private domain as well as public land that is not forested.

It addresses the issues mentioned above, reducing areas without governance, providing economic opportunities for the rural poor, conserving existing forests, promoting afforestation and investment in forest land, and opening practicable pathways to overcome contradictions in policies and laws.

Furthermore, it adheres to the principles specified in the VGGT, as is detailed below.

Specifically, the policy upholds the following principles:

- Human dignity and rural livelihoods, considering especially the livelihood of the rural poor, which are at present considered "illegal settlers"
- Non-discrimination, equity, and justice
- Equality between men and women
- Sustainable use of natural resources based on clear and secure rights
- The rights of indigenous people, as stated in Chapter 9.4 of the VGGT: “States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples…” (Committee on World Food Security 2012)
- Tenure security, especially for rural communities, based on easily accessible procedures, as stated in Chapter 17.4 of the VGGT: “Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. The spatial accuracy for parcels and other spatial units should be sufficient for their identification to meet local needs... To facilitate the use of records of tenure rights, implementing agencies should link information on the rights, the holders of those rights, and the spatial units related to those rights” (Committee on World Food Security 2012).
- Participation, consultation, and inclusion, as recommended by Chapter 9.12 of the VGGT in: “States and non-state actors should endeavour to prevent corruption in relation to tenure systems of indigenous peoples and other communities with customary tenure systems, by consultation and participation, and by empowering communities” (Committee on World Food Security 2012)
- Operate under the rules and laws both nationally and internationally
- Transparency in the processes, as indicated by Chapter 17.5 of the VGGT: “States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions” (Committee on World Food Security 2012)
- Accountability among policy actors, bureaucrats, and tenure beneficiaries
- Dynamic products of a continuing process of review and improvement

The following is the policy context:

- Forest lands and natural resources are owned by the State. In general, the controlling policy is Presidential Decree 705, as amended.
- Some forest lands are declared as protected areas by virtue of the National Integrated Protected Area System Act and other specific laws pursuant to such.
- Some forest lands are declared for mining purposes, for which the controlling policy is the Mining Act.
- Some forest lands are declared by law for specific purposes, and their control is transferred accordingly to agencies other than the Department of Environment and Natural Resources (DENR), and the controlling policies are the specific laws or policy issuances concerned.
- Some forest lands are declared as ancestral domain areas under the Indigenous Peoples’ Rights Act, for which Certificate of Ancestral Domain Titles (CADTs) and Certificate of Ancestral Land Titles are awarded.
- In all of these laws, what is however clear is that the DENR retains its regulatory powers in terms of how resources on forest lands (both above and below the surface) are to be managed.
The proposal in this report is not only to establish a single system for governing land tenure in public open lands but also to include titled lands where the owners are willing to enter into a management agreement with the government to devote such lands to forest and environmental resource management purposes. The management agreement instrument shall be referred to as a Land and Environmental Resources Management Agreement or LERMA, and its governance system is to be referred to as the LERMA System.

The LERMA has the following major elements/features:

- **Parties**—in addition to corporations, people’s organizations, and indigenous peoples—would now include nongovernmental organizations, LGUs, academic institutions, civic organizations, NGAs, and individuals.

- **Lands covered** would be all those:
  - Lands under the control of the DENR (open lands, protected areas, mining areas);
  - Lands that are under the control of other NGAs but have forest characteristics; and
  - Titled lands (CADT, private lands).

- **Land uses covered** would be:
  - Production (tree plantation, agroforestry, non-timber forest products production, grazing/pasture);
  - Other special uses (tourism, infrastructure, education and research, cultural purposes);
  - Protection; and
  - Multiple uses.

- **Duration of the LERMA** would be flexible but can be extended up to 25 years and is renewable for another period that is extendable up to another 25 years (i.e., renewal is different from extension).

- **Approving authorities** would be:
  - For lands under DENR—Regional Directors (RDs);
  - For lands under NGAs—joint issuance by DENR-RD and the equivalent for NGAs;
  - For titled lands:
    - Within CADT lands—joint issuance by DENR-RD and Regional National Commission on Indigenous Peoples (NCIP)
    - Private titled lands—private–public partnership between DENR-RD and private land owner
  - LERMA is approved with a detailed management plan and, if for production purposes, would require a feasibility study;
  - LERMA must be in accordance with existing FLUP/CLUP, Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), and Protected Area Management Plan (PAMP):
    - LGU certifies compliance with FLUP/CLUP
    - NCIP certifies compliance with ADSDPP
    - PAMB certifies compliance with PAMP
  - LERMA within CADT areas will require free, prior, and informed consent;
  - LERMA within critical areas would require Environmental Compliance Certificate; and
  - For LERMA in Palawan, would require clearance from the Palawan Council for Sustainable Development.

- **LERMA can be transferrable to a qualified party** (including heirs) based on justifiable loss of interest, death, or incapacitation, but only for the remaining period of the contract.

- **LERMA can be cancelled for cause**, without prejudice to the filing of administrative and criminal cases.

- **Can be contracted to a sub-LERMA only for activities included in the approved plan but with exception of activities imbued with public interest.**

- **LERMA can also be packaged as an investment portfolio.**

- **Fees that will be collected**:
  - Revenue shares based on actual market sales of products, when LERMA is for production purposes
  - Environmental fees—based on opportunity cost
    - Positive—when land use depletes the stocks of forest resources (LERMA holder is levied a fee to compensate for the loss)
    - Negative—when land use contributes to the maintenance and growth of stocks of forest resources (LERMA holder can be given a subsidy or incentive, or such can be deducted from the amount that the holder owes the government in the form of taxes and revenue shares)
  - Socialized system and technical assistance for marginalized groups.

As the LERMA System will involve parties other than DENR, the most ideal situation is to enact a law that establishes it. However, considering that the process of legislating is complicated and highly politicized, the next best option is to have it implemented in the form of an Executive Order to be issued by the President, and where the implementing rules and
regulations will be crafted as a joint enactment of DENR with NCIP, the Department of Agrarian Reform, and the Department of the Interior Local Government in the form of a Joint Administrative Order. This does not preclude the parties to advocate, however, that an enabling law will still be enacted in the future as a separate statute or as one embedded either in the Land Use Act or in the Sustainable Forest Management Act, both of which have yet to be passed by Congress.

Meanwhile, steps can already be taken by concerned agencies in line with the thrust of the proposal. DENR, through the Forest Management Bureau and Biodiversity Management Bureau, can in the interim phase issue a DENR Administrative Order (DAO) to address a LERMA System within its jurisdiction. DENR and other agencies can also already examine their processes and requirements, and DAOs and technical bulletins can already be issued in terms of, for example, shifting from zonal valuation to opportunity cost valuation. The conversion of management agreements to investment portfolios can also be adopted and pursued, just as the convergence mechanisms at all levels can be strengthened.
1 Rationale of the study

This study “Improving the Governance of Tenure in the Philippines” was conceptualized in response to the continuing deforestation and degradation of forest ecosystems and communities in the Philippines. These problems are further compounded by the lack of clear land use rights, bringing forth the insecurity of tenure for the public lands and the various peoples dependent on them. These public lands are located mainly in the uplands, which contain around 53% of the forest resources (Philippine Forestry Statistics 2013).

These public lands, which are often referred to as the upland areas, are covered by various and mostly overlapping tenure and management regimes such as the Community-based Forest Management Agreement (CBFMA), Community Forestry Management Agreement, Certificate of Tree Plantation Ownership, Forest Land Grazing Management Agreement (FLGMA), Forest Land Management Agreement (FLMA), Integrated Forest Management Agreement (IFMA), Industrial Tree Plantation Lease Agreement, Industrial Tree Plantation License, Private Forest Development Agreement, Socialized Industrial Forest Management Agreement (SIFMA), Special Permit (SP), Timber License Agreement (TLA), Timber Production Sharing Agreement, Tree Farm Lease Agreement, and others. There is also the Forest Land Use Agreement (FLAG) and its variant for tourism purposes (FLAGT).
Also covered under these are those lands within the National Integrated Protected Area System (NIPAS) where tenurial rights are awarded to communities within protected areas in the form of Protected Areas Community-Based Resource Management Agreements (PACBRMAs), as well as those in the context of the Indigenous Peoples' Rights Act (IPRA) in the form of Certificate of Ancestral Domain Titles (CADTs).

The Forest Management Bureau (FMB) of the Department of Environment and Natural Resources (DENR) has undertaken three regional consultation workshops in Subic, Cebu, and Davao earlier this year with the following goals:

1. To review the existing policies, rules, and regulations on the issuance of tenurial instruments, permits, and/or agreements for the use of forest lands;
2. To identify problems/gaps, issues/concerns relative to the implementation of the aforesaid laws, rules and regulations, and the corresponding measures to address the same; and
3. To harmonize the review/evaluation and processing of applications for tenurial instruments.

The output of the workshops is a draft DENR Administrative Order (DAO) that hoped to harmonize all the existing tenurial instruments covering forest lands, which were limited to CBFMA, IFMA, SIFMA, FLGMA, FLAG, and FLAGT. Thus, it did not include forest lands that are covered under the NIPAS and those that are held by indigenous cultural communities/indigenous peoples (ICCs/ IPs) under the terms of the IPRA. Furthermore, the consultations drew inputs only from two sources—the technical–legal perspectives of FMB staff and the experiences of field personnel involved in the implementation of the various tenure instruments—and were not based on the conduct of a systematic study of the land tenure policy system in the country.

Under the premise of establishing a clear and unified land tenure system covering all public lands by 2022, the DENR-FMB and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH jointly commissioned the study on “Improving the Governance of Tenure: Enhancing Guidance for the Issuance of a Unified Tenure System” (henceforward the study) with funding from the German Federal Ministry for Economic Cooperation and Development (BMZ) through the Forest Governance Programme. The study was also implemented under the project “Preparation of a National REDD+ Mechanism for Greenhouse Gas Reduction and Conservation of Biodiversity in the Philippines” (National REDD+ System Philippines), which is implemented by DENR and GIZ, and funded by the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The main task of the study is to review and assess all legal management and tenure options in forest lands including, but not limited to, CBFMA, IFMA, SIFMA, FLGMA, FLAG, and FLAGT, as well as PACBRMA and CADT.

The study has the following objectives:

1. To conduct stocktaking and assessment of existing tenure and management options;
2. To develop policy recommendations toward a unified tenure system; and
3. To enhance of the development of harmonized guidelines for the issuance of a unified tenure system.

1.1 Research framework and working hypotheses

The assessment of the land tenure regimes in forest lands, including those in protected areas as well as those held by IPs, was done at two levels of analysis: at the policy level and at the implementation level. The basis of the assessment and the formulation of alternatives was done in the context of whether the country’s policies and practices adhere to the principles specified in the “Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security” (VGGT), developed by the Food and Agriculture Organization of the United Nations.

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1. A unified tenure system refers to a comprehensive framework providing clear rules and regulations to all actors, awarding titles and other tenure rights, and clarifying which institution is responsible in each case, based on Philippine laws and a comprehensive land information system.
Specifically, the land tenure policies and practices were assessed in terms of the following:

- Whether these promote human dignity and rural livelihoods
- Whether our policies and practices are non-discriminatory
- Whether these adhere to the principles of equity and justice
- Whether these recognize the equality between men and women
- Whether these recognize that natural resources and their uses are interconnected, and thus adopt a sustainable and integrated approach
- Whether these provide tenure security
- Whether the processes are participatory, consultative and inclusive
- Whether these operate under the rules and laws both nationally and internationally
- Whether there is transparency in the processes
- Whether there is accountability among policy actors, bureaucrats and tenure beneficiaries
- Whether the process and policies are dynamic and are products of a continuing process of review and improvement

Any study, in order to provide focus, has to have a working hypothesis that becomes the basis upon which the assessment and formulation of alternatives will be done. The following are truth claims or premises that served as working hypotheses to be validated or rejected during the course of the review and field studies:

Premise 1: The main problem is that there are just too many existing tenurial instruments with different requirements. Harmonizing these would entail going beyond technical convergence of having standardized requirements but would require a paradigm shift on how we look at land tenure in public lands.

Premise 2: At present, and based on initial assessment:

a. Tenure is given to a legal entity for a very definite and time-bound purpose (CBFMA for people’s organizations [POs] in forest lands; PACBRMA for PO in protected area; IFMA, FLAG, FLAGT, and FLGMA for others, for a period of 25 years renewable for another 25 years).

b. This does not truly operationalize the idea of multiple-use forestry and may in fact compromise sustainability of livelihoods, particularly for the less-capital endowed entities such as PO and may not even realize the optimal economic and ecological value of the land, considering that the tenure is constrained by a fixed type of use and not for a more comprehensive management of lands based on existing social, economic, and bio-physical resource conditions.

Premise 3: The focus of the national tenure management strategy is on public lands but not on private lands whose ecological character is critical to watersheds and protected areas. The national management strategy for these lands is being regulatory and not developmental in terms of private land owners who are non-CADT holders.

Premise 4: At present, a number of public institutions at the central and decentralized levels are deciding on the award and control of land and forest management rights. This causes overlapping titles or tenure rights, conflicts between the competences of different institutions, and gaps in effective governance in certain areas. A more coherent and coordinated institutional framework may be necessary to implement a unified tenure system.

1.2 Research questions

The study team pursued the following research questions in order to fulfil the targets of this commissioned study:

1. What are the facilitative and obstructive factors to a unified tenure instrument system in the Philippines?
2. What are the aspects (i.e., requirements, procedures, time frame, and elements) necessary in harmonizing the tenure instruments in the forestry sector, enhancing both forest protection and the livelihoods of rural communities?
3. What policy strategies can be employed to achieve the unified tenure instrument system in the Philippines?

a. Are the current practices of having a specific tenure that limits land uses given to a particular holder sufficient to address the principles laid out in the VGGT or is there a need to shift to a more comprehensive instrument that does not limit the system to a specific tenure instrument-land use?

b. If current practices are sufficient, how can we unify the tenure instrument system?

c. If they are not sufficient, what alternatives are available?
i. Is it more in line with the VGGT if only one tenure instrument is given to all possible parties, which would include PO, nongovernmental organization (NGO), corporate, LGU, schools and universities, and church, and that tenure may be given in the form of a Comprehensive Resource Management Agreement (CRMA), the terms and conditions of which will be negotiated between parties and will be customized according to the capacity of the contracting party and the ecological and economic character of the land in question, consistent to the principles outlined under the VGGT and taking into consideration the Comprehensive Land Use Plans (CLUP) of Local Government Units (LGUs), and wherein the principles of payment to ecological services (PES) can be operationalized?

ii. Is it also reasonable that whenever appropriate, and only for some sites, the DENR may actually consider the awarding of resource management agreements as investment portfolios?

iii. Finally, is it also possible that a new paradigm for private–public partnerships (PPPs) with those holding titles, which include both CADT holders and private land owners, to institutionalize resource management agreements in the form of co-management or production sharing arrangements within privately owned lands that are identified as critical watershed or are providing ecosystem services, in lieu of reversion to public lands?
Methodology

The general research strategy of this study rested heavily on archival research and fieldwork to generate both secondary and primary data. The research team carried out three major research activities from July to September 2015, namely: (1) extensive archival review of available literature, reports, and studies on various tenure instruments that have been operational across the country; (2) conduct of key informant interviews (KIIa) and focus group discussions (FGDs) with national policy actors; and (3) fieldwork on three case sites considered as representatives of the forest lands covered with various tenure instruments. These case study sites included Davao Oriental, Iloilo, and Isabela.

The output of this study is embodied in this summary report, which contains not only a comprehensive review of policies, procedures, guidelines, and tenure and management options, but also appropriate recommendations on how to formulate a unified tenure instrument to cover the open access areas in most forest lands in the Philippines. Ultimately, an Executive Order (EO) was drafted, containing various propositions based on the results of this research.
2.1 Gathering and analysis of evidence from textual and archival analysis of studies, reports, policies, and other published materials

This part did focus on two tasks. First, an extensive review of literature was done to compile secondary materials on tenure instruments used in forest lands in the Philippines. Second, a content and historical analysis of policies and reports was conducted, a process that was descriptive, historical, and evaluative.

It was descriptive as a content analysis of the documents was carried out to come up with themes and categories that describe the state of the art on land tenure policies, studies and records of practices in the country. This entailed collection, characterization, and comparing of all the policy issuances related to the management arrangements and their corresponding tenurial instruments of forest lands in the Philippines.

It was historical in the sense that it entailed the characterization of the policy trajectories for the development of land use planning in forest lands, particularly on the institutional drivers, enabling and constraining contexts and agents, and the crucial points for divergence that led to the emergence of conflicts.

It was evaluative as the review of policies, studies, and records of practices was done with the goal of assessing their compliance with the terms and guidelines set forth in the VGGT as outlined above. Specifically, forest land management arrangements and their associated tenurial instruments were assessed in terms of their effectiveness in:

- Creating favorable conditions for good forest and land governance, particularly in achieving rational, feasible, and timely land use planning; and
- Enabling the sustainable management of natural resources, particularly in achieving positive and sustainable economic benefits for, and the equitable provision of incentives to, the forest land users.

2.2 Gathering and analysis of evidence from national implementing agencies, partners, and stakeholders

This activity primarily implemented individual and group interviews of national policy actors, either as agencies or organizations involved in land tenure policy formulation and implementation, or as individuals.

The individual interviews or KII were carried out with the following respondents:

- Director, FMB
- Director, Biodiversity Management Bureau
- Director, Land Management Bureau
- Director, National Mapping and Resource Information Authority
- Director, Land Registration Authority
- Director, Housing and Land Use Regulatory Board
- Executive Director and Former Executive Director, National Commission on Indigenous Peoples
- GIZ Chief and Senior Advisers
- GEF Small Grants Programme
- Staff, Congressional Policy and Budget Research Department, House of Representatives
- Head, NGOs
  - Philippine Association for Intercultural Development, Inc. (PAFID)
  - Katutubong Samahan ng Pilipinas or National Coalition of Indigenous Peoples (KASAPI)
  - Mediators Network for Sustainable Peace, Inc.

KIIIs were conducted using a set of guide questions (refer to Annex 1) and carried out from July 7 to July 17, 2015 in various locations in Metro Manila.

For the FGD, the following groups were constituted:

- NGO representatives (2)
  - Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)
  - Non-Timber Forest Products-Exchange Programme (NTFP-EP)
- FMB staff (8)
These groups were convened in the main office of DENR-FMB in Quezon City from July 14 to 16, 2015. Guide questions were used during these discussions as well (refer to Annex 2; for the list of respondents see Annex 3).

2.3 Gathering and analysis of evidence from field case studies

This activity involved the conduct of fieldwork in three case study sites in order to gather and process primary data from the field. In this activity, the research team collected data from the technical staff at DENR field offices; the LGU administrators; the local government agencies such as NCIP, Department of Agrarian Reform (DAR), and Department of the Interior and Local Government (DILG); and other relevant practitioners involved in civil society organizations in each case study site. These case studies were intended to document and describe actual cases of land use conflicts, particularly emanating from overlapping tenure, with the goal of teasing out from them lessons that can be used to formulate practical guidelines for land use planners, and conscious of the principles enshrined in the VGGT.

2.3.1 Research sites

Three research sites have been selected as exemplary cases where various scenarios on convergence and divergence in tenure instruments and administration can be exhibited. The selection of these case study sites was based on the following criteria:
- Representative site per islands of Luzon, Visayas, and Mindanao; and
- Presence or absence of contentious and/or overlapping tenure instruments issued by various agencies including the DENR, Department of Agriculture (DA), and other government agencies.

Given these criteria, the provinces of Isabela, Iloilo, and Davao Oriental were selected in close collaboration with DENR. Table 1 presents some basic information on each study site, especially in terms of land areas and forest cover.

Table 1. Basic information on the case study sites

<table>
<thead>
<tr>
<th>Basic information</th>
<th>Isabela (Northern Sierra Madre) Area (ha)</th>
<th>Iloilo Area (ha)</th>
<th>Davao Oriental Area (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total land area</td>
<td>1,066,456</td>
<td>532,397</td>
<td>516,446</td>
</tr>
<tr>
<td>Certified A/D lands</td>
<td>459,666</td>
<td>396,149</td>
<td>200,944</td>
</tr>
<tr>
<td>Forest lands</td>
<td>606,790</td>
<td>136,248</td>
<td>315,502</td>
</tr>
<tr>
<td>Forest cover</td>
<td>378,272</td>
<td>25,667</td>
<td>162,325</td>
</tr>
<tr>
<td>Closed forest</td>
<td>69,444</td>
<td>2,954</td>
<td>78,258</td>
</tr>
<tr>
<td>Open forest</td>
<td>308,106</td>
<td>21,397</td>
<td>82,198</td>
</tr>
<tr>
<td>Mangrove</td>
<td>723</td>
<td>1,315</td>
<td>1,868</td>
</tr>
<tr>
<td>Forest cover in forest lands</td>
<td>377,461</td>
<td>17,855</td>
<td>160,652</td>
</tr>
<tr>
<td>Closed forest</td>
<td>69,379</td>
<td>2,553</td>
<td>78,095</td>
</tr>
<tr>
<td>Open forest</td>
<td>307,463</td>
<td>14,594</td>
<td>81,315</td>
</tr>
<tr>
<td>Mangrove</td>
<td>619</td>
<td>708</td>
<td>1,242</td>
</tr>
<tr>
<td>Forest cover in A/D lands</td>
<td>811</td>
<td>7,812</td>
<td>1,673</td>
</tr>
<tr>
<td>Closed forest</td>
<td>65</td>
<td>401</td>
<td>163</td>
</tr>
<tr>
<td>Open forest</td>
<td>643</td>
<td>6,803</td>
<td>883</td>
</tr>
<tr>
<td>Mangrove</td>
<td>104</td>
<td>607</td>
<td>626</td>
</tr>
</tbody>
</table>


Table 2 summarizes the tenure instruments that have been issued to beneficiaries in these provinces based on the 2013 Philippine Forestry Statistics issued by the FMB.
Table 2. Summary of tenure instruments in each study site

<table>
<thead>
<tr>
<th>Tenure instruments*</th>
<th>Isabela</th>
<th>Iloilo</th>
<th>Davao Oriental</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>Area (hectares)</td>
<td>No.</td>
</tr>
<tr>
<td>IFMA</td>
<td>9</td>
<td>88,051</td>
<td>1</td>
</tr>
<tr>
<td>Tree Farm Lease</td>
<td>4</td>
<td>753</td>
<td>2</td>
</tr>
<tr>
<td>SIFMA</td>
<td>372</td>
<td>2,235</td>
<td>1</td>
</tr>
<tr>
<td>FLGMA</td>
<td>34</td>
<td>7,422</td>
<td>3</td>
</tr>
<tr>
<td>SLUP</td>
<td>1</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Special Land Use Lease Agreement</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>FLAG</td>
<td>—</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>FLAGT</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

*CBFMA and TLAs are reported as aggregates at the regional levels.

Table 3 provides the data for the number of protected areas in the study sites, as well as the number and area of the PACBRMAs that were issued within them.

Table 3. Protected areas in the study sites as of 2004 and PACBRMAs issued as of 2015

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Legislation</th>
<th>Dates</th>
<th>Area (ha) Remarks</th>
<th>No. of PACBRMA</th>
<th>Area in hectares</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Isabela</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fuyot Springs National Park</td>
<td>Ilagan, Isabela</td>
<td>Proc. 327</td>
<td>10/8/1938</td>
<td></td>
<td></td>
<td>819</td>
</tr>
<tr>
<td>Palanan Wilderness Area</td>
<td>Isabela</td>
<td>LOI 917 and 917a</td>
<td>8/22/79 and 9/7/79</td>
<td>Undetermined</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iloilo</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jalaur River WFR</td>
<td>Calinog, Iloilo</td>
<td>Proc. 601</td>
<td>6/28/90</td>
<td></td>
<td></td>
<td>9,228</td>
</tr>
<tr>
<td>Maasin River WFR</td>
<td>Maasin, Iloilo</td>
<td>Proc. 16</td>
<td>2/12/23</td>
<td></td>
<td></td>
<td>6,150</td>
</tr>
<tr>
<td><strong>Davao Oriental</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mati WFR</td>
<td>Mati, Davao Oriental</td>
<td>Proc. 222</td>
<td>7/2/67</td>
<td></td>
<td>890</td>
<td>4 811.44</td>
</tr>
<tr>
<td><strong>Proclaimed</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Isabela</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern Sierra Madre Natural Park</td>
<td>Palanan, Divilacan, Maconacon, Ilagan, San Pablo, Cabagan, San Mariano, Dinapigue, and Tumauini, Isabela</td>
<td>Proc. 978 RA 9125</td>
<td>3/10/97 4/22/01</td>
<td>359, 486</td>
<td>18</td>
<td>5.951.27</td>
</tr>
<tr>
<td><strong>Davao Oriental</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mt. Hamiguitan Range Wildlife Sanctuary</td>
<td>Brgy. Macambol, La Union, and Sergio Osmeña in Mati, San Isidro and Governor Generoso, Davao Oriental</td>
<td>RA 9303</td>
<td>7/30/04</td>
<td>6,834</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

LOI—Letter of Instruction; Proc.—Proclamation; RA—Republic Act; WFR—watershed forest reserve.
Table 4 presents a list of the IPs living in or near the study sites, and a profile of those that possess CADTs.

<table>
<thead>
<tr>
<th>Province</th>
<th>IPs</th>
<th>Tribe</th>
<th>Area in hectares</th>
<th>No. of IP right holders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isabela</td>
<td>Agta</td>
<td>Agta</td>
<td>340,500.88</td>
<td>2,733</td>
</tr>
<tr>
<td></td>
<td>Agta-Dumagat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Applai</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ayangan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bago</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bontok</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bugkalot</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Calinga</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dumagat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gaddang</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ibaloy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ibanag</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Itawis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kalanguya</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kalinga</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kankanaey</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Parananum</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tingguian/Itneg</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tuwali</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yogad</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iloilo</td>
<td>Ati</td>
<td>Panay-Bukidnon</td>
<td>1,748.90</td>
<td>1,526</td>
</tr>
<tr>
<td></td>
<td>Panay-Bukidnon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Halawodnon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Davao Oriental</td>
<td>Kalagan</td>
<td>Mandaya</td>
<td>19,151.44</td>
<td>3,259</td>
</tr>
<tr>
<td></td>
<td>Mandaya</td>
<td></td>
<td>14,540.32</td>
<td>2,339</td>
</tr>
<tr>
<td></td>
<td>Manobo</td>
<td></td>
<td>19,860.87</td>
<td>3,330</td>
</tr>
<tr>
<td></td>
<td>Mansaka</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Carino 2014.

**2.3.2 Data collection tools**

This study employed archival research, KII, and FGD as data collection tools to address the following research questions (refer to Table 5).

In this study, archival research played a key role in the systematic interpretation and analysis of various available documents from respective government units and agencies, and other pertinent organizations.

KII, however, allowed the research team to collect the first-hand experiences and expert knowledge from among practitioners, implementers, and administrators of different tenure instruments used in governing forest lands in the Philippines. This also gave the research team the opportunity to converse with target participants who provided their insights and perspectives on the research questions as well as their recommendations toward a unified tenure instrument. Guide questions were used to standardize the implementation of KII as semi-structured, face-to-face, in-depth interviews (refer to Annex 4).
Table 5. Summary of the research details

<table>
<thead>
<tr>
<th>Questions</th>
<th>Objectives</th>
<th>Source of data</th>
<th>Data collection tools</th>
<th>Data analysis tools</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the facilitative and obstructive factors to a unified tenure instrument system in the Philippines?</td>
<td>To analyze the factors that determine the success of a unified tenure instrument system in the Philippines</td>
<td>Policy, program, and project documents; department issuances and annual reports Practitioners/field staff</td>
<td>AR KII FGD</td>
<td>CA DAAn GT</td>
</tr>
<tr>
<td>What are the aspects (i.e., requirements, procedures, and elements) necessary in harmonizing the tenure instruments in forestry sector?</td>
<td>To examine the various features of a unified tenure instrument system in the Philippines</td>
<td>Primary data collected from the research participants at both the national and local/field office levels</td>
<td>KII FGD</td>
<td>CA GT</td>
</tr>
<tr>
<td>What policy strategies can be employed to achieve the unified tenure instrument system in the Philippines?</td>
<td>To determine the necessary policy strategies to implement a unified tenure instrument in the Philippines</td>
<td>Documents Heads of offices Middle-level managers LGU administrators</td>
<td>AR KII</td>
<td>CA DAAn GT</td>
</tr>
</tbody>
</table>

AR—archival research; CA—content analysis; DAAn—Document analysis; FGD—focus group discussion; GT—grounded theory; KII—key informant interview.

Finally, FGDs were used as a venue for selected individuals to discuss among themselves some selected topics/issues surrounding the harmonization of land tenure instruments in the Philippines. The research participants in the FGDs included the:

- Community Environment and Natural Resource Officers (CENROs)
- Municipal Environment and Natural Resource Officers (MENROs)
- Provincial Environment and Natural Resource Officers (PENROs)
- Provincial, City, and Municipal ENROs
- Protected Area Superintendents (PASu)
- LGU representatives/administrators
- NCIP/DAR/DILG/National Irrigation Administration (NIA) representatives/administrators
- NGO representatives/officers
- PO representatives/officers
- IPs
- Mining industry community relations officers/managers

The FGDs were facilitated using the guide questions listed in Annex 5. The fieldwork activities were carried out over a period of 5 days per case study site.

Table 6 presents an indicative work plan for the fieldwork.

Table 6. Timetable of the fieldwork

<table>
<thead>
<tr>
<th>Date (inclusive of travel days)</th>
<th>Case study site</th>
<th>Number of participants</th>
<th>KII</th>
<th>FGD</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 20–24, 2015</td>
<td>Davao Oriental</td>
<td></td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>July 27–31, 2015</td>
<td>Iloilo City</td>
<td></td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>August 3–7, 2015</td>
<td>Isabela</td>
<td></td>
<td>8</td>
<td>4</td>
</tr>
</tbody>
</table>
2.3.3 Data analytical tools

In analyzing the collected data, this commissioned study employed three analytical tools, namely, content analysis (CA), document analysis (DAn), and grounded theory (GT) methodology. CA is an analytical method with which collections of texts can be examined and hence understood. This involves counting of various aspects of the content of a material through thematic analysis of the data in order to determine the underlying meanings and contexts of texts.

DAn is also a qualitative analytical tool, which allows the researchers to interpret and give meaning especially around assessment or evaluation topics. DAn also involves coding and thematic analysis of data in order to comprehend, compare, and summarize the information presented in various documents on the same topic.

Lastly, GT is also an analytical tool that can deal with archives, documents, and transcripts of KII and FGD. GT can guide the researchers in seeking out patterns and structures of meaning to substantive topics/areas from the responses of the research participants, especially during KII and FGD. However, in this study, the GT methods of analysis will be used primarily in order to code and generate themes from the materials and transcripts. This would greatly assist the researchers in summarizing the relevant information to address the research questions and in producing outputs for this consultancy work.

2.3.3.1 Other activities related to the commissioned study

Moreover, a number of consultation meetings were conducted by the research team with various audiences and sectors. These were held with the objective of seeking comments and inputs on the study’s preliminary results and of ensuring the results’ ownership by the intended end users. Table 7 summarizes the details of these meetings.

<table>
<thead>
<tr>
<th>Date</th>
<th>Audience</th>
<th>Nature/purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2–3, 2015</td>
<td>FMB staff</td>
<td>Consultation workshop</td>
</tr>
<tr>
<td>July 10, 2015</td>
<td>FMB staff</td>
<td>Inception workshop</td>
</tr>
<tr>
<td>August 18, 2015</td>
<td>Directors of:</td>
<td>Multi-Agency Advisory Group Meeting (MAG)</td>
</tr>
<tr>
<td></td>
<td>1. FMB</td>
<td>(refer to Annex 6 for related documents)</td>
</tr>
<tr>
<td></td>
<td>2. BMB</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. LMB</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. NCIP</td>
<td></td>
</tr>
<tr>
<td>August 25, 2015</td>
<td>DENR heads and staff</td>
<td>Preliminary presentation of results</td>
</tr>
<tr>
<td>September 22, 2015</td>
<td>Various stakeholders</td>
<td>Policy conference on:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) Governance of Tenure</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) Financing and benefit sharing in REDD+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) Drivers of deforestation and forest degradation</td>
</tr>
</tbody>
</table>
3
Analysis of tenure issues at the national level

This portion of the report is based on KIIIs and FGDs at the national level. These involved government officials from various departments, and representatives of international agencies (GIZ, Global Environment Facility), of IPs, various NGOs, and the Congressional Policy and Budget Research Department of the House of Representatives. Unless other sources have been mentioned, the following pages contain statements and opinions of different stakeholders in a summarized form. In some cases where a variety of opinions have been presented, these are mentioned in the sections. The statements or opinions may not be attributed to a specific person or institution.
3.1 The land and forest situation in the Philippines

Interview partners see unregulated use and the absence of enforcement as main root causes for deforestation in the Philippines. Unclear legal situations and land conflicts are caused by more than 60 often-conflicting laws governing land administration in the Philippines. The consequence of this legal situation and of the inexistence of a unified land information system is the issuance of overlapping titles, agreements, and concessions, including in declared protected areas. The 1987 Philippine Constitution provides general principles on land ownership, recognition of ancestral domains, and natural resource protection as basis for statutory law. Simultaneously, IPs use customary law when ruling within ancestral domains.

A total of 53% of the Philippine land area have been classified as forest land. However, the Philippine State does not have the capacity to manage this land effectively, more so after the introduction of the rationalization program in DENR, which has reduced the number of staff continuously. The alternatives, to hand over forest management to local communities, families, or LGUs, have also been reduced in terms of area covered and in terms of perspectives:

- In 2013, DENR declared a moratorium on the issuance of new forest management agreements (such as CBFMA and other CBFM instruments, covering approximately 4,800,000 hectares in 2011).
- Approximately 50% of Certificate of Stewardship Contract (CSC), granting tenure of forest land to individual families, have expired in the last years and have not been renewed up to date.
- DENR is not willing to continue co-management agreements with LGUs. DENR’s argument to discontinue co-management with LGUs is the loss of control over forest lands.

Although 15.81 million hectares are classified as forest land, data about actual forest cover in the Philippines vary between 5 and 7 million hectares. Approximately 85% of these remaining forests are located within ancestral domains, either recognized as CADT or in the process after being claimed as ancestral domains. Although the recognition of indigenous ownership over land covered by primary and secondary forest is no guarantee for forest protection, it is an important chance to strengthen sustainable forest management and enforcement.

The VGGT is hardly known among national institutions and organizations, with the exception of NGOs and GIZ staff who had been directly involved in past studies in relation to the VGGT. The VGGT can serve as guidelines for a reformed unified tenure system in the Philippines, given that they address such issues as IPs, customary and informal tenure, land administration, spatial planning, conflict resolution, and others.

In the Philippines, land can only be classified by the Congress. The actual classification into forest land, mineral land, protected areas, and A/D does not correspond to the situation on the ground any more, requiring the reclassification of land. In addition, even the legal process to delineate forest land has not yet passed Congress.

3.2 Existing tenure arrangements

Most officials of the DENR and its offices understand the term “land tenure” as limited to tenure agreements on public land. Others understand “land tenure” as any bundle of rights that individuals, groups, or legal entities have over a piece of land.

An assessment of different land titles and tenure instruments (CADT, CBFMA, IFMA, Certificate of Land Ownership Agreement [CLOA], CSC, PACBRMA) regarding their impact on livelihood, equity, and natural resources was realized during the study by a FGD with NGOs and members of the FMB. The assessment showed relatively good results for CADT, CBFMA, and CLOA. CADT are communal titles issued by NCIP, CLOA are individual titles issued by DAR, and CBFMA is a communal tenure agreement issued by DENR. Although CADT and CLOA are permanent titles, CBFMAs are limited to 25 years plus 25 years in the case of renewal. CADTs are often issued on land considered as public land, but this land is no longer under public control after the issuance of the title. CLOA should be issued on A/D land, but in practice, they also are issued on public land, even within protected areas. The FMB denounces this practice as illegal. Legally, the DENR can authorize the release of public land for agrarian reform, allowing the issuance of CLOA by DAR. The impact of CBFMA varies, depending on the structure and performance of the organization that has been awarded the agreement. Although NGOs claim the good ecological status of ancestral domain areas, FMB criticizes the sale of natural resources in ancestral domains, especially in the south of the country, with negative impacts on their ecological sustainability. As reaction, the DENR at local and regional levels control the transport of forest products outside ancestral domains. The FGD provided little information about PACBRMA and so the team could not assess them. IFMA was assessed as less positive, both in social and environmental terms.
3.2.1 Ancestral domains

Ancestral domains (CADT) are the most disputed tenure regime in the Philippines, due to the size of area covered by CADT and CADC. Even the question of how many hectares of ancestral domains have been titled or claimed is under dispute. Although the official NCIP website provides the figure of 6 million hectares as titled and under application, other interviewed partners mentioned 7–10 million hectares. In the Philippine Forestry Statistics of 2011, the number of 4,276,639 hectares of approved CADT and CALT is given. As most of the ancestral domains are titled or claimed on public land, these numbers significantly affect the area that will remain as public land if all claims have been processed: Deducting between 6 and 10 million hectares for ancestral domains, between 5.8 and 9.8 million hectares will remain as forest land area, from a total area of 15.81 million hectares of forest land before IPRA. This corresponds to 37%–62% of forest land. In addition, non-indigenous settlers are living in most ancestral domains. Normally, they can come to an agreement with IPs through a memorandum of agreement (MOA), if they respect the tribal plans (Ancestral Domain Sustainable Development and Protection Plan [ADSDPPs]). However, no new settlers are allowed within AD. Ancestral domain titles are infinite in time, providing tenure security and good opportunities for forest protection and for livelihoods. Already, they are covering most of remaining forests (85% according to NGOs, although this figure is unverified). However, the sustainability of the use of ancestral domains depends on the internal governance structures of the IP. In Luzon, unanimous decisions by the IP assembly are required if an applicant wants to use part of the land of the ancestral domain, and in Mindanao, datus have the competence to take decisions alone. Risks are corruption and that IPs render to the pressure from companies or from NCIP to give FPIC to unsustainable activities within their domains. In many cases, IPs who are now CADT holders have been CBFMA holders in earlier times, before NCIP was created. In general, ecological and livelihood impacts of CADT are assessed as positive, but the role of NCIP as a gatekeeper in ancestral domains is criticized as not being to the benefit of IPs. The recognition of CADT is also seen as a redress of past injustices against IPs. There is also a perception that CADTs may be better for forest protection as IPs have managed the forests in their domains for long periods of time.

Officials at the PENRO and CENRO levels complain about ancestral domains gaining control over the large land areas recognized as IP land. However, IPs and NCIP are complaining about the lack of awareness among other government agencies of the processes and provisions involved in implementing the IPRA Law. They consider that in the case of IPs, the government is dealing with someone of equal ownership rights and that IPs have owned their ancestral domains since time immemorial. The map of Region 11, provided and produced by NCIP, shows the extent of ancestral domains in the region (all green areas are approved CADTs, yellow areas are ongoing areas) and is shown in Figure 1.

3.2.2 Forest tenure agreements

The moratorium of DENR proclaimed in 2013 to not renew old or to issue new tenure agreements on forest land has led to a growing number of areas without regulated tenure regime. The expiry of CSC without renewal left many settlers on forest land with the status as “informal settlers.”

Although CBFMA, IFMA, CSC, and a number of other less significant instruments (such as FLAG, SP, etc.) are labelled as forest tenure instruments, much of the land in question is without forest cover. Most CBFMA areas have been replanted by communities, and much of CSC land is used for agriculture.

3.2.2.1 CBFMA

DENR officials and NGOs state a positive impact of CBFMA on livelihood. The impacts on natural resources vary between negative and positive, according to the internal structure of the PO. Not considering hindering factors such as the moratorium on new tenure agreements, the logging moratorium, and the discontinuity of forestry policies, the success of community-based forestry depends on the strength of the organizations (PO) that have been awarded CBFMA. There are various weaknesses of the 1,884 POs that have benefitted from CBFMA so far. Many POs were created for the sole purpose of the CBFM scheme. Thus, many do not have leadership and management capacities, and disintegrate after some time. Some POs provide benefits only to the leaders and include only part (20%–30%) of the community. An additional difficulty is the bureaucratic procedure required for the functions of CBFM (management plans, resource inventories, RUP, annual plans, etc.). FMB is revising these requirements in order to propose a “simplified community management plan.” According to FMB, the “5-year work plan” of a PO, if approved, already includes RUP, not requiring additional application procedures. Participatory resource monitoring and
Figure 1. Ancestral domain map of Region 11
Source: NCIP Region 11
resource inventory is a proposal coming from NGOs to simplify current procedures. In the last years, the logging moratorium and bureaucratic procedures to obtain RUP reduced incentives and made it difficult for POs to derive economic benefits from CBFM. However, many CBFMAs are functioning well if the POs are consolidated (especially PO created by IP) and if projects and programs such as National Greening Program (NGP) support them. In relation to forests, most CBFMAs are working on land where not much forest has remained. Therefore, the task of the CBMA holders is to promote regeneration or to plant trees, supported by the NGP, without having the security that they will be allowed to harvest.

3.2.2.2 IFMA

NGO as well as DENR officials consider the impacts of IFMA on social justice and rural livelihoods as lower than the impacts of CBFMA. In addition, livelihood impacts of IFMA are less, due to only seasonal employment and due to benefits for only a limited number of people. The opinions about ecological impacts of IFMA are divided—in many cases, illegal activities were based on a legal IFMA or other forest management agreements, but some forest recuperation and plantations were also observed. NGO and FMB officials in Manila criticized that economic benefits of IFMA are going mainly to companies and not to the rural poor.

3.2.2.3 CSC

CSC was considered a relatively successful instrument, granting rights to individuals for 25 years. The instrument harmonized with the predominant model of individual family agriculture or agroforestry on uplands. According to some interview partners, CSC areas had and have the best management and forests in good conditions. Half of approximately 500,000 CSC have expired. FMB plans to renew them within the frame of CBFMA.

3.2.2.4 CLOA

CLOAs are permanent titles over small pieces of land awarded by DAR in the framework of agrarian reform. Although the permanent nature of the title favors sustainable use, CLOAs have been sold in various occasions, leading to new landlessness and eventually new land concentration.

3.2.3 Open access areas and informal settlers

A large part of public land has been titled as CADT or CALT; other parts have been claimed as ancestral domains, in total approximately 6–10 million hectares, as indicated in Figure 1. Only approximately 5–7 million hectares of public land are still forested, partly within protected areas, partially under CBFMA, in protected areas, or protected watersheds, but most of the forest is on the land of IPs. According to NGOs, 85% of the remaining forest cover is located within ancestral domains.

Therefore, forest conservation should be realized in partnership between the IP and government. Ancestral domains fall under the governance of IP and NCIP; today, much of the remaining land under the jurisdiction of DENR is forest land where not much forest has remained. Much of this public forest land is de facto occupied by the rural citizens classified as “informal settlers,” who see this land as their property, pay tax to the local LGU, and are recognized by the LGU. In the past, 500,000 families had been awarded CSC by DENR for 25 years, but in most cases, this term has expired and certificates have not been renewed. Estimates consider 22 million Philippine citizens living as “informal settlers” on public land. Many other settlers had no tenure agreement in the past. Interview partners highlighted the importance of secure tenure of these settlers for good management, increased plantation of permanent cultures, and improved forest cover, as was the evidence from CSC areas in the past. The legalization of the de facto use of public land by “informal settlers” may be guided by the VGGT 10.1: “Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being” (Committee on World Food Security 2012). The principles of legalizing informal settlers should be to consider people who are there and care about sensitive areas. For this purpose, a clear policy on the legalization of their status is required. It is necessary to make an inventory based on a survey in cooperation with the LGU and to establish clear criteria on which settlers have legitimate rights and which do not. This survey should also make use of information of expired and valid CSC. Relevant criteria may be the productivity and ecological condition of the land; proven sustainable management; the primary occupation of settlers, their origin, and the time of permanence on the land; and the question of who put the settlers where they are and who supports them. As of today, no new settlers are allowed in ancestral domains and protected areas.

Although awarding tenure to settlers corresponds partly to DENR (on forest land and also within protected areas, if settlers have been there before their proclamation), another part of settlers live within ancestral domains and require agreements with the respective IPs.
Interview partners reported that almost all public forest land is claimed either by IPs or by migrants/settlers who have been there for some time. The regularization of these claims requires unification of the tenure system, conflict management, adherence to the Constitution and to the principles of social development, and protection of sensitive areas such as watersheds. There are overlaps between ancestral domains and protected areas, between ancestral domains and areas under tenure instruments, and between areas occupied by informal settlers and ancestral domains or forest reserves and protected areas, etc. De facto management and de facto occupancy of the land exist but are not legalized in many cases. However, many forests in protected areas are not sufficiently protected. Out of 160 protected areas in the Philippines, only 29 have a budget for biodiversity management; some are practically open access areas. So, in practice, open access is caused by the lack of enforcement in protected areas and in those areas that have not been used for farming in the past decades. In ancestral domains, IPs have, in most cases, established their management system in the past, leaving no open access areas.

Many open access areas of the past that had not been effectively protected are claimed now by settlers. The question is less what to do with open access areas, but on how to legalize the status of informal settlers, to give continuity to communities managing forests, and to find appropriate arrangements for sensitive areas (for biodiversity or watershed protection). For these forests or sensitive ecosystems, management arrangements with DENR, LGUs, local communities, and IPs are proposed below. It is expected that the legalization of land rights of “informal settlers” would also improve the vegetation cover by increasing the area of permanent cultures such as coffee and cocoa. This would require extension services and marketing support.

3.2.4 Positions on future land tenure governance

3.2.4.1 Individual and community tenure within community agreements
The FMB as well as NGO and other interview partners consider that individual tenure in forest land should be framed within community arrangements in order to ensure monitoring of the land use by the community and to reduce the administrative burden of public institutions. As much of forest land is actually used for farming, it is proposed that the forest should be managed communally, but farms individually, within the named framework of community arrangements.

3.2.4.2 Unified tenure instrument on forest land
During the consultation workshops commissioned by FMB before this study, one single tenure instrument was proposed, which may be awarded to all possible parties, such as POs, LGUs, companies, NGOs, and others, giving space to DENR to negotiate the conditions. Major elements of this proposal were captured in the proposal for LERMA. A single tenure instrument on public land given to different actors was accepted and welcomed in general by KII and FGD participants. However, some persons mentioned that there should be a prioritization of who should be awarded such tenure agreement. They proposed that priority should be given to those who are already there. The new tenure instrument may also replace the instrument PACBRMA awarded in protected areas, with conditions adapted to the protection objective.

At the same time, it was seen that the processes to award such instruments and the related permits for resource use must be simplified. Beneficiaries must be strengthened, both in internal governance and in forest management. Various persons also mentioned that a precondition for awarding tenure instruments should be the proven capacity of beneficiaries to manage resources sustainably, without providing answers on how to develop such capacities.

Resource management agreements as investment portfolios are not welcomed by everybody, based on past experience with IFMA and other resource investments. FMB officials and NGOs reported cases of drastic resource degradation in IFMA areas. They should be restricted to specific land.

As most uses can be covered by the new unified tenure instrument on public land, another tenure instrument is required for the subsoil. This may be the Mining Production Sharing Agreement (MPSA), regulating mining. At the moment, such agreements are the result of a lengthy process with changing conditions and a number of involved government institutions. The process requires streamlining and simplification, and a common process for the new unified tenure instrument on public land and MPSA in order to avoid overlaps and in order to link tenure with land use planning.
Interview partners mentioned the following conditions and principles for a unified tenure instrument:

- All temporary tenure and resource management instruments must be guided by the CLUP, the FLUP, and a unified map containing actualized information on all issued permits, titles, and land classification.
- On ancestral domain land, the FPIC by the IPs is obligatory.
- Organizations having proven sustainable management should be favored as well as those with strong internal structures.
- After the expiry of existing temporary tenure arrangements (CBFMA, CSC, IFMA, MPSA, and others), these may be transformed into the new proposed tenure instrument.
- The number of government institutions issuing temporary tenure instruments should be reduced to one or two, with consultation of specific line divisions or departments before the issuance of tenure agreements. Considering the actual jurisdiction, it seems appropriate that this institution will be a division of DENR.
- The term of such tenure instruments should be allowed to go beyond 50 years (at present, 25 + 25 years are the maximum).

3.2.4.3 Land use planning and forest protection

The FLUP and the CLUP identify and map production and protection areas within one local government area, such as areas for watershed and biodiversity protection, agriculture, production forests, etc. Tenure arrangements must be based on this plan. This means that for production areas, the tenure options are the new unified tenure instrument, CLOA, or A/D titles, if the land has not yet been titled or claimed as ancestral domain.

For protection areas identified in the CLUP, there are various tenure options:

- Protected areas under the NIPAS and BMB;
- Protected watersheds or locally conserved areas proclaimed by LGU, managed by hired forest guards (LGU or DENR) or by communities; and
- Indigenous conservation areas (ICCA) in ancestral domains.

For protected watersheds and locally conserved areas on public forest land, a tenure arrangement between the respective LGU and DENR is required. In this case, the DENR has a controlling function; in the case of ICCA, its function is technical assistance. Interview partners believe that the transfer of responsibilities to LGUs should depend on their capacity to manage natural resources.

3.2.4.4 Resource management agreements as investment portfolios

Opinions about awarding tenure instruments to investors are divided. Some say that in the past, such arrangements did not work; others are more optimistic or want them to be limited to specific types of land and under conditions that avoid conflicts between stakeholders.

3.2.4.5 Forest protection on private and CADT land

PPP of government with CADT and private title holders for resource protection are seen as a viable instrument, provided that technical support is given, that rules are established, and that government recognizes the traditional governance of IPs. Many see PPP as an opportunity for partnership that may include the payment for ecosystem services (PES) in sensitive watersheds. There is a need for a better regulation of PPP. In some cases, PPP function well with a multi-stakeholder approach (IP + university + NGO + DENR + DILG).

3.2.5 The need for a unified tenure system

The need for a unified tenure system has been discussed in the Philippines for the last years. This need is becoming more urgent as population grows and pressure on resources increases. The following three reasons are important arguments to take the political decision toward a unified tenure system.

Approximately one-third of the Philippine population (22 million citizens) living in the uplands as “informal occupants” have no written land tenure arrangement and are often considered as illegal or landless. Many of these families were benefitting from CSCs, which have expired and have not yet been renewed by DENR. Nevertheless, this group lives mainly from natural resources
on public forest land or on ancestral domain land. The regularization of their tenure situation in the framework of a new unified tenure regime has to address the situation of this population:

- To ensure the human rights and to enhance the livelihoods of these people. They need tenure security to invest in order to increase food production and income.
- To reduce disasters caused by natural hazards: Settlements in risk areas must be restricted.
- To increase the forest cover and sustainable use of the land (according to interviews, areas with secure tenure showed evidence of good tree plantations and forests; settlers with tenure security plant more permanent tree crops).

The Philippine tenure system is based on a series of sector laws and policies that are not consistent and leave space to contradictions and overlapping. Typical cases are ancestral domain titles awarded in forest lands or national parks, mining concessions overlapping ancestral domain titles and protected areas, or land above 18° slope (which is forest land according to the Forestry Code of 1975) within ancestral domain land. The existing Convergence Initiative among DENR, DA, DAR, and DILG was not able to resolve conflicting positions on tenure, and very few decisions were taken in the last years. Apparently, a number of conflicting issues had not been taken to the NCIP. The lack of decisions leads to the absence of governance and enforcement in contested areas that are considered “open access.”

At present, with the absence of governance or efficient control, areas without legal tenure regimes have practically become areas where sustainable forest use and conservation is not guaranteed, although various parties may claim ownership. Clear tenure arrangements are necessary on these lands to maintain the forest cover, the biodiversity, and the provision of environmental services such as water for drinking purposes and rice production, to protect roads and settlements from erosion and landslides, etc. Many of these areas correspond to the land at present de facto managed by informal settlers or claimed as ancestral domains.

3.2.6 Conclusions regarding tenure policy

The remaining 5 or 7 million hectares of forest should be managed either as protected areas with the involvement of neighboring communities or under a communal forest regime, either by LGUs and communities or by IPs within ancestral domains. The combination of communal forestry and individual commitment for farms seems viable. Both can be combined under a communal tenure agreement. Therefore, the proposal that DENR enters into partnership agreements or PPP with private land owners and CADT holders is a useful option for critical areas (for biodiversity or watersheds). Such agreements may include technical support by DENR and, eventually, PES by local government.

The policy for public lands without forest cover should consider informal settlers living on that land and the principles laid out in the part about open access and informal settlers. For the perspectives of REDD+, the carbon ownership of Philippine forests will remain with the owners of these forests: in the case of ancestral domains with the IP or ICC, in the case of protected areas with the State (DENR), and in the case of titled private land with the respective title holders. In the case of tenure instruments on public land, carbon ownership should be part of the tenure agreement with the PO, LGU, or entity who is the beneficiary.
4 Elements of a unified tenure system

Beyond overall policy guidelines based on the VGCT, the implementation of a unified tenure system requires the following elements:

- One unified spatial database and one unified land register for all land
- Comprehensive land use planning at the local level as the basis for awarding tenure (the basis for CLUP is laid out in the guidebooks published by Housing and Land Use Regulatory Board [HLURB])
- Simplified, fast, and not costly procedures and types of tenure in a unified tenure system (the simplified community management plan, actually under revision, may fulfil this requirement)
- Conflict resolution structures
- An adequate institutional setup, limiting the number of awarding institutions
- Public support for the implementation and success of the unified tenure system (allocated budgets and technical support).
4.1 Unified spatial database and land register

It is necessary to establish one unified spatial database and one unified land register for all land, public and private, and to make it available to the public. The VGGT states in 17.4: “Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. The spatial accuracy for parcels and other spatial units should be sufficient for their identification to meet local needs... To facilitate the use of records of tenure rights, implementing agencies should link information on the rights, the holders of those rights, and the spatial units related to those rights,” and in 17.5: “States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions” (Committee on World Food Security 2012). Such a unified spatial database (cadastre) and land register for all public and private lands can be established using global positioning system technology. Main difficulties are overlapping titles and rights. To proceed, the best strategy is to start with information on uncontested areas and to proceed to areas with contested claims in a second step. At present, land-based information has to be collected from different sources. The Department of Finance has a map of real property that is used for collecting taxes. There are some cadastral maps but not for all areas and not updated. The National Mapping and Resource Information Authority (NAMRIA) provides a base map that is topographic but does not have information from the different departments on issued titles and tenure instruments. NGOs have consolidated considerable information, and line departments have their own databases. Once passed in Congress, the Land Administration and Reform Act (LARA) would provide conditions for such a unified database and land register. As this may not be the case in the near future, the consolidation at the regional, provincial, or LGU level may be a realistic option but requires a policy decision. The initiative of NGOs led by PAFID may be another option: They have brought information together on maps, creating a National Land Spatial Database, including information about ancestral domains, CLOA, protected areas, and mining tenements. However, there is a certain risk—that issued titles and rights are incorrect and do not correspond with the situation on the ground and that the attempt to consolidate the spatial database would create too many conflicts of overlapping titles and rights. Therefore, a unified spatial database must be accompanied by conflict resolution structures.

4.2 Conflict resolution

A major conflict exists between NCIP and DENR regarding the jurisdiction over ancestral domain land. Although DENR has the impression that the control over forest lands in ancestral domains has been lost, IPs fear that NCIP is giving up power when joining the National Convergence Initiative. IPs feeling as owners of their domains are doubtful regarding the role of NCIP as their representative in these government structures and mechanisms. The final issues at stake are: Who owns the land and who owns the resources above and below the ground? A solution is possible but requires a clear national policy that does not leave space for interpretation.

Conflict resolution at the local level is required to resolve conflicting claims without involving the courts at an early stage. Courts may serve as the ultimate resort, after all attempts of out-of-court settlements between departments and rights holders have failed. Municipal, provincial, and regional level land boards may be established for this purpose with the support of the Mediators Network for Sustainable Peace or other organizations experienced in this field. Such land boards may be created involving actors forming the existing regional and provincial level Land Use Committees. Both mediation and arbitration may be used to resolve land conflicts. Within ancestral domains, customary conflict resolution mechanisms involving the elders should be used. The VGGT 21.2 and 21.3 recommend that “States may consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights” and “States should strengthen and develop alternative forms of dispute resolution, especially at the local level” (Committee on World Food Security 2012). Another existing conflict resolution structure is the National Mediation Council under the Department of Justice.

Some conflicts are created by the transition from one tenure regime to another. In approved CADT areas, some IPs do not respect existing IFMA which term has not yet expired. A policy on a unified land tenure system must also include transitional rules.

4.3 Adequate institutional setup

Although most agree that forests should be managed by communities, the State has an important role to control the forest and its management according to plans in public forest lands that are not falling under ancestral domains, with less influence in private and A/D lands. For the continued cooperation of DENR with IPs, it is proposed to reopen the DENR’s Indigenous Cultural Communities Affairs Division, which was closed after the creation of NCIP. NCIP lacks capacity in resource...
management, so the remaining Philippine forests require a partnership between DENR/FMB and the IPs on whose domains most of the forests remain. In addition, protected areas under CADT (ICCA) should be supported by DENR. ICCAs have been recognized by IPRA and NIPAS. The support to forest management on land that is not under the jurisdiction of DENR (ancestral domains and private land) will be a new role of the institution. This means that DENR, in ancestral domains and on private land, will be more of an advising and technical than a controlling institution. DENR can still promote sustainable forestry in these areas instead of leaving this task to others, regarding that neither NCIP nor other institutions have strong technical capacities in forest management, and IPs and local communities have relevant indigenous knowledge in this field.

Capacities of DENR to control forest land and protected areas in the field are limited. Institutions most present in the field are LGUs, barangays, and communities (with some forest guards). It is estimated that more than 50% of LGUs have capacities in forest governance, although such list could not be verified. However, the cooperation between DENR and LGUs is very limited. The co-management agreements of DENR with LGUs are practically terminated. In the future, an arrangement among DENR, LGUs, and IPs could be the basis of a viable framework for a tenure system based on proper integrated resource use planning. The draft National Land Use Act (NaLUA) is mainly in harmony with the VGGT. Its enactment is therefore an important step toward the translation of the VGGT into national law, but it has not passed Parliament in the last 24 years. In the future, the NaLUA could be a framework for cooperation in comprehensive land use planning; at present, the new HLURB guidebooks on CLUP already serve as such a framework. In this process, the responsibility of the LGU is to involve other agencies and civil society.

Different government institutions give communities, companies, or individuals access to public land, under different forms of titles and arrangements: DENR, MGB (which is considering itself as an autonomous agency, under the umbrella of DENR), NCIP, and—in some cases—DAR, although agrarian reform should consider only A/D lands, as well as others. LGUs are involved as the government units most knowledgeable about the local situation. However, the coordination among the different actors responsible for land tenure is difficult, among departments, between NCIP and DENR, between departments and LGUs, as well as within departments. NCIP, DAR, LRA, LGUs, and, within DENR, FMB, BMB, MGB, and LMB are the main relevant institutions for tenure on public lands. The LARA bill proposes that, in the future, a new Land Administration Authority should be responsible for issuing land titles. However, in order to build up support for this bill to pass Congress, it is necessary to publish and promulgate the problems and conflicts caused by the lack of coordination of a multitude of agencies issuing tenure rights, titles, and concessions. A movement bringing together stakeholders affected by these problems and conflicts may be necessary for sufficient public pressure.

There are other government institutions with land rights or power over land: National Power Corporation, NIA, Philippine National Oil Corporation, and Department of Energy (DOE). The land area covered by these institutions is approximately 626,000 hectares excluding areas awarded by DOE (Philippine Forestry Statistics 2011). In the future, the issuing of land rights by these institutions should be limited to avoid confusion and overlaps. If land is needed for public purposes such as infrastructure, energy, water supply, etc., then such need has to be documented by the respective institution, and tenure rights may be awarded by another entity.

Various attempts have been made to institutionalize coordination mechanisms and to bring public institutions dealing with natural resources to the table to resolve problems and conflicts. The National Convergence Initiative on natural resources includes DA, DAR, DENR, and DILG, but not NCIP. Although, in 2014, the issue of a unified land tenure system came up in the National Convergence Initiative, its members were not able to discuss and to streamline policies between departments, and have not produced relevant results so far, but NCIP may serve as a future platform. Shortcomings are partly due to the fact that issues of conflict have not been taken to the National Convergence Initiative, so the initiative was not informed. Another problem was that its executive power depends on the consensus of the institutions involved.

In 2012, a Joint Administrative Order (JAO 1.2012) was proclaimed between DENR, LRA, DAR, and NCIP that before a title or an agreement is issued, the institutions should meet to avoid overlaps. However, it took one year for the JAO to be signed and agreements were rare.

Interview partners agree that joint decisions are difficult, because institutions fear losing power and control over the land. In addition, within DA and DENR, there are conflicting interests. Therefore, an EO from the President or a law is required to spell out a clear policy with clear guidelines.
4.4 Public support to the implementation and success of the unified tenure system

The allocation of budgets is necessary to implement the spatial database and the land register, to support conflict management mechanisms and to realize forest and comprehensive land use planning. Funds are also necessary to capacitate and to support the right holders technically and financially in order to enable them to use awarded land sustainably, though a related issue is to whom these funds should be channeled. Of course, this requires channeling the funds to the government and private agencies (service providers) capable of providing technical services for sustainable resource uses both to the POs and IPs. Especially, agroforestry should be systematically supported. Agroforestry is a developed strategy combining the improvement of livelihoods and the state of the vegetation cover. Such support should include extension services, training, marketing support, and seedlings of good quality. The NGP provides seedlings but falls short of the other required elements such as technical support. Support in terms of capacity development and monitoring is also required from DENR, LGUs, and NCIP for the establishment and protection of ICCAs.
5
Proposed policy instruments for a unified tenure system

In order to translate the mentioned recommendations on a unified tenure system into a policy instrument, different options must be considered.

A unified land tenure system for public land must include forest land, mining concessions, protected areas, and ancestral domains. This focus goes beyond the responsibility of the DENR but involves other public institutions as well. The situation requires a policy instrument beyond a sector DAO, which is limited to one department.
Several factors are hindering tenure reform in the Philippines: powerful clans that have little interest in reform, politicians who are big landlords, lobbying of influential groups at the level of Congress and departments, sectorial thinking, conflicts within departments, and the unwillingness of departments to give up power. Experience of the past has shown that the results of voluntary cooperation of departments are limited: There were JAOs, Joint Circular Memoranda, the National Convergence Initiative, and others, but the problems of overlaps and the lack of a common database have not yet been solved.

Most contacted persons consider JAOs or other instruments based on the agreements between departments as too weak for the challenge of establishing a unified tenure system. Interviewed persons agree that an EO from the President or even a law is necessary to ensure that the policy for a unified tenure system is binding for all the relevant institutions. A respective law would still be a stronger instrument, because it cannot be cancelled by a new government. However, the NaLUA bill has been in the Congress for 24 years, waiting to be passed. This experience shows that a law on controversial issues such as tenure and land use may take too long to pass in Congress, as it can be expected that affected departments and stakeholders with vested interests will delay the law-making process. Therefore, most interview partners agree that the EO option is the most suitable policy instrument. The weakness of the EO as compared to a law is the possibility that the next president may change it, but still at the moment, it seems to be the most viable option.
6 Case studies

6.1 Analysis of tenure at the field level: Results of the case study in Isabela (Region 2)

The fieldwork in Isabela was accomplished through 8 KII respondents and 24 FGD participants in 5 FGDs. The KII respondents included the Regional Directors of DENR and NCIP as well as the representative of the DILG Regional Director, Assistant Regional Directors, City/Provincial ENROs, Protected Area Superintendents, NGO, CENROs, and PENROs, and the 5 FGDs consisted of representatives from the PENROs/CENROs, Regional Technical Divisions, DAR officials, IPs/NCIP, and PASus. This case study report recapitulates the in-depth discussions of the research participants on four themes, namely: (1) experience on land tenure instruments; (2) issues related to tenure and proposed solutions; (3) cooperation among institutions and organizations; and (4) unification of land tenure instruments. Lastly, the conclusion summarizes the points made by the respondents during the fieldwork.
6.1.1 Experience on land tenure instruments

6.1.1.1 CADT

CADT is considered as anti-development by some DENR officials as it invokes a sense of insecurity over tenure of the land and confusion among government agencies. First and foremost, the IPs are not made to understand that their entitlements are to the ancestral domain only, and the resources on or under the domain do belong to the State. CADT being a title should not be taken as contradictory to the land use categories like protected areas. For example, Mt. Apo is a protected area covered by a CADT. However, there should be no problem according to the IPs if only the FPIC is satisfied prior to the approval or implementation of any projects covering their domains.

Second, the boundary delineation survey of ancestral domains is also a pressing concern. As it is right now, the ancestral domains do not have clear boundaries because there is no proper coordination between DENR and NCIP to resolve this difficulty. In fact, some DENR personnel are even surprised upon discovering that some areas under its jurisdiction had already been covered by CADT applications. On the part of DENR, it was not able to anticipate this problem as the targeted area for its project was not previously covered by CADT during the study preparation. However, when the project was on its completion, it was declared by NCIP that a CADT application was in progress. However, as the NCIP insisted that CADT is only a formality, it required DENR to secure FPIC from the IPs for its project.

Third, this vague interpretation and implementation of the IPRA Law raised more issues focusing on the capability of the IPs in managing their ancestral domains. Could IPs level up in terms of how they manage their ancestral domains when they do not have the technical knowledge required of such management? Another issue centers on which agency should issue the title for CADTs (i.e., whether it is DENR or NCIP). Even within CADT, there are titled areas—could this be a case of double-titling?

Finally, the IPs also suffered from issues surrounding their CADT application with NCIP. The CADT in Isabela is considered one of the largest CADTs in the country, covering five municipalities where Agtas reside. However, during the social preparation, the CADT application among Agtas was subdivided into sub-tribes based on geographic location to facilitate the processing of the CADT application. There arose problems on boundary overlaps among the claims of these sub-tribes. There was a resolution to settle this conflict that regardless of political boundaries, if individuals identified and had proven themselves as Agta, then the claimants would be allowed to occupy the area being claimed. However, what is dragging this application was the conflict in San Mariano, wherein there were Calingas who are occupying certain areas in CALC 182 issued by DENR. Although Calingas are said to be descendants of Agtas, the Calingas are not considered part of the Agta CADT application. Initially, the Calingas wanted to be included in the Agta CADT; thus, the solution offered was to include the Calingas in the Agta CADT but have them sign a document saying that the area they are occupying is part of CADC 182. Other Calinga leaders agreed on this offer, but some did not want to sign on this document because they realized that they wanted a Calinga CADT instead of riding on CADC 182 or the Agta CADT. Such conflict of interests has trampled the opportunity to push through the Agta CADT. As a result, the Agta communities are still on the wait for the approval of their application.

6.1.1.2 Integrated Social Forestry Program

There were a number of ISF projects in the province, which were converted into CBFM. These areas are now being used for the NGP of DENR, which actually encouraged the communities to enter into the said program. One issue that was presented during a discussion is the case of the IPs being driven away from the ISF areas. This case concerns the Ayangan tribe, a migrant Ifugao tribe from the Cordilleras who resettled in the Agta communities due to economic reasons. The area was applied for an ISF but was not renewed eventually. It was said that by the 1980s, outsiders started claiming these resettlement areas with titles. The IPs did not know about these titled areas; all they knew was that their areas were public lands. The IPs wanted to renew the ISF, but this was not allowed because of the presence of the original certificate of title or transfer of certificate title in this area. Thus, the migrant IPs were being evicted out of the former ISF area. Meanwhile, in other ISF areas, like in Quirino, the ISF holders are in the process of renewal. However, there were former holders who have already transferred their rights or sold them to other interested parties.

6.1.1.3 CBFM

Some CBFM POs had already entered into NGP as source of livelihood as they had already harvested their planted Gmelina trees. Moreover, there was lack of monitoring and technical assistance from the DENR according to an NGO assisting the CBFM POs who are also IPs. During phase out, the DENR personnel were practically out of the area; thus, communication and assistance were not prioritized for the beneficiaries. It was raised in these discussions the need to renew the land tenure agreements as soon as possible. Guidelines should be set on how these agreements/contracts could be renewed and on what grounds. Another issue raised by the participants is the production sharing agreement within CBFMs. Some private owners were even requesting DENR to lower the percentage of sharing from 5% of the gross income to 5% of the net income.
6.1.4 CLOA
Although CLOA is a recognized legal instrument, there were incidences wherein CLOAs were issued within protected areas or production forests by DAR. This eventually created conflict between DENR and DAR. Some DENR personnel pointed to the fact that some areas have moderate to flat lands where the tractor can still be operable and no longer have a good forest cover rendering the entire landscape as “agricultural.” However, they agreed to the halting of the issuance of CLOAs because of the shrinking forest lands. In order to resolve these conflicts, joint investigation teams composed of DENR, DAR, and NCIP representatives were formed. The fundamental policy adopted is that whatever is existing prevails. A case on point was Mt. Apo, wherein a portion of Mt. Apo with about 4,000 hectares was declared as A/D during the Marcos regime. During the time of President Cory Aquino, these lands were reverted back to timberlands. Such action had created confusion among the people because they thought the lands were awarded to them legally by the government, yet were being taken away from them by the same government.

6.1.5 IFMA/SIFMA
There were no active IFMAs/SIFMAs in Region 2 because of the suspension on the implementation of such by the central office. No guidelines have been issued so far. However, SIFMA holders had already neglected their areas by not installing any improvement or development therein. In the case of a PO of San Mariano, the PO applied for a SIFMA, but it was not able to push it through because of the suspension of SIFMA operations. However, the area being applied for had already been developed as it combined reforestation, agroforestry, and crocodile conservation. In San Mariano, there are 100 crocodiles in 7 crocodile sanctuaries.

6.1.6 Special Agreement for Protected Area (SAPA)
SAPA was never implemented in Region 2 because of the suspension of the processing of SAPA application. The DENR personnel do not have any idea why such was suspended. There was no issuance of SAPA in the region. Nonetheless, the PA transcends even A/D lands. When A/D lands were included in the declared PA, the usual policy is to respect the prior rights of these peoples. This rule is also applied to CLOAs. Private titles in PAs are considered by the participants as not inconsistent. For them, it is consistent because the category of PA is landscape and not strict nature reserve, and landscape includes anthropogenic activities including in A/D lands. The concept of PA embraces everything because its main concerns are the natural features, sceneries, mountains, river systems, grasslands, and agriculture. It depends on the definition: if it is a strict protected area, then they have to separate the A/D lands from the PAs. However, if there was an ardent need to forge an agreement with people on the use of a PA for a particular purpose, then the foresters resorted to MOA with barangays. For example, there was a MOA with a local barangay to safeguard a waterfall. Unfortunately, as this was just a temporary agreement and is anchored on the chief executive, the protection or special use would not hold with the next chief executive. Each chief executive who is elected has a different priority so there is no continuity in terms of the MOA.

6.1.2 Issues related to tenure and proposed solutions
6.1.2.1 Expiration and cancellation of land tenure agreements
In Region 2, a number of SIFMAs were cancelled due to the following reasons: (1) there was no development in the areas or, if there were, they were not properly reported to DENR; (2) beneficiaries did not comply with the 90-10 mix of forest trees and cash crops in favor of the latter; (3) they did not pay the appropriate rental fees; and (4) beneficiaries were “selling” the tenure instrument or renting them out without notifying the RED/PENRO. On the part of the DENR, there was lack of monitoring of these SIFMAs, which contributed to such neglect. Instead, DENR opened these areas to the NGP.

However, IFMAs still exist. These sites were the former areas covered with TLAs. Moreover, there were FLGMA that had already expired or expiring, and they needed to be endorsed by the LGU for the renewal. However, if the FLGMA holders who are usually of higher socioeconomic background are in conflict with current LGU officers in terms of political party affiliations, the LGU would not endorse their applications. It is becoming burdensome for these FLGMA holders because the processing of FLGMA or renewal thereof becomes politically motivated. Thus, it is not a good principle to get endorsement from local executives. In fact, this requirement is new. In the past, there was no need for any LGU endorsement. It was the RED who assessed the application. However, now, the technical process has gained political colors. This was not anticipated by the drafters of this policy. It should be technical evaluation only.

6.1.2.2 Private titles within public lands
There are many cases in Region 2 wherein existing private titles are located within public lands. This happened primarily because DAR had encroached into the timberlands in the past. For example, recipients of ISF projects were awarded with CLOAs
by DAR. As a result, ISF beneficiaries were able to sell their rights to whoever was capable of paying them money. Even until now, they are still selling these rights over the awarded ISF areas. Those who bought these rights also did some development in their respective areas. There was no ownership involved, except in a case where the ISF area was issued a title. Frustratingly, it was also a DENR personnel who did so. It was a CENRO who processed the CLOA, and the PENRO signed on the papers to be issued by DAR. At present, DAR had conferred its commitment to support DENR in settling issues regarding these titles and that it would no longer encroach into the forest lands. In turn, DENR advised these private title holders to convert their private lands into agroforestry sites.

Second, patents were also issued within forest lands. In the past, it was also the CENRO who issued these patents. There had been DENR personnel who had manipulated the process to grant these personal intentions to own the lands. With the issuance of Regional Memorandum Circular 2, the procedure in securing land tenure instrument was modified to go through appropriate channels in order for it to become foolproof.

There are also a number of claimants who were able to register their lands through their payment of tax declarations and establish their positions before the advent of the PD 705. Some of these claimants were even beneficiaries of CBFM. At present, private companies are interested in leasing within forest zones. These include cellular companies such as Smart, Globe, and Sun cellular. However, instead of going directly to DENR for contracts, they contacted individual claimants and even paid more than DENR. The DENR tried to run after Smart and Globe cellular companies, but they were not giving in to DENR. Instead, they were fighting legally against DENR. It was only once that they were able to claim payment from these companies, giving DENR a meager amount of Php 3,000 and giving these individual beneficiaries Php 10,000.

6.1.2.3 CLUP and FLUP

There are a number of FLUPs that have already been approved for Region 2. These FLUPs became the basis of the endorsement of the Sangguniang Bayan. They are also being integrated into the CLUPs. These CLUPs will still be covered by technical reviews of appropriate agencies and are updated according to the guidelines set by the law. However, some LGUs have not yet integrated their FLUPs into their CLUPs. In order to implement this, the LGU needed Php 500,000 as start-up fund. DENR-CENRO issued a MOA with the City ENRO in order to formulate these plans. The target is the second quarter of 2016. In Isabela, the participating CSOs include WWF and B+Wiser. Finally, FLUPs and CLUPs should be taken as prerequisite for all tenure instruments, yet there is no policy governing the preparation of FLUPs, only CLUPs.

6.1.2.4 Interpretation of the IPRA Law

The discussions among the respondents, particularly the DENR personnel, highlighted their interpretation of the provisions of the IPRA Law. According to DENR personnel, in the IPRA Law, the ancestral domain is what belongs to the IPs, but any resources found above and below such domain still belong to the DENR as mandated by law to manage these natural resources. They consider that if the IPs insist otherwise, then whatever they cut within their ancestral domains must never be brought out of their areas because if they do, the DENR will surely run after them. The DENR will not confiscate the lumber while within the ancestral domains, but once they bring these out, the IPs will be reprimanded/incarcerated. Indeed, what the IPs could not understand is the regulatory power of DENR.

Most of the respondents questioned why the IPRA Law seems to have become the highest law above all DENR policies. Issues to be resolved are the management of the critical watershed areas covered by the CADT and the duration of the FPIC process. If DENR intends to bring in development projects to manage critical watersheds, it must secure FPIC from the IPs/NCIP. Even simple application processing needs to secure FPIC. This is where project proponents had to shell out a huge amount to secure FPIC. However, if FPIC is denied, this becomes part of the unrecoverable cost of a failed project. DENR has the opinion that this should not be the case and wants the process of securing FPIC to be standardized.

The following are some of the cases that were cited during the discussions.

- **The case of the migrant IPs.** Igorots are migrant IPs in some parts of Isabela. Their livelihood option is considered very destructive because they are into farming in the uplands. This is the reason why the mountains in Vizcaya are not properly maintained because of the farming activities. The Calingas, on the other hand, are into hunting so their concerns are more into forest conservation to preserve their hunting grounds.

- **The case of Ivatans in Batanes.** The entire island of Batanes was issued one CADT. It was considered as the ancestral domain of Ivatans. Within the CADT, however, there are existing individual titles. This situation gives rise to a number of conflicts with other tenure instruments, especially the private titles issued in Batanes. Furthermore, the NCIP had even
pushed to claim Itbayat as ancestral domain even if this area is in the forest zone. The NCIP has disregarded the forest zone and treated it like agricultural lands. Once CADT is issued on these areas, it would be difficult for DENR to issue SAPA or foreshore lease agreements, creating further contentions.

- **The case of IPs in PA.** The IPs are claiming some portions of the PA. For example, in Quirino, CADT/CADC is present in the PA. For DENR, there is no problem because the IPs respect the PA; thus, there is no inconsistency despite the overlap. It is clear for DENR that there is a distinction where the PA is a classification and not a tenure instrument. On the other hand, the overlap between the Northern Sierra Madre PA and CADT, some respondents were raising the issue of having only one instrument from one agency in order to avoid further complications. Thus, according to the PASu, in the management plans of their respective PA, they incorporate the ADSDPP of the IPs in order to integrate the IPs into the process more meaningfully.

Some of the persistent issues with the IPs include the following: (1) it is a must that you pay respect to them (“dapat nagpapasintabi sa kanila”); (2) the process of securing the FPIC is difficult even if the project is from IPs as other IPs could not understand that if the project is from them or will benefit them, then FPIC must no longer be required; and (3) there are varied degrees of organization among IPs; for example in Aparri, the IPs are not yet organized, whereas the Bugkalot are more advanced IPs in terms of organization and coordination, and the Agta are wanderers.

- **Land use disputes.** These issues are focused on the land use conversion. In Magapit, for example, the people wanted to remove the PA in their area because they wanted to convert the game refuge sanctuary to protected landscape as the area is being abused by people. They wanted such reclassification into protected landscape in order to drive away people out of the area. However, the respondents recognized the fact that the area is accessible to people as it is on flat lands. To complicate this situation, the Cagayan Economic Zone (CEZA) had also encroached into the area. Backed by a RA, the area granted under the CEZA had an overlap with the PA in Palawi, Bawang, and Magapit.

- **Insurgency problems.** People could not agree if they would stay or abandon their areas because of insurgency problems in their areas. Insurgency problems beset most of the upland areas, although after the insurgency problem, people usually come back to their homesteads. What they were usually afraid of was when they could not come back right away to their original positions, their areas were grabbed by other claimants. Some areas were claimed by lowlanders through fraud. Although the Agtas were aware of the fraud, they did not know how to contest these using official documents/titles being produced by the illegal claimants.

### 6.1.2.5 Devolution issues

Land tenure instruments were not devolved such as CBFMA, IFMA, and SIFMA. According to LGU representatives, the issuance of these land tenure instruments should have been devolved. There are contracts in Ilagan that cover huge areas but were not devolved to LGUs. The LGUs had been demanding DENR to devolve these areas because of no development happening in the area as those who were given the contracts were not following the terms and conditions of their agreements. The 25-year period is too long; in fact, it was only during the first 3 years that these recipients were able to establish some developments in their respective areas. After such short-term period, they normally abandoned their areas. There should be an assessment by DENR whether these contracts can be rightfully cancelled.

### 6.1.2.6 Use of tax declarations in land prospecting

The problem is that people are claiming that they are the “registered” owners of the land because they had been paying tax according to their declarations. However, tax declarations do not mean land ownership. It is the DENR that still has jurisdiction over the areas. The LGU was clear about this, but it still collects tax from these claimants nonetheless.

### 6.1.3 Cooperation between institutions and organizations

#### 6.1.3.1 Policy support

There have been a number of joint memorandum circulars between DENR, DAR, and NCIP, sometimes involving PA and IP. However, the policies are only written and not implemented. Although an EO is more powerful, still it depends on the local leaders and administrations as to how and which policies to prioritize. In the rationalization, there is an increase in the frontliners of services. But who will handle these tenure instruments? In what agencies? On what budgets? These are the commonly raised issues regarding policy support during the discussions.
There is a convergence program among agencies in Region 2. When asked of their relationships among the government agencies working on these land tenure instruments, these agencies articulated the following.

6.1.3.2 Relation of DENR and NCIP

According to DENR respondents, the relationship is cordial compared to DAR. It is professional as both understand each other’s mandate. However, one of the problems encountered with NCIP is the difficulty in securing FPIC as it is a slow and tedious process. Moreover, the approval of plan for CADT must also pass through DENR to avoid complications. The results of the survey must be submitted to DENR for inspection/approval. However, some respondents believed that the delineation of boundaries in these areas is based on emotions and not backed up by science. Whatever is declared and pointed at by the IPs becomes part of their ancestral domains.

Second, DENR and LGUs were excluded during NCIP consultations. Why not include DENR and LGUs? Way back in the 1990s, the DENR was the one surveying for the CADC, resulting to a more positive relationship with IPs, especially in the conservation of areas. However, with CADT, the IPs became domineering; they would also require FPIC from government agencies. However, whenever they encounter problems, the elders would run to the DENR. Such inconsistency creates negative attitudes among DENR personnel against the actions of the elders in particular and the IPs in general. Meanwhile, the turnover among NCIP commissioners is very fast. This is also a problem for DENR because a number of projects were withheld due to this turnover. For example, there was a multinational company that wanted to invest into environmentally friendly windmills in the region. However, because of the slow processing of FPIC, the plan did not materialize. In another case in Vizcaya, a misunderstanding such as this was easily cleared because the DENR and NCIP had clear understanding as to what FPIC is about, resulting to faster processing and release of FPIC.

Even in PA, where NCIP as well as the mandatory representatives of IPs are members of the PAMB, the main contention involves the slow granting of FPIC to biodiversity researchers. In Palawi, even if the PAMB had already granted permits to the researchers, the IPs still demanded that the researchers get permits from them, rendering the collective decision futile. Sometimes, the NCIP would also meddle with titled properties. For example, there was a Taiwanese businessman who would like to partner with a local land owner. However, according to NCIP, the businessman needed to secure FPIC. Several respondents declared that NCIP considers the IPRA Law being above other laws.

There was an attempt to harmonize with NCIP, but this was not fully implemented because it was not clear as to who would be the lead agency in the harmonization. The meeting with NCIP was not successful because according to NCIP, they should be the one to dominate (”masunod”). According to NCIP, under IPRA, even if an area is not yet covered with a CADT, the area being applied for is already considered as ancestral domain and that the issuance of the CADT is just for formality.

6.1.3.3 Relation of DENR and LGU

The relationship between DENR and LGU is generally positive because of the MOA between DILG and DENR. The LGU was given deputization to process land titling, and they act as partners of DENR in processing requests. The DENR has authority to sign on A/D lands. Among coastal LGUs, they have the jurisdiction over beaches and foreshore. They even built nipa huts as recreational facilities without notifying the DENR. There is also co-management set up between DENR and LGU, for example, the LGU in Nueva Vizcaya. The LGU established recreational facilities in their area consisting of dorm, recreation, mini-zoo, and fishponds. However, the problem lies on the fact that the municipal LGU was not getting any share out of the income of these facilities. Although the employees of this facility came from the same municipality, there was not a clear income-sharing arrangement between the municipal LGU and the provincial LGU.

Meanwhile, the drafting of the CLUP/FLUP has cemented the coordination between DENR and LGU. The DENR is involved in the process; in fact, it was DENR that spearheaded the preparation of CLUP/FLUP through the support of the Ecogov of the United Nations Development Programme (UNDP). It takes 2–3 years for CLUP to happen. Once done, there is need to legislate the CLUP/FLUP, which comes handy especially in securing permits, FPIC, and other transactions regarding land uses.

At the provincial LGU, the relationship between DENR and the PENRO is good. If there are land disputes, the current governor convenes all the parties to talk about the land dispute. Thus, the provincial government becomes a mediator. Through the help of the legal office, the governor himself finds a way to settle the dispute amicably. Land disputes in the province usually involve overlapping boundaries and contesting claimants (e.g., university vs. illegal settlers). The provincial government through the Sangguniang Panlalawigan settles these disputes over land.
6.1.3.4 Relation of DENR and DAR
There is a joint memorandum agreement between DENR and DAR in settling the issues concerning CLOAs in timberlands. An alternative solution offered by one CENRO in Isabela is to convert the CLOA to agroforestry farms to achieve peaceful coexistence in the timberlands. It was also suggested to some CLOA holders to engage and continue with NGP projects to rehabilitate the area (i.e., timberlands with no trees anymore). These have been initiated by the CENRO to avoid conflicts among the end-users and DENR.

The respondents rooted out the main problem on CLOAs to the fact that lands and DENR are not well coordinated. DAR is continuously reviewing the references of these CLOAs. Both DENR and DAR agree to cancel these CLOAs. Other CLOA holders were able to sell their CLOAs to others, but this right cannot be transferred. In Quirino, for example, the people want patents for their lands and not CLOA because of the many restrictions of the CLOAs. If you want to get a loan, it is better if you have land patent than CLOAs, as CLOAs cannot be transferred to others; they are not acceptable collaterals for loan. CLOAs are like stewardship contracts.

6.1.3.5 Relation of the Mabuwaya Foundation (MF) with government agencies
MF, a prominent NGO in Isabela, has strong institutional relations with DENR and DILG/LGUs/Bantay Sanctuaries. Mabuwaya does not have projects with NCIP due to the: (1) difficulty in securing permits/FPIC from NCIP; and (2) expensive costs entailed in the participation of NCIP personnel in any phase of the project. In fact, in its project on biodiversity survey, MF advised the researchers to divert the project so as not to cover the areas covered by NCIP. In this way, MF was able to avoid dealing with NCIP.

6.1.4 Unification of tenure instruments
According to RD, this issue on the unification of land tenure instruments was already raised by him as early as 2003. This is a good proposal according to him as DENR has numerous land tenure instruments, but the priority is always given to protected area over the production forests. With the unification of these tenure instruments, there should be an alignment between protected forest and production forest purposes.

The RD proposes that there should be one land tenure instrument in order to: (1) make possible the maintenance of SIFMA areas; (2) formulate one objective for the many strategies in the management of the timberlands; and (3) get/provide more technical assistance from/by the DENR. DENR should assist tenure holders from establishment to the marketing of forest products.

On the other hand, he proposes the role of NGOs to be: (1) maintaining visibility of staff in the area especially if the area being managed is large; (2) acting as external evaluator—to suggest improvement in the project; (3) be present in the process all throughout—cannot abandon the PO being assisted; and (4) the common project encountered by NGOs is the lack of technical information, education, and communication on projects; for example, the NGP lacks information dissemination among possible contractors.

He considers that the unified land tenure instrument must also standardize the procedures, but the resource management agreements should be customized depending on the: (1) recipients; (2) land area to be covered; and (3) lease period as this should be variable depending on the progress, capability, and activities of the lessee. There was the opinion that the tenure for open lands and forest lands should be awarded by the DENR because of its mandate. For private lands, especially for CLOA holders, it should be the DAR. For CADT areas, there should be joint issuance by NCIP and DENR. On what purpose? The following purposes should be considered: (1) protection; (2) agroforestry; (3) transmission lines; (4) energy; and (5) others.

Another consideration should be the mode of payment such as PES as this must include the true economic value of resources. Taxes can also be charged for direct and indirect taxes, as well as sales tax or value-added tax of forest products. However, taxes may become disincentives for applicants. In terms of user’s fee, true economic value of the forests must be considered. Moreover, a portfolio approach consisting of investment plans for both private and public sectors should be considered as well. Some respondents suggested two instruments to be given, namely, a CRMA for open areas and the MPSA for mining purposes. This purpose can be taken as comparable to forest lands and must co-adjust with the CRMA especially for protection purposes. Other suggestions include the possibility of privatization of the forest lands and the co-management agreements with CLOA holders.

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According to the respondents, in the unification of the tenure instruments, there should be distinction of roles, clear guidelines, and specific people to handle the implementation. There should be clear assignments so that it would be simple and non-confusing. Furthermore, the unification of these tenure instruments must also be done to address the existing issues such as encroachment. DENR must be the primary agency on land management, and there should be full coordination with DENR. The CLUP and FLUP play an integral role in delineating boundaries to avoid encroachment. Thus, there is a need to finalize the land use classification, identify a person in charge over the land uses, and the tenure instruments must be clear.

Finally, the harmonization should start from above as there is no problem at the grass roots. For as long as there is proper consultation with the top and bottom levels, then the implementation of this unified land tenure instrument will be effective. If the requirement of this unified land tenure instrument is a DAO, let it be DENR. If it is an EO, then it should involve other government agencies.

6.1.5 Conclusions

What stood out in this case study is the recognition of the respondents of the difficulties surrounding varied land tenure instruments, thus allowing DENR personnel to improvise in “harmonizing” tenure instruments even at the regional level only. Their concerns over the unification of land tenure instruments cover multiple issues, actors, and stakes. Fortunately, the relationships among government agencies are said to be openly cordial, which should not hinder the implementation of the proposed unified land tenure instrument once created. The main issue lies on the negative interpretation of DENR personnel on CADT and the procedures thereof brought about by the requirements for FPIC, which result into a lengthy process until consent is reached. Their desire is to make the government-to-government requirements more fluid and coordinated to avoid delays, overlaps, and contentions in delivering their respective functions. One way out that they recognized was the preparation of CLUPs and FLUPs as prerequisite to efficient convergence among DENR, LGUs, DAR, HLURB, and NCIP. Although a number of DENR respondents have not given up on the idea that the lead agency in this unification is the DENR, the respondents nonetheless have demonstrated how they could work hard in ensuring the successful implementation of the proposed unified land tenure instrument in the forestry sector.

6.2 Analysis of tenure at the field level: Results of the case study in Iloilo City (Region 6)

There were three KII respondents and eight FGD participants who were recruited during the fieldwork in Iloilo City. The KII respondents consisted of the Regional Director and Assistant Regional Director for Technical Services of DENR, and the Chief of the Technical Services and Management of NCIP; the FGD was composed of representatives of CENROs, PENRO and Regional Office, MENRO, NIA, and PO (Katilingban sang Pumuluyo sa Watershed sang Maasin [KAPAWA]). This case study report summarizes the perspectives of these research participants on four areas, namely: (1) experience on land tenure instruments; (2) issues related to tenure and proposed solutions; (3) cooperation between institutions and organizations; and (4) unification of land tenure instruments. Finally, some conclusions are drawn from these themes.

6.2.1 Experience on land tenure instruments

The following accounts reflect the experiences and opinions of the respondents on five main commonly identified land tenure instruments in Iloilo City and its nearby areas.

6.2.1.1 CADT

In Region 6, most of the ancestral domains are located in the timberlands. However, in terms of CADT, the NCIP has not yet fully determined the boundaries of these ancestral domains. Thus, some DENR officials complained that whenever DENR has projects in the timberlands, the IPs would suddenly claim over the area and demand for a FPIC. FPIC could have been the basis for the harmonizing of the interests of both parties/agencies. However, NCIP cannot declare their boundaries yet as these are merely based on their notion of “since time immemorial,” which cannot be easily established on the grounds.

The issuance of FPIC has been a long-standing issue on IPs. In fact, the IPs are said to have been using the FPIC as bargaining chip in order to demand for benefits from any project as a matter of the social responsibility aspect of any project entering their areas. CADT has become an “arrogated” titling because the IPs want all lands. One official even exclaimed, “Imagine, 2 million hectares all for IPs only?” Accordingly, ancestral domains are there to give due respect to the lands, but the use of
resources therein must be under the law. IPs should indicate in their ADSDPP their desire to manage their areas properly and appropriately. There should be convergence effort to level off understanding of the provisions of IPRA Law.

6.2.1.2 IFMA
Only those respondents who were connected with DENR or whose jobs were related to forestry were able to relate to this instrument, and some respondents were not even familiar with IFMA as a land tenure instrument. Accordingly, its predecessors include the Tree Farm Lease, Agroforestry Lease, and Industrial Tree Plantation; however, there were difficulties in renewing these predecessors because the basis for renewal has become obsolete, making both IFMA and its predecessors incompatible and irrelevant to one another. In the renewal of this instrument, the DENR should follow the old procedures to be fair to the applicants. There should be simplification in the requirements. In fact, let the parties agree on the terms and conditions of the contract, and treat these areas as "backyard plantation." Unfortunately, no investments were entering the IFMA/SIFMA areas because of peace and order situations.

6.2.1.3 CSC
Likewise, the CSCs were also one of the more popularly discussed land tenure instruments among the respondents. It was pointed out during the FGD that because of the lack of guidelines on the renewal of the CSC, concerned parties like the POs were confused on how to go forward with the harvesting of planted trees that were planted sometime in the 1990s. It was later expressed that if a site validation were to be conducted in these CSC areas, the original holders might no longer be located as they are not the ones occupying the areas anymore. These CSCs could have already been transferred to "new" holders, despite the terms and conditions stipulated in their CSC contracts.

6.2.1.4 CBFMA
The CBFM in Maasin, Iloilo City, can be considered as a self-sustaining CBFM project, which was formed under the agreement between DENR and KAPAWA, a PO federation. Because of the operations of the federation as an upland community-based bamboo and abaca industry, this CBFM in Maasin, Iloilo, has been hailed as a model for sustainable livelihood project within an environmentally critical area. The main livelihood is intercropping of bamboo, abaca, and coffee in their CBFMA areas.

Despite the wanting support of the LGU, the POs under the KAPAWA umbrella were able to sustain the livelihood opportunities through the facilitation of the DENR. The DENR provided technical assistance in building the KAPAWA members' financial and enterprise capabilities to develop their CBFMA area, which was awarded in 2002. An NGO named Environmental Science for Social Progress helped the CBFM beneficiaries in organizing themselves into a PO. Moreover, according to its current officials, the member POs were able to generate its initial capital from their participation in the reforestation projects of DENR. Through this, the KAPAWA as a federation of all POs in the area was formed.

However, some respondents raised issues surrounding CBFMA and how vast tracts of lands were entrusted on a fledgling. What is the responsibility/accountability of the PO? How do we make sure that they will do their responsibilities? What is our hold on them? What if they were not able to deliver their contract with DENR-LGU? Some also suggested making the coverage of CBFMA more limited or smaller in size; others recommended making the CBFMA barangay-based instead of having the central office controlling the approval/administration of the management of these areas.

6.2.1.5 FLAG/FLAGT and FLMA
FLAG/FLAGT is considered as still very new instruments in the case of Iloilo City, and some officials have no experience with these instruments. The case of Boracay was brought to the discussion on the issues surrounding FLAG/FLAGT wherein a land title was issued covering the timberlands of the island to a family in Aklan. The whole island of Boracay is declared as ancestral domain, but every square meter of it is already claimed through a title. Should this title be respected? Who would contest it? If a DENR employee brings this matter to court, then the case becomes "personal" as opposed to "official duty" as he/she would be on his/her own. Meanwhile, the hotels and restaurants thriving in Boracay have been increasing. Unfortunately, the government has yet to receive its shares from such. In fact, the DENR has not done proper monitoring on the said island as it lost its visitorial power over the titled areas.

Another case to demonstrate these inconsistencies in implementing FLAG pointed to the case of the Century Peak Energy Corp. and its energy development project of a 5.1-MW Igbulo plant in Igaras, Iloilo. The DENR has facilitated the conduct of surveys and preparation of documents through the CENRO. The FLAG was said to have already been approved by the central office with other requirements still on process. This particular application was swamped with issues such as: (1) problems with claimants over the encroachment of the FLAG application in reforestation areas/timberlands being occupied by the community; (2) proponent is a politically powerful personality; and (3) construction of access roads without considering the situation in...
the community during rainy days. However, some respondents presented a counter-argument that this particular FLAG will support the NGCP and build roads that are needed by the community for transportation.

6.2.2 Issues related to tenure and proposed solutions

6.2.2.1 Delay in processing CADT application
The fact that ancestral domains in Region 6 are remotely located in the uplands causes delays in the actual delineation survey of these areas. Ancestral domains are usually inaccessible to land transport, and with worst weather conditions, it would take 2–3 weeks of work for a team of five. Moreover, the delay was also attributed to the inability of the DENR to follow the 30-day rule in processing/issuance of its technical comments on the nonoverlapping certification. If DENR could not issue its official comments on the request, then NCIP had to put on hold the processing of the application. In terms of projections (i.e., mapping), the DENR had issued incomplete data, if not erroneous. The references/monuments were non-existent due maybe to: (1) the DENR personnel could not penetrate the deep/inner parts of the ancestral domains; and (2) the DENR lacks geodetic engineers to process and make correct projections. As a result, there is no cadastral survey in the timberlands where the ancestral domains are usually located. The boundaries are usually established based on natural landmarks as there are no records of political boundaries in these areas. These technical issues mainly cause the delays in the processing of CADT application, which is usually blamed on NCIP. In Iloilo City, no official data on coordinates have been approved yet by the NAMRIA.

More recently, the Assistant RD had reported that the regional cadastral map has been accomplished as of May 15, 2015. More specifically, forest boundaries are done and the monument establishment in the forest lands was conducted in accordance with the national standards in terms of height and spacing. NAMRIA did supervise this activity, including the geotagging of all DENR projects.

6.2.2.2 Issuance of FPIC
Most of the respondents agreed that the processing of FPIC is long, tedious, and burdensome. It was estimated by NCIP personnel that on average, it will take mining projects 1–2 months in processing FPIC, whereas it will be variable for hydroelectric and forestry projects. The time period required depends on the number of barangays or total land area being covered by the project. Accordingly, the smaller the area, the shorter the processing will be. Moreover, the processing of FPIC also depends on the requirements imposed by DENR, as DENR has to endorse the application to NCIP, which will then issue the non-overlap certification.

This negative perception of the FPIC is shared by other agencies aside from DENR. For example, in the implementation of the long-overdue Jalaur River Multipurpose Project, the NIA encountered difficulties in securing FPIC as there was an overlap between the watershed area covered by the said project and a CADT. The NIA openly opposed the proposition of the NCIP that the IPs should manage the watershed area with NIA; however, the NIA believed that the concern on watershed management is a mandate of DENR. According to a NIA representative, it is easier to deal with DENR because the policies are clearer compared to NCIP whose main policy is still subject to various interpretations. NIA's suggestion is to forge a co-management agreement among the NCIP, NIA, and DENR in order to avoid the perpetual turfing even among government agencies.

Meanwhile, in a news article, the IPs were “restless” over the delay in the said project but pointed to the prerequisite of FPIC to determine the “just compensation of their destroyed farms and products including a relocation site for their community” (Philippine News Agency 2014). According to NIA, the IPs also demand to get their share of the user’s fee for the use of water. They were also asking for livelihood projects and basic services (e.g., schools, bridges, access roads, health centers, day care centers), which NIA cannot provide as these items are excluded in the budgetary requirements of the said project.

6.2.2.3 Cancellation of existing tenure instruments
The problem with DENR is that the tenure instruments are being cancelled at the middle of the contract. Such drastic action brings about instability to the land tenure instrument, which eventually boils down to the lack of sustainability and continuity of the process that instills fear of investments on the applicant. DENR cancels on paper but not on the ground. Even if the cancellation was already communicated to the tenure holders, the DENR does not have the capability and human resources to drive away people who are using the area for pasture, for example. Then, such cancellation becomes useless in the practical sense.
6.2.2.4 Land speculations and land use conflicts

LGUs do not know how nor have the political will to address this problem on land speculation, especially as they directly benefit from the land taxes collected from these claimants. However, DENR is not that aggressive in pursuing and preventing dubious tax declarations over timberlands. Although these LGUs recognize that these land claimants do not hold ownership rights over these taxed timberlands, they still consider these tax declarations as their share over the use of the land without considering the implications of these tax declarations on the land speculation in forest lands.

Land use conflicts, on the other hand, arose from the difference between what had been declared by PD 705 as forest lands and what are actually practiced on the ground, which are on agricultural lands. Other land use conflicts cover disputes over political boundaries and the intended land uses without approved CLUPs/FLUPs. These CLUPs/FLUPs should be the basis of DENR in resolving land use conflicts. However, it must have its thematic maps from which to extract derivative maps to determine the land uses of the concerned areas.

6.2.2.5 Issues on user's fees

What ought to be the basis for user's fee: zonal value or opportunity cost? In zonal value, there is distortion of the value of the land. It does not capture the true value of the resources therein. Thus, there is a need to determine the economic value of timberlands, and zonal value does not do justice to this. Meanwhile, the opportunity cost as applied in user's fees is quite nearer to the idea of the use of the forest. The assigned value must also capture the environmental cost of using the land. The sad part about the user's fee is that the PO claims that they are not getting their own share of these user's fees. For example, in Maasin, the PO members sacrifice themselves in protecting the watershed area, yet they are not getting any portion of the user's fees as well as additional support in terms of additional livelihood projects from the Metro Iloilo Water District. How much should be brought back to the community?

6.2.3 Cooperation between institutions and organizations

The relations between institutions and organizations in Region 6 are complex. There is a continuous blurring of jurisdiction among government agencies, resulting to a more belligerent attitude among government officials and employees regarding the appropriate turfs of their respective agencies.

6.2.3.1 Relation between DENR and NCIP

A JAO among DENR, NCIP, DAR, and LRA was issued in order to resolve the contentious areas in the implementation of their mandates, policies, and procedures. There is no one who has experience in dealing with conflicts in ancestral domains. Even DENR employees are not aware of the provisions of IPRA nor the meaning of ancestral domains. For DENR, CADT is still its jurisdiction. However, NCIP insisted that the DENR does not have jurisdiction over the land once it is awarded to the IPs yet admitted that the management and regulation over the resources still remain with DENR.

Although it was openly declared that NCIP has a good working relationship with DENR, there are still some issues that beset DENR projects whenever it tries to enter CADT areas. One of the persistent complaints among DENR personnel is that whenever the agency brings in a project, it is required by the NCIP to secure FPIC, whether or not the projects are developmental or non-extractive. Such results to: (1) the work of DENR doubles; (2) confusion because sometimes NCIP blocks the project although IPs want it; and (3) perpetual delays on the processing of applications and/or project implementation. NCIP clearance being required by DENR entails the processing of Certification of Non-Overlap and FPIC.

6.2.3.2 Relation between DENR and DAR

The relationship is generally good, but when they overreach into DENR's turf by issuing CLOAs on timberlands without the knowledge of DENR, then there is a problem. For example, in San Remigio, Antique, there were CLOAs issued on forest lands by DAR. In the past, DENR usually held meetings with DAR but not anymore.

6.2.3.3 Relations of DENR and LGUs

Some functions of DENR were not totally devolved to LGUs. For example, signed land tenure agreements have already expired, and these must be renewed by LGUs. However, the LGUs could not renew these lapsed agreements without having them pass through or processed by the DENR. Each renewal is subject to DENR's review, but there is no outright renewal for that matter. Due to the moratorium and delays, a gap in the renewal period from 2010 to 2015 was created. Moreover, the renewal could no longer be based on the old tenure agreement. There should be a change in the agreement, yet no technical guidelines had been issued to those who would like to renew their leases. Under the local government code, all the LGUs could do is to coordinate with DENR.
Meanwhile, the DENR faulted the LGUs for not preparing the CLUPs to which the FLUPs were to be integrated. Although the DENR is the one to initiate the creation of FLUPs, it is the LGU that should implement the preparation of such. The final product should be a Land Management Plan (LMP) that specifies the zones for biodiversity areas, agricultural lands, hazard-prone areas, infrastructures, illegal hunting, rituals/cultural areas, and production and protection forests. This LMP contains about 22–26 thematic maps that are used as overlay maps. The DENR conducts a series of consultations on these thematic maps.

### 6.2.3.4 Relation between NCIP and DAR

NCIP submits the results of the delineation survey to DAR for reference and comments. From DAR, the documents are forwarded to DENR, which is an added layer of red tape to a rather efficient processing of CADT application requirements such as Certificate of Non-Overlap. DAR does not hold any authority to issue such certification; thus, NCIP has to forward the documents to DENR, which has the authority. For example, DENR in Region 7 did not project the CADC in Bohol on its control map because there was inadequate information regarding these claims. In Negros Oriental, there are also CLOAs that were projected on the maps of DAR, which have overlaps with CADCs. If only these claims are properly projected on these maps, then it could have facilitated the processing of the CADT applications in NCIP.

### 6.2.3.5 Relation of NCIP and LGUs

Most of the LGUs are supportive of the CADT, but some were hesitant to support NCIP openly for political reasons.

### 6.2.3.6 Relations of NCIP and LRA

Processing with LRA is done in the central office. However, there is a delay in the communication between the central office of LRA and the Register of Deeds in the city/province, causing further delays in the issuance of CADTs. Moreover, there is a joint management circular on the fees to be charged in the processing of the title.

### 6.2.4 Unification of land tenure instruments

The unification of land tenure instruments, according to the respondents, should be done to arrest the overlapping functions, jurisdiction, control, management, and regulation of these lands. The main concern is how such unified tenure system would look like. Would it include the offices of DENR, DAR, LRA, and NCIP because these agencies are knowledgeable with the laws and policies governing land tenure instruments in the country? DILG must provide technical and logistic support to this office/system through training.

Such unification could be favorable in terms of: (1) not being subject to the influence of the change in politics, policy, or administration; (2) sustainability of projects beyond the period of 50 years; and (3) development of a prescriptive portfolio that is not applicant-dependent. In fact, it is easier to have a unified land use tenure system in forest lands as their boundaries are well defined. However, such unification needs to address and reconcile the different and oftentimes inconsistent intentions of each land tenure instrument. Would such harmonization be expressed in a DENR Administrative Order, Joint Management Circular, or an EO signed by the President of the Philippines?

The land management agreement in ancestral domains must be issued jointly by NCIP and DENR. NCIP shall require FPIC, and DENR shall provide technical review of the documents. Any projects coming into these areas must have affirmation from concerned agencies such as DENR, NCIP, and LGU. FLUP/CLUP must be a requirement and must be accomplished within the shortest time possible. For example, FLUP preparation must be done within 5 months until final draft. However, the process is expedited only if the LGUs have enough funds.

The requirements must be simplified. The policies must also be harmonized. Project implementation must start with a plan, anchored in good plans. These plans must be based on the FLUPs. FLUPs can be part of the performance targets of the government offices; there should be updating of current land uses. Implementation must be coupled with monitoring.

### 6.2.5 Conclusions

What is unique in this case study is the presence of a model CBFM site in Maasin, which was visited on-site by the research team to confirm and confer with some officials of KAPAWA, the federation of all POs in the said area. Three main lessons can be drawn from the success of this organization and may be considered as best practices that can inform the drafting of the proposed unified land tenure instrument. First, the KAPAWA was organized by an able NGO with focus on capacity building.
of the member-organizations of KAPAWA. Second, it was pointed out by the KAPAWA officials that it was easier to coordinate with only one national agency—the DENR—than deal with various government agencies and NGOs that may in turn create confusion. Finally, the livelihood opportunities poured in the area, thus sustaining the operations of the federation.

The issues confronted in other research sites are also expressed by the respondents in Iloilo City. Their concerns over the unification of land tenure instruments are grounded on the uncertainty of relationships among significant government agencies whose mandates are intertwined in terms of dealing with upland dwellers, forest-based livelihoods, and land tenure issues. Thus, it is important to them to simplify the unification system, requirements, and procedures, and to clarify the turfs held onto by these government agencies.

6.3 Analysis of tenure at the field level: Results of the case study in Davao Oriental (Region 11)

The field study focuses on the province of Davao Oriental but includes interviews and FGDs in Region 11 with officers of DENR, NCIP, DAR, and HLURB. The following presentation of results is based on the interviews and discussions conducted in the region and in the province, involving IP, mining companies, LGU, provincial government officers, and various government agencies.

6.3.1 Experience on land tenure instruments

The interviewed persons had experience with the following six types of tenure/titles: CADT, CLOA, CBFMA, IFMA, CSC, and MPSA.

6.3.1.1 CBFMA
DENR officials in Davao City at the regional level state that the impact of CBFMA on livelihood is weak, due to bureaucratic procedures and changing policies that limit resource use, but there is success in CBFMA areas with well-organized POs. The ancestral domain claims are causing insecurity among CBFMA holders. DENR officials at the province and municipal levels consider the impacts of CBFMA positive. They claim that all POs are functioning and benefiting from the NGP. Weaknesses are that only very few families benefit from the CBFMA and that there are tree-cutting activities ongoing in some of these CBFMAs. CBFMAs exist inside and outside ancestral domains.

6.3.1.2 IFMA
DENR officials at the regional level state that most IFMAs are failures, and many IFMA areas are abandoned. Livelihood impacts of IFMA are low, due to seasonal employment and benefits for a limited number of people. The opinions about ecological impacts of IFMA are divided—in many cases, illegal activities were based on a legal IFMA or other forest management agreement. CBFMA and IFMA are the main tenure instruments handled by the CENRO. IFMAs are mainly located inside ancestral domains.

6.3.1.3 CSC
Most CSCs have expired in the region, but DENR has guidelines to consolidate them into CBFMA. In the case of the protected area of Mt. Hamiguitan, they were pre-existent to the declaration of the protected area and have been respected by the protected area authority. ISFs are considered equal to CSC. A positive experience mentioned is people wanting proofs of their tenure over their landholdings and using this tenure to develop their lands for production purposes. One CENRO reports that most of the CSC holders, there are migrant holders and IP holders. The solution for the renewal problem of CSC can be in two ways: either CSC can be renewed in the remaining number of years of the CBFMA or people may simply join in the CBFMA without renewing the CSC.

6.3.1.4 PACBRMA
These are community tenure instruments in protected areas, but no existing PACBRMA have been reported by interview partners. Mt. Hamiguitan Range Wildlife Sanctuary is planning to introduce a PACBRMA with the families already living within the protected area. Some of these families had CSC contracts before the area was declared protected. So, the legitimacy of
Improving governance of tenure of these families is recognized by DENR, which is aiming at establishing a legal agreement instead of continuing with an informal situation.

6.3.1.5 CLOA
In Region 11, the agrarian reform has worked purely with private agricultural lands, not on public forest land. Some CLOAs have already been sold, leading to new landlessness. Tenure security was highlighted as the most positive aspect of this kind of tenure. It corresponds to a private land title.

6.3.1.6 MPSA
Mining companies complain that the process of receiving a mining concession takes approximately 6 years, passing through various processes and institutions—MPSA by MGB, Environmental Compliance Certificate (ECC) by Environmental Management Bureau, FPIC by IPs and approved by NCIP, and land conversion by DENR. They consider the complexity of this process as being too complicated and would prefer one single agency. Mining in ancestral domain requires a FPIC by the IPs, which is not given in all cases. IPs also negotiate the share they will receive before the issuing of FPIC. MPSAs also exist inside and outside ancestral domains.

6.3.1.7 CADT
In Region 11, 23 CADTs have been titled, 11 have been claimed, and 7 are in the pipeline. 850,000 hectares have been approved; 385,000 are still in process and still have to be delineated. The last title was issued in April 2015. As a consequence, very little is left of public lands in Region 11, and most are ancestral domains. There is hardly any more area under forest land. However, until now, CADTs are not absolute secure titles, as their enforcement is weak. The CADT of Mandaya suffered encroachment by coal mining operation, some public agencies do not respect the law related to CADT, and some even gave titles within ancestral domains. Green areas in the following map are titled CADT, yellow and blue areas may be declared CADT in the future, and much of the land colored in white is private land. Some officers see CADT as creating social problems, as the access to resources is given to a limited part of the population.

Although CADT and CLOA are titles without time limitation, other instruments are awarded for a maximum of 25 years, renewable for another 25 years. A major problem of these instruments is the fact that in the last years, 25-year-old tenure instruments, especially CSC and CBFMA, have not been renewed, due to policy, due to the lack of the required endorsement by LGUs, and due to problems with the evaluation of the areas and with obtaining FPIC in cases where areas had been declared ancestral domains. Therefore, if tenure instruments have expired, no RUP is given; so, many people who have invested and planted trees cannot benefit from their investment. The lack of renewal is linked to the moratorium on issuing tenure agreements, which is effective in Davao Oriental since 2010.

Many problems are based also on the non-coordination of public institutions. Agencies issuing land tenure instruments are especially criticized for not involving other actors, such as LGU and IP, before instruments are awarded. A negative factor in Region 11 is the political violence, especially in Compostela Valley, which made farmers to abandon their lands and leave areas without any governance or management.

An interesting model regulating resource use is the plan of a zoning ordinance based on a municipal CLUP outside the Mt. Hamiguitan Range Wildlife Sanctuary, establishing a “Sustainable Forest Use Zone” where certified trained resin tappers will be allowed to tap almaciga trees. This arrangement requires as precondition a MOA between DENR and the respective LGU, a modality which is difficult to achieve at the moment but may be replaced by a LERMA awarded to the LGU in the future. The model is developed by BMB and UNDP.

6.3.2 Issues related to tenure and proposed solutions

6.3.2.1 Settlers
The regularization of the status of settlers is a big issue in Davao Oriental, within ancestral domains, protected areas, and other zones. There is the proposal to produce national guidelines for the question on settlers. In ancestral domains, IPs should regulate the migrants. The rights of migrants with title will be respected. NCIP tries to facilitate the process and send migrants to the council of elders. The elders can give a lease contract or a usufruct contract to migrants; they can choose which option to apply. The community has to decide how to deal with them. Settlers are part of the ADSDPP and part of the land management proposal.
DAR sees options for settlers on forest land if they are CSC holders and with CBFMA arrangements: There are still 4 million hectares of A/D land to be distributed by DENR. This land still has to be identified before it is given to forest dwellers. In Region 11, most forest areas are already occupied by people practicing slash-and-burn.

6.3.2.2 Illegal logging
Another problem is illegal logging. Some have IFMA or CBFMA for areas outside the PA, but cut trees inside. The source of timber is illegal, but there is a legal document backing it up. The protected area authority uses bantay gubats to control these activities. There are 14 bantay gubats in the area of Mt. Hamiguitan Range Wildlife Sanctuary, receiving Php 300 each per day for 10 days each month. In the expansion zone, there are forest rangers with CENRO. It was also proposed to organize a composite team composed of LGU, DENR, Philippine National Police, NGO, church organizations, and political leaders to reduce these illegal activities.

6.3.2.3 Interpretation of the law
There are differences in the interpretation of the laws especially with regard to the IPRA Law (CADC and CADT) and especially between DENR and NCIP/IP. There are IP officers who interpret the law liberally but others who interpret it literally. This causes difficulties in dealing with the FPIC, especially among CBFMA applicants/holders. There are occasions where IPs do not want to issue FPIC wanting to take over CBFMA areas or where IPs are invoking sharing agreement with the CBFMA holders prior to the issuance of FPIC. DENR proposes as solution the unification of the existing tenure instruments to complement with each other and one policy with one direction as far as the interpretation of the laws is concerned. A specific case of concern is also with agencies that intervene or enter the CADTs without FPIC. The conflict between CADTs and other tenure arrangements should be solved at higher level of authority. It requires a joint memorandum circular among the concerned agencies, as several government agencies are not aware of the processes and provisions involved in implementing the IPRA Law.

6.3.2.4 Lack of a unified map
A main problem of the process of issuing titles, tenure instruments, or concessions is the lack of a comprehensive map that provides information about issued titles and tenure instruments. This leads to overlapping and conflicts. Some data of existing maps are wrong and not verified on the ground. The lack of a unified map has been addressed by mining companies, by DAR, as well as by provincial officers. In Region 11, NCIP is in the process of producing a master map with information about CBFMA, etc., and requested information from DENR. It was proposed that there should be only a data set with one information about land. Companies demand that an integrated map should be published and made accessible before the application for mining.

Due to the lack of a unified map, there is overlapping of agrarian reform areas with forest areas and with indigenous areas. There are other cases of overlaps, such as mining with other land tenure. In the case of agrarian reform, consultations for overlaps are done at the municipal level. If it cannot be resolved at that level, it goes to the province; if not there, it goes to the regional level.

6.3.2.5 The process and criteria in granting FPIC is still causing problems
IPs see the following criteria in granting FPIC for commercial projects such as mining or commercial timber production:

- Economic benefits—the company must provide jobs
- Infrastructure—building of farm-to-market roads
- The activities of the company should not degrade the environment.

Sometimes, mining permits are granted directly from the top (e.g., DOE), without FPIC by the IP. IPs claim that the notion of FPIC must be respected and followed by all government agencies including DENR. IPs treat CADT as "private ownership" of their ancestral lands, so they consider that they should enjoy all rights attached to private ownership entitlements.

6.3.3 Land use conflicts

6.3.3.1 Agriculture by migrants—forest/watershed
Although some stakeholders see no conflicts in Davao Oriental with migrants/settlers, others see the conflict of watershed vs. agriculture as the main issue. According to DENR, there should be a control of migrants in the watersheds, promotion of agroforestry by providing assistance to existing migrants, and a prohibition to allow no more entry of new settlers. The conflict of agriculture with forest, soil, and water protection is especially critical in sloping areas (>50%). In Compostela Valley, migrants from outside the forest zones/protected areas occupy portions of the forest lands. They are relatively unorganized and hence would not qualify for PACBRMA issuances. According to DENR, they are usually the easier to eject. In addition, planned hydropower projects pose a threat to watershed management.
6.3.3.2 Agriculture on titled land—protected areas
In 1983, about 40,000 hectares in Mt. Apo were declared as A/D through a PD to benefit the Kilusang Kabuhayan at Kaunlaran of the then Ministry of Human Settlements. In 1987, this was reverted back to public lands as protected area, but during the period from 1983 to 1987, several people were able to legally process their titles. Thus, at present, there are titled lands within the PA. There is no management arrangement forged between these title holders and the DENR, but it can be done under the PPP arrangement.

6.3.3.3 Ancestral domains—agriculture by migrants
In CADT areas, the migrants were informed about the consequences of CADT approval in their areas and have entered into talks with IPs. The IPs are already informed of the desire of CSC holders to renew because they argued that they have been there first prior to the approval of the CADTs.

Others fear that NCIP is getting powerful, with the risk that management agreements, such as CBFMA, may not be renewed anymore if NCIP does not give FPIC. This leads to insecurity of tenure on tenured migrants living within CADT areas or in areas with CADT applications in process.

6.3.3.4 Ancestral domains—forest/protected areas
There are conflicts between DENR and NCIP in terms of CADT lands overlapping with forest areas or with PAs. In ancestral domains, there are area overlaps with IFMA/CBFMA, tenement claims, and settlements.

In the Mt. Apo area with CADT holders, the conflict was addressed in proper coordination with NCIP, and the relationship between NCIP and DENR in the region was constructive; the IPs are represented in the PAMB, and the presence of B+Wiser, a USAID-funded project, is facilitating the integration of the ADSDPP of the IPs with the PA Management Plan of the protected area (Mt. Apo).

In Compostela Valley, almost all of the forest lands are covered by CADTs. There is technically no problem about this in terms of tenure issues, as the IPs are well represented in the PAMB. However, the only negative experience is that NCIP is telling IPs who have participated in the NGP that the latter will have to give NCIP a share once the trees/crops are harvested, a practice which has no legal basis.

6.3.3.5 Mining—forest/protected areas
A big problem is the conflict between mining and forest. Mining may cause disturbance and downstream effects in key biodiversity areas. There is a mineral land in Mt. Hamiguitan, which had been there before the protected area was established and which should be removed according to the opinion of the PA manager. Part of Mt. Hamiguitan is a mining tenement, based on a shared permit by MGB within the buffer zone, which is declared as Locally Conserved Area (LCA). There are two mining permits, one with Sino-Phil and one with TQGT. Under NIPAS, no mining is allowed in PA, but in LCA, it is allowed. If it is mineral land, no CLOA can be given. In many cases of lands identified for agrarian reform, there are conflicts with mining and AD claims. The court has to decide. Another difficulty is illegal mining. A solution would be to include the proposed uses in the zoning ordinance, if it is declared LCA and adopted by the province. If the ordinance is effective, the mining permit cannot be renewed. However, at the moment, the permit is still in place and valid.

In Mt. Apo area, there is an organized group of small-scale miners, a mixture of Lumads and migrants that already operate within one of the protected areas. This group has asked the DENR to excise from the PA 100 hectares for their small-scale mining operations. This has been referred to MGB. To date, no decision has been made, even as the small-scale mining operation is still ongoing.

The mining–forest conflict is a big challenge in Compostela Valley, particularly in Mainit. The small-scale mining operations (using closed-pit tunneling) operate deep in the middle of the PAs. Settlements have already evolved, and a road traverses the PA and passes through the mining area. An organized group exists and is petitioning to DENR to excise 100 hectares from the PA and turn it into a Minahang Bayan just like those already in operation in other parts of the province outside the PA, which is regulated jointly by the LGU and MGB. However, such is not possible right now as the NIPAS does not allow mining inside PAs. The mining lobby is, however, strong and has the political backing of the LGU leaders. CADT holders are also involved in the mining operations. The PAMB in the area is weak. The way that the PENRO sees as a way out is to declare the 100 hectares as a buffer zone, through the PAMB, and then enter into a MOA with the mining community.

Mining needs stricter compliance and enforcement, particularly on meeting environmental standards.
6.3.3.6 Boundary conflicts
There are boundary conflicts between IPs, between municipalities, and between barangays.

Conflicts related to land use and tenure are often resolved by court decisions or by compromise at the local level. Alternative dispute resolution is possible, if all stakeholders are invited to a series of meetings based on mutual respect to put things in proper order. There is a need to sit down to settle different uses and claims. Facilitation can be done by the LGU. The outcome is a map that is integrated into the CLUP and agreements for co-management of biodiversity in rehabilitation and biodiversity areas.

Some bodies for conflict resolution already exist. There is the Mine Rehabilitation Fund Committee and the Multi Party Monitoring Team. The Regional Development Council of Region 11 came out with a technical working group including Region 12 to resolve conflicts. In addition, datu, sultan, and elderly councils are involved to resolve issues at an early stage, but individual agencies want to fulfil their targets.

Beyond conflict resolution at the local level, more efforts are required to clarify the policy on ancestral lands vis-à-vis forest land management at the national level.

6.3.4 Cooperation between institutions and organizations

Interview partners mentioned that the institutional cooperation is one of the major issues related to land tenure.

6.3.4.1 Relation of LGU–IP/NCIP
The relationship of LGU–IP/NCIP is good. Since 2014, mandatory representatives are representing IPs in LGU councils.

6.3.4.2 Relation of DENR–NCIP and DAR
NCIP also claims good working relationship with DENR; they conduct meetings, FLUP preparation activities, and other activities like REDD+. Within DENR, BMB and the protected area superintendents work closely with IPs. The relationship of DAR with NCIP is framed in a joint memorandum to resolve overlapping areas, but some DENR officials claim that NCIP does not consult with DENR in the preparation of ADSDPP and in the issuance of CADT.

There is a need to strengthen coordination and partnerships between NCIP and DENR on how to deal with CADT overlaps, to generate a win-win solution. The premise that was discussed is the fact that CADT holders own the domain and have prior rights, but any land use management on the land, including those that the CADT holders will implement, still has to be approved by DENR, which shall conduct technical evaluation of it. Hence, it may be possible that for CADT areas, the approval of all management agreements will have to be a joint activity between DENR and NCIP in concurrent capacities.

6.3.4.3 Relation of DENR–IP
However, IPs claim that many DENR officials are not convinced of the provisions of IPRA, wanting to have sole control over the natural resources within the CADT areas and refusing to understand. IPs state that DENR does not directly contact the IPs. The relationship between DENR and IPs is limited to the issuance of permits; IPs must go through the process for application.

For good functioning of the relation between IP and DENR, certain rules must be followed: ADSDPP is the basis of activities of IPs within CADT. Projects of other agencies in AD are possible, if they are within the ADSDPP. The resources remain with the government, but the IP has priority rights. If projects affect natural resources, then they need authority from DENR. Agreements between DENR and IPs are possible. It is part of the NCIP mandate to cover third-party agreements with IPs under the principle of FPIC. CBFMA is possible within ancestral domains. In addition, the PASu should contribute to the ADSDPP; the PAMP should be in harmony with ADSDPP.

6.3.4.4 Relation of DENR–LGU
There is less harmony in relations between the provincial and municipal authorities and DENR. It was claimed that there is no proper coordination, that DENR issues titles without consultation with the LGU, and that the participation of DENR in the local level land use planning processes is insufficient. In the preparation of FLUP, the lead agencies are the LGUs and DENR. In the preparation of CLUP, the DENR should assist LGUs regarding how FLUP should be done. The preparation of CLUP and FLUP are fields that require a good coordination of DENR with LGUs. This is not always the case, but it was also reported that in some areas, there are coordination meetings between DENR and LGUs every month. In CENRO Baganga, there is good teamwork among local government agencies; the DENR initiates co-management when it comes to PAs with LGU.
In 2008, a LGU requested the DENR to assist them in the FLUP, but DENR did not assist them; thus, there was no finished FLUP. In the process of CLUP in another municipality, the PASu was involved, and the CENRO also was represented. CLUP was headed by the Municipal Planning Officer, and the MENRO was involved. In the same municipality, FLUP was also chaired by the Municipal Planning Officer, with the involvement of PASu and the Philippine Eagle Foundation, but without CENRO, the FLUP is still to be finished.

There are 11 component municipalities in Davao Oriental that needed FLUP, but the DENR only assisted four component LGUs. In the past, LGUs had more power in regulating resource use, but the DENR took back the authority to issue permits for logging and small-scale mining, leaving a dispute with LGUs.

According to the laws and regulations (Local Government Code and guidelines of FMB), for the renewal of the CBFMA, municipal offices must be involved, but LGU officers claim that CENRO people do not know this, yet are slowly starting to cooperate.

The relationship between FLUP and CLUP was described by DENR: The FLUP needs to be approved by the DENR. Then, the FLUP is integrated in the CLUP as adopted by the LGU; the CLUP is forwarded to HLURB and then to NEDA. NEDA approves the CLUP and the LGU conducts the implementation. The ADSDPP incorporates both the culture and practices of the IPs; then, this is combined with the uses of timberlands/forest lands into the FLUP.

6.3.4.5 Spaces for dialogue and coordination

The PAMB is a space of dialogue and coordination, including DENR, IP, PO, NGO, religious organizations, and LGU. In Mabini, the presence of a strong multi-stakeholder body (PAMB), where MOAs are issued with beach resorts, is helpful in ensuring the compliance of the other parties (private resort owners) to environmental standards and ecological considerations.

6.3.5 Unification of land tenure instruments

For a unified tenure system, it is necessary to reach a consensus among DENR, other agencies, and stakeholders. LGUs claim that DENR should consult the LGU before issuing tenure based on the CLUP and FPIC, and consider the governance of forest land by municipalities.

It is also necessary to better integrate the different land use planning processes (by IP: ADSDPP, DENR: FLUP, LGU: CLUP) and to issue only tenure instruments based on the CLUP and the FPIC.

Some IPs are not favoring the unified instrument and rather prefer different permits per agency so they can deal with more actors and can bargain for better conditions.

In terms of policy, the revision of land classification, the question of CADT (public or communal ownership), and the harmonization of laws and policies are proposed.

Mining companies claim that many stakeholders want multiple land use, for example, first mining, and then tree plantation for rehabilitation on the same land. For this purpose, a tenure instrument allowing different land uses would be a better instrument than the actual instruments. There should be only one agency issuing agreements, and there must be clear procedures with defined steps. For mining permits, the requirements of IP, MGB, LGU, and DENR should be unified, and the tenure evaluated after 20 years. There should be a harmonized mining policy with requirements, steps, comprehensive maps, institutions, charges, and FPIC.

6.3.6 Conclusions

Davao Oriental and Region 11 are characterized by ancestral domains and a large share of the indigenous population. Although conflicts are there, various conflict resolution mechanisms are in place. In some areas, political instability does not allow ecological stability, but in other areas, arrangements have been found to harmonize ancestral domains, forest/biodiversity protection, and sustainable use.
Although some officials report good institutional cooperation, in many cases, the differing positions and the lack of coordination between public agencies are still an important hindering factor to move toward a unified tenure system and to avoid overlaps. The differences from province to province or municipality to municipality show that with the lack of a clear national policy, at the local level, there are both constructive and conflictive ways to deal with ancestral domains, settlers, mining, natural resources protection, and the conflicts between differing land uses and between different tenure rights.
Why is a unified land tenure system necessary?

Compelling reasons from the ground and from archival research

The empirical data examined in the case studies, and the results of the FGDs and KIIs lend support to the evidence from archival research on studies conducted on the ground on the issue of land tenure. These include the studies of Balooni et al. (n.d.), Pulhin et al. (2008a,b), Guiang et al. (2012), Ateneo de Davao Institute of Anthropology and Bennagen (2013), Calde et al. (2013), Mann and Munez (2013), Mayo-Anda et al. (2013), Fortenbacher and Alave (2014), and Quizon and Pagsanghan (2014).
A content analysis of the themes of the researches converges on the following issues:

- The Philippine tenure regime is based on a series of sector laws (more than 60) and policies, and a multiplicity of land tenure instruments that are not consistent and leave space to contradictions and overlapping. The convergence initiatives among NGAs were not able to process or manage conflicts and overlaps. This lack of clear decisions leads to the absence of land governance.

- With the absence of governance or efficient control, areas without legal tenure regimes have practically become areas where sustainable forest use and conservation is not guaranteed. Clear tenure arrangements are necessary on these lands to maintain the forest cover, the biodiversity, and the provision of environmental services.

- Many of these areas correspond to the land at present de facto managed by “informal settlers.” Approximately 22 million citizens living in the uplands have no written land tenure arrangement and are often considered as illegal or landless, many because their CSCs have expired and have not been renewed. This group lives mainly from natural resources on public forest land or on ancestral domain land. In order to secure their livelihoods, their tenure situation has to be regularized in the framework of a new unified tenure system.

- Much of the remaining forests (approximately 85% of the 6–7 million hectares) are located within ancestral domains. However, ancestral domain claims are being seen as a threat instead of an opportunity to be addressed by the unified tenure system.

- Land tenure is often not awarded according to land characteristics, as not all LGUs have FLUPs and CLUPs, defining which use is appropriate for which area.

- A large part of public forest lands is without forest cover, but there is no management agreement available for parties that would like to protect forest areas. There is no systematic policy to address the issue of private lands with forest character, such as those falling within what are supposed to be watershed protection zones or protected areas, and multiple use forestry is hardly operationalized within existing rigid management agreements.

- Existing tenurial instruments have not ensured livelihoods, economic development, and sustainable use, due to their narrow focus, insecurity, and conflicts with other titles and instruments.

- The NaLUA, the Guidelines for CLUPs, the proposals for financing mechanisms in the framework of REDD+, and the proposed land tenure policy are pieces that are to be linked in order to make sustainable forestry benefitting for the population and the climate. Tenure is the major factor to define which individuals and groups will gain from benefit sharing in climate financing. As shown above, it is also a major factor to reduce deforestation.

These themes from the ground and from the literature provide a compelling justification to rationalize the governance of land tenure in the country, in particular, by developing a unified land tenure system.
8
Proposed policy

8.1 Guiding principles
The proposed policy on a tenure management system takes into account the more modern principles in the scientific management of forest and land resources. It considers forests in the public domain, the ancestral domain, and the private domain, as well as public land that is not forested.

It addresses the issues mentioned above, reducing areas without governance, providing economic opportunities for the rural poor, conserving existing forests, promoting afforestation and investment in forest land, and opening practicable pathways to overcome contradictions in policies and laws.
Furthermore, it adheres to the principles specified in the VGGT, as is detailed in Table 8.

### Table 8. Matrix on the relation of VGGT principles with the LERMA

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<tr>
<th>Chapters of VGGT</th>
<th>Elements of proposed policy</th>
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<td>Guiding principles of LERMA</td>
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<td>Parts of the LERMA</td>
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<td>Beneficiaries of LERMA</td>
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<td>Allowed land uses</td>
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<td>Approving authorities and clearance for LERMA</td>
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<td>LERMA as investment portfolio</td>
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<td>Governance and implementation considerations</td>
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Specifically, the policy upholds the following:

- Human dignity and rural livelihoods, considering especially the livelihood of the rural poor, which are at present considered “illegal settlers”
- Non-discrimination, equity, and justice
- Equality between men and women
- Sustainable use of natural resources based on clear and secure rights
- The rights of IP: Chapter 9.4 of the VGGT provides that “States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples…” (Committee on World Food Security 2012)
- Tenure security, especially for rural communities, based on easily accessible procedures: 17.4 of the VGGT states: “Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. The spatial accuracy for parcels and other spatial units should be sufficient for their
Improving governance of tenure

- Participation, consultation, and inclusion: 9.12 of the VGGT recommends that “States and non-state actors should endeavour to prevent corruption in relation to tenure systems of indigenous peoples and other communities with customary tenure systems, by consultation and participation, and by empowering communities”
- Operate under the rules and laws both nationally and internationally
- Transparency in the processes: 17.5 of the VGGT indicates that “States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions”
- Accountability among policy actors, bureaucrats, and tenure beneficiaries
- Dynamic products of a continuing process of review and improvement

This has the following concrete implications:

- The eligibility for LERMA will consider above all the poorer parts of the rural population. By granting them tenure arrangements, LERMA contributes to more secure tenure, more sustainable land uses, and poverty reduction. Eligibility criteria should be established in such a way that these poorer members of society are not excluded.
- LERMA will also favor those settlers who have been on the land for a certain time and who use the land sustainably for agriculture, forestry, and agroforestry.
- LERMA will respect the rights of IPs to FPIC.
- It will provide conflict resolution and coordination mechanisms to resolve conflicting claims within a reasonable time frame, with the aim to reduce areas without governance and to provide secure tenure to the legitimate claimants. The guiding principles mentioned above shall serve to harmonize conflicting policies regarding land and forests.

8.2 The policy context

The following is the policy context:

- Forest lands and natural resources are owned by the State. In general, the controlling policy is PD 705, as amended
- Some forest lands are declared as protected areas by virtue of the NIPAS Act and other specific laws pursuant to such
- Some forest lands are declared for mining purposes, and the controlling policy is the Mining Act
- Some forest lands are declared by law for specific purposes, and the control of those lands is transferred to agencies other than DENR, and the controlling policies are the specific laws or policy issuances
- Some forest lands are declared as ancestral domain areas under the IPRA Law, for which CADT and CALT are awarded
- In all of these laws, what is however clear is that the DENR retains its regulatory powers in terms of how resources on forest lands (both above and below the surface) are to be managed

8.3 The policy instrument

The proposal is not only to establish a single system for governing land tenure in public open lands, but also to include titled lands where the owners are willing to enter into a management agreement with government to devote such land for forest and environmental resource management purposes. The management agreement instrument shall be referred to as a LERMA, and its governance system is to be referred to as the LERMA System.

As the LERMA System will involve parties other than DENR, the most ideal situation is to enact a law that establishes it. However, considering that the process of legislating is complicated and highly politicized, the next best option is to have it in the form of an EO to be issued by the President, and where the implementing rules and regulations will be crafted as a joint enactment of DENR with NCIP, DAR, and DILG in the form of a JAO. The proposed EO is hereby presented in the following Box. This does not preclude the parties to advocate, however, that an enabling law will still be enacted in the future, as a separate statute, or as embedded in the Land Use Act or in the Sustainable Forest Management Act, both of which have yet to be passed by Congress.
DRAFT EXECUTIVE ORDER

Malacañang Palace
Manila

BY THE PRESIDENT OF THE PHILIPPINES

Executive Order No. _____

WHEREAS, it is the policy of the State to protect and advance the rights of Filipino people to a balanced and healthful environment; promote industrialization and creation of employment opportunities based on sound resource development that make full and efficient use of human and natural resources; and protect the people from natural disasters like floods, landslides, and threats to environmental and economic security like food and water shortage, biodiversity loss, air pollution and drought;

WHEREAS, forest lands and natural resources are owned by the State, and thus the controlling policy is PD 705, as amended;

WHEREAS, some forest lands are declared as protected areas by virtue of NIPAS Act and other specific laws pursuant to such;

WHEREAS, some forest lands are declared for mining purposes and the controlling policy is the Mining Act;

WHEREAS, some forest lands are declared by law for specific purposes, and the control of those lands is transferred to agencies other than DENR, and the controlling policies are the specific laws or policy issuances;

WHEREAS, some forest lands are declared as Ancestral Domain areas under the IPRA Law, for which CADT and CALT are awarded;

WHEREAS, in all of these laws, the DENR retains its regulatory powers in terms of how resources on forest lands both above and below the surface are to be managed, even as it is also recognized that the involvement of other agencies such as NCIP, DAR, DILG and the Local Government Units are vital in the achievement of the over-all goal of environmental protection and poverty alleviation;

WHEREAS, the continuing deforestation and degradation of forest ecosystems and communities in the Philippines are further compounded by the multiplicity of land use tenure arrangements and instruments given by different agencies to parties under different land use contexts;

WHEREAS, there is a need to rationalize and systematize the management and issuance of land use tenure instruments on public open lands, especially but not limited to forest lands.

NOW, THEREFORE, I, ________________, President of the Philippines, by virtue of the powers vested in me by law, do hereby order and declare the adoption of the Land and Environmental Resources Management Agreement (LERMA) as the single land use instrument on all open public lands, and on private lands which may be identified for the purpose of this order.
Section 1. Declaration of Policy.

1.1. It is the policy of the State in land tenure management:

1.1.1. To take into account the more modern principles in the scientific management of forest and land resources.
1.1.2. To consider forests in the public domain, the ancestral domain and the private domain.
1.1.3. To consider public land which is not forested.
1.1.4. To reduce areas without governance by providing economic opportunities for the rural poor, conserving existing forests, promoting afforestation and investment in forest land and opening practicable pathways to overcome contradictions in policies and laws.
1.1.5. To adhere to the principles specified in the “Voluntary Guidelines on the Governance of Tenure (VGGT) of Lands, Fisheries and Forests in the Context of National Food Security.”

1.2. Specifically, the policy upholds the following:

1.2.1. Human dignity and rural livelihoods, considering especially the livelihood of rural poor which are at present considered “illegal settlers”
1.2.2. Non-discrimination, equity and justice
1.2.3. Equality between men and women
1.2.4. Sustainable use of natural resources based on clear and secure rights
1.2.5. The rights of indigenous people
1.2.6. Tenure security, especially for rural communities, based on easily accessible procedures
1.2.7. Participation, consultation and inclusion
1.2.8. Operate under the rules and laws both nationally and internationally
1.2.9. Transparency in the processes
1.2.10. Accountability among policy actors, bureaucrats and tenure beneficiaries:
1.2.11. Dynamic products of a continuing process of review and improvement

1.3. In the implementation of the LERMA, the following will be considered:

1.3.1. The eligibility for any land tenure instrument will consider above all the poorer parts of the rural population. By granting them tenure arrangements, the instrument contributes to more secure tenure, more sustainable land uses and poverty reduction.
1.3.2. Eligibility criteria will be established in such a way that these poorer members of society are not excluded. The policy will also prioritize those settlers which have been on the land for a certain time and which use the land sustainably for agriculture, forestry and agroforestry.
1.3.3. The rights of IPs to free, prior and informed consent (FPIC) will be respected.

Section 2. The Land and Environmental Resources Management Agreement (LERMA).

2.1. The LERMA is a management agreement that serves as an instrument for a juridical entity (group or individual) to secure access rights to a forest land
2.2. The access rights associated with a LERMA is a form of tenure that is in the nature of a usufruct
2.3. A LERMA is a stand-alone agreement, which shall be in the form of a negotiable contract
Section 3. Parts of a LERMA. The LERMA is a negotiable instrument with the following parts.

3.1. Description of the land to be managed
3.2. Party to whom the LERMA is going to be forged
3.3. Map of the specific area, in terms of present land use
3.4. Detailed description of the management activities which shall be conducted in the area, with appropriate thematic maps
3.5. If for production purposes, a feasibility study has to be attached
3.6. An economic analysis of the land uses, in terms of the values of the contribution to or depletion of ecological services, as an attachment
3.7. Enumeration of the duties and responsibilities of all parties involved
3.8. Duration of the LERMA
3.9. Schedule of payment of revenue shares and environmental payments on the part of the contractor, and of release of financial incentives and support mechanisms, on the part of the State
3.10. Mechanism for monitoring and evaluation, its schedule, and the terms for renewal and extension, as well as for revocation and cancellation
3.11. Optional attachment of a longer strategic plan that goes beyond the initial duration of the LERMA

Section 4. Duration of the LERMA. The LERMA has a maximum of 25 years, renewable for another period not to exceed 25 years, with the actual duration to be determined based on the capability of the contracting party and the nature of the land use management proposal. Specifically, the following provisions will apply.

4.1. Renewal is different from extension.
4.2. Initially, a LERMA can be given a provisional shorter period depending on the nature of contracting party, the land covered and the proposed land use.
4.3. Extension of the LERMA will come as an amendment to the contract, and will depend on the performance of the contracting party.
4.4. A LERMA can be extended more than once, if the strategic plan provided by the LERMA holder is approved.
4.5. Extension can only be given to applicants that submit as attachment to the LERMA application a longer strategic plan that will cover a maximum period of 25 years.

Section 5. The types of land that can be devoted to LERMA. LERMA can be issued on the following lands.

5.1. Lands that are under the jurisdiction of the Department of Environment and Natural Resources (DENR)
  5.1.1. Open forest lands
  5.1.2. Forest lands that are declared as protected areas
  5.1.3. Forest lands that are declared for mining purposes
5.2. Lands that are under the jurisdiction of other National Government Agencies (NGAs)
  5.2.1. Forest lands that are currently under the management of other NGAs but are managed for forest purposes, such as the NAPOCOR and SUCs, among others
  5.2.2. Lands that are under the Department of Agrarian Reform (DAR) but are within forest zones
5.3. Lands that are titled or in the process of titling
  5.3.1. Under CADT or are proposed to be covered by CADT, and are within forest zones
  5.3.2. Lands that are titled, but are in areas that have forest land characteristics
5.3.3. Any land that is titled but whose owner is willing to enter into a management agreement with the Government to devote the land for forest and other environmental purposes allowed under this order

Section 6. Qualified partners for LERMA.

6.1. The following are the parties with whom the Government can forge a LERMA

6.1.1. People’s organizations
6.1.2. NGOs
6.1.3. Indigenous Peoples
6.1.4. Private Corporations
6.1.5. Other NGAs
6.1.6. LGUs
6.1.7. Schools, Colleges and Universities
6.1.8. Social and Civic Organizations
6.1.9. Private individuals

6.2. In the awarding of LERMAs, priority will be given on those who are already living on the land.

6.3. The case of settlers – settlers can be qualified to be organized as POs, or act as individuals, and can become eligible contractors for LERMAs, with the understanding the priorities will be given to prior rights of IPs, or earlier migrants, more so if these are already organized.

6.4. A system of qualification and accreditation will be established to guide the determination of qualified parties

Section 7. Allowed land uses within LERMA. As a general rule, LERMAs will be awarded only for land-uses that are compatible with the bio-physical characteristics of the land, as well as allowed by law. The following are the land uses which will be allowed within a LERMA.

7.1. For production purposes

7.1.1. Tree plantation
7.1.2. Agroforestry
7.1.3. Non-timber forest products and services (includes both extractive, as well as farming of flora and fauna)
7.1.4. Grazing purposes

7.2. For other purposes

7.2.1. Tourism activities
7.2.2. Development infrastructures, such as roads, cell-sites, transmission lines, construction of irrigation canals and water-impounding facilities, etc.
7.2.3. Educational and research purposes
7.2.4. Cultural activities

7.3. For protection purposes

7.4. Multiple-uses – a LERMA can be awarded for any combination of these uses, provided that such will be indicated in the agreement

7.5. LERMAs will not be awarded for mining purposes, as this is already handled by the MGB, and a different land management agreement system applies here. However, adequate coordination will be done to ensure that issuances of mining agreements will not overlap with the LERMAs issued. The awarding of mining agreements is not permitted in protected areas and areas under LERMA, and requires FPIC from IP, in order not to undermine existing CADTs.
Section 8. Approving authorities.

8.1. For lands that are within the jurisdiction of the DENR
8.1.1. For open lands: DENR Regional Director/s, with authorization from the Secretary and advise by FMB, and with clearance from IP and NCIP if the land is considered for CADT application
8.1.2. For protected areas: DENR Regional Director/s, with authorization from the Secretary and advise by BMB, and with clearance from the PAMB, and from IP and NCIP if the land is considered for CADT application
8.1.3. For lands declared as mining reservations or for mining purposes, but whose proposed land-uses may either be compatible non-mining production (i.e., establishment of plantations) or for protection purposes: MGB Regional Director, with authorization from the Secretary and advise by FMB or BMB, and with clearance from IP and NCIP if the land is considered for CADT application

8.2. For lands that are under the jurisdiction of other NGAs
8.2.1. For forest lands that are currently under the management of other NGAs but are managed for forest purposes: Joint issuance between the NGA and DENR Regional Directors, with authorization from their Secretaries or National Heads if applicable, and with clearance from IP and NCIP if the land is considered for CADT application
8.2.2. For lands declared under the jurisdiction of DAR but are falling within forest Zones and will be used only for the uses outlined above, where it is understood that CLOAs will no longer be issued for areas that fall within forest zones, and that CLOAs with IPs as recipients will be issued if such areas are also under CADT or are identified for possible CADT applications. It is also further understood that DENR reserves the right to initiate a reversion proceeding on these lands, even as short-term LERMA can still be granted during the period until reversion, but upon mutual agreement with DAR and the contracting party: Joint Issuance between the DAR and DENR Regional Directors, with authorization from their Secretaries, and with clearance from IP and NCIP if the land is considered for CADT application

8.3. For lands that are titled or in the process of titling
8.3.1. For lands that are within CADT areas, or are part of those being considered for CADT application: Joint issuance by the NCIP and DENR Regional Directors with authorization from their Chair and Secretary, respectively, and with advise from FMB, BMB and MGB depending on proposed land-use, and with FPIC from IP and with clearance from PAMB if the land is also a protected area
8.3.2. PPP between the DENR Regional Director, with authorization from the Secretary, and the Private Land Owner (regardless of whether it is acquired through LMB or through DAR) with advise from FMB or BMB, and clearance from the LGUs

Section 9. Plans and Maps

9.1. The awarding of LERMA must be based on the CLUPs that contain the FLUPs. Hence, the existence of these land use plans is highly desired, and it is recommended that a time-table be set to complete all the CLUPs and FLUPs, after which no LERMA will be awarded in the absence of at least a FLUP for the areas covered
9.2. A unified spatial land information system will be established to collect and store all information on existing land titles, tenure arrangements and concessions. Such information system will be housed and managed in NAMRIA.
Section 10. Clearance requirements prior to approval of LERMA

10.1. Only if the LERMA application includes areas that are within critical zones, that an ECC will be required prior to approval.

10.2. All LERMA applications must be consistent with the FLUP and CLUP, and hence the LGU, through their planning and development officers, should certify the LERMA, including even if the LGU is the applicant, indicating that the application is consistent with the FLUP/CLUP.

10.3. For lands under CADT or which are considered for CADT applications, an NCIP clearance is required to ensure that the LERMA application is consistent with the ADSDPP. Furthermore, such clearance is required even if the applicant is the IP CADT holder.

10.4. For lands that are declared as protected areas, a clearance from the PAMB is required to ensure that the LERMA application is consistent with the PAMP.

10.5. For lands in Palawan, a clearance from the Palawan Council for Sustainable Development (PCSD) is required.

Section 11. Transfer of LERMA

11.1. LERMA can be transferred to a qualified party, including but not limited to heirs of the LERMA holder when applicable but only upon approval by the approving authorities concerned.

11.2. Transfer may be due to justified lack of interest, or due to death or incapacitation of the LERMA holder.

11.3. Such transfer will only be for the remaining period, and will be implemented in accordance with the terms and conditions of the LERMA.

Section 12. Cancellation of LERMA

12.1. A LERMA can be cancelled only for cause, voluntary surrender of the holder, or by the act of the State in pursuance of the public interest. Such public interests will be defined in a separate regulation by the President or by law.

12.2. Cancellation due to cause will be without prejudice to the filing of appropriate administrative and criminal cases, and the collection of fines or the non-refund of applicable deposits.

12.3. Cancellation due to voluntary surrender shall be tightly regulated in order not to compromise public interest. In no way that voluntary surrender will be accepted as a way to escape liability due to violation of terms and other forest and environmental laws.

12.4. If cancellation is due to an act of the State in pursuance of public interest, appropriate remuneration will be provided to the LERMA holder in accordance with policy.

Section 13. Sub-LERMA

13.1. A LERMA holder will be allowed to sub-contract the use of the land to other parties as sub-contractors.

13.2. The subcontracted LERMA will be referred to as a “Sub-LERMA” and would have the same approving authorities as a LERMA, with the additional signatory being the primary LERMA holder.

13.3. A Sub-LERMA is awarded only upon approval by the duly-approving authority (or authorities in cases of joint issuances), and with the appropriate amendment to the main LERMA contract stipulating the shares in revenues and environmental fees to be levied on the sub-contractors, and the added duties and responsibilities.
13.3.1. A Sub-LERMA is allowed only for activities that are contained in the approved LERMA.

13.3.2. However, exceptions will be made in cases where the activity is an unanticipated use that is imbued with public interest, which the State shall determine, such as infrastructure projects like cell sites.

13.4. The Sub-LERMA holder will not be allowed, however, to further sub-contract any portion of its area to any other party.

13.5. Appropriate guidelines will be drafted to govern the issuance of Sub-LERMA, particularly on the accountability mechanisms, such as those that will pertain to the Sub-LERMA.

13.5.1. A Sub-LERMA could not be transferred to another party.

13.5.2. A Sub-LERMA, upon approval of the pertinent authorities, can continue to exist in the event that its parent LERMA is cancelled, and only in instances where the Sub-LERMA holder is not adversely implicated in the reason for the cancellation.

13.5.3. In cases of continuation of the Sub-LERMA, the government may also decide to convert the Sub-LERMA into a LERMA but only for the unexpired duration of the contract.

### Section 14. Shares and fees.

14.1. The valuation mechanism will have two categories: revenue shares and environmental fees.

14.2. Revenue shares from the sale of forest goods and services – if the land use will generate the production of marketable goods and services, an appropriate sharing arrangement will be applied between the land manager (contractor) and the parties involved in the issuance of the LERMA, whether as final signatory, or as concurrent or advisory agent. This will be levied on the gross income of the LERMA holder.

14.2.1. Exception – for private titled lands that enter into a PPP, revenue shares will no longer be levied, but such land-owners will have to pay the necessary sales taxes and other taxes to government.

14.3. Environmental fees

14.3.1. This is to be based on the opportunity cost approach.

14.3.2. This would require the determination through a technical study of the environmental values, in terms of opportunity costs when a hectare of a forest land is used for a particular purpose.

14.3.3. The current land use, prior to the LERMA will then be assessed for its opportunity cost (a close forest land will have a low opportunity cost compared to a grassland, for example).

14.3.4. This will be compared to the proposed land use or land uses contained in the LERMA. The formula will be: Net Opportunity Cost = Opportunity Cost with LERMA – Opportunity Cost without LERMA.

14.3.4.1. If the value is positive, then the LERMA holder will pay the necessary environmental fees equivalent to the net opportunity cost.

14.3.4.2. If the value is negative (that is, the LERMA holder is even contributing to the protection and conservation of forest resources) then this amount can be deducted from the collectible revenue share, or can be the amount that can be provided as subsidies or support funds for the LERMA holder.

14.3.6. Environmental fees will be paid to Government, and will again be divided according to the formula provided. However, if the fees become negative, and a subsidy needs to be provided, this will be provided by the DENR drawn from...
Improving governance of tenure

14.4. The State will provide a mechanism for a socialized system, where environmental fees and revenue shares can be waived, or subsidized, for marginalized groups such as POs and IPs. It is however preferred to make it as a direct subsidy but casted as soft-loan, so that the PO/IP would at least have the mindset that they have to make the land productive and motivate them to engage in livelihood enterprises, or to source funding from LGU through the BUB or IRA processes.

14.5. Mechanisms will be established to operationalize the Payment for Ecosystem Services (PES) Scheme to levy environmental charges to user of forest-related environmental services such as energy and water, and to insure that this will go to the DENR fund to subsidize the reimbursement of negative environmental fees to LERMA holders that contribute to the protection and conservation of forest resources.

Section 15. LERMA as Investment Portfolios

15.1. DENR may package the LERMA as investment portfolios
15.2. This is to be subjected to bidding by interested parties, and for which the rules on Bid and Awards will apply, in addition to the guidelines set herein.
15.3. Investment portfolios are complete packages that include all the plans, and which already passed the required clearance, concurrent and advisory mechanisms cited above.
15.4. Cancelled LERMAs can also be converted into investment portfolios, but only for the remaining period
15.5. Priority shall be given to locally-based parties, as well as to qualified POs and IPs.

Section 16. Administrative provisions

16.1. Technical Working Group: Since the issuance of LERMAs will involve not only DENR but other agencies, a multi-agency TWG chaired by DENR and composed of representatives from FMB, BMB, MGB, NCIP, DAR, DILG, NAMRIA and other NGAs that have jurisdiction over lands that are managed for forest purposes (NIA, NAPOCOR, some HEIs) will be formed to ensure uniformity in the application of the policy.
16.2. Technical Manual: A technical manual for the implementation of the LERMA will be jointly issued by DENR and NCIP, upon approval by the TWG. The technical manual shall contain all the necessary specifics of the implementation of the LERMA System, including the procedures, forms, formulas and specific values of the constants and variables necessary in its implementation. The manual will be good for 3 years, and shall be subjected to review and revision every 3 years herein.
16.3. Technical Assistance: DENR, through FMB, BMB and its field offices (Regional, PENRO and CENRO), should provide technical assistance in the preparation of the LERMA proposals. Priority will be given to those who do not have the resources to procure the services of professional planners and foresters, such as PO applicants.

Section 17. Monitoring and Evaluation

17.1. A system of monitoring and evaluation will be done on a periodic basis, and will be specified in the agreement, and will be mandatory one year prior to the expiration of the LERMA.
17.2. The monitoring and evaluation will focus on compliance of the LERMA holder to the terms and conditions of the agreement, including but not limited to timely accomplishments based on the management plan.
17.3. The monitoring and evaluation will be conducted by a multi-stakeholder body that will be formed at the regional level of operations, Chaired by the Regional DENR, and with representation from NCIP, the LGUs and key civil society organizations.

17.4. Results of monitoring and evaluation would be the basis for extension, renewal, or cancellation for cause of LERMA.

17.5. On adverse recommendations, such as cancellation or non-renewal, a more formal investigation will be done by an investigative panel that shall be formed by, and to make the final recommendation to, the authority channels defined above.

17.6. LERMA holders will be accorded the right to due process, and a mechanism for appeal will be promulgated.

Section 18. Transitory provisions

18.1. This policy shall apply to all applicants for land use agreements.

18.2. To harmonize existing regulatory management agreements such as CBFMA, IFMA, SIFMA, FLGMA, FLAG, FLAGT, and CSC with the new policy, a mechanism be adopted to allow the current holders of agreement to convert these to LERMA, and to make the migration as attractive as possible.

Section 19. Implementing Guidelines. DENR, NCIP, DILG and DAR, with DENR acting as Lead Department, within fifteen (15) days from the date of this Executive Order, shall issue a Joint Administrative Order (JAO) specifying the implementing guidelines of the LERMA System.

Section 20. Funding Mechanisms. Funds needed for the implementation of the LERMA for the current year shall be provided by the DBM and the DENR and funding for the succeeding years shall be incorporated in the regular appropriation of DENR.

Section 21. Separability Clause. Any portion or provision of this Executive Order that maybe declared unconstitutional shall not have the effect of nullifying other provisions hereof, as long as such remaining portions can still subsist and can be given effect in their entirety.

Section 22. Repealing Clause. All rules and regulations and other issuances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

Section 23. Effectivity. This Executive Order shall take effect immediately upon its publication in a newspaper of general circulation.

DONE in the City of Manila, this ___________________________.

Meanwhile, steps can already be taken by concerned agencies in line with the thrust of the proposal. DENR, through FMB and BMB, can, in the interim, issue a DAO to address a LERMA System within its jurisdiction. DENR and other agencies can also already examine their processes and requirements, and DAOs and technical bulletins can already be issued in terms, for example, of shifting from zonal valuation to opportunity cost valuation. The conversion of management agreements to investment portfolios can also be adopted and pursued. The convergence mechanisms at all levels can also be strengthened. The following is a draft DAO for the DENR.
DRAFT ADMINISTRATIVE ORDER

BY THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Department Administrative Order No. ______

WHEREAS, it is the policy of the State to protect and advance the rights of Filipino people to a balanced and healthful environment; promote industrialization and creation of employment opportunities based on sound resource development that make full and efficient use of human and natural resources; and protect the people from natural disasters like floods, landslides, and threats to environmental and economic security like food and water shortage, biodiversity loss, air pollution and drought;

WHEREAS, forest lands and natural resources are owned by the state, and thus the controlling policy is PD 705, as amended;

WHEREAS, some forest lands are declared as protected areas by virtue of NIPAS Act and other specific laws pursuant to such;

WHEREAS, some forest lands are declared for mining purposes and the controlling policy is the Mining Act;

WHEREAS, some forest lands are declared by law for specific purposes, and the control of those lands is transferred to agencies other than DENR, and the controlling policies are the specific laws or policy issuances;

WHEREAS, some forest lands are declared as Ancestral Domain areas under the IPRA Law, for which CADT and CALT are awarded;

WHEREAS, in all of these laws, the DENR retains its regulatory powers in terms of how resources on forest lands both above and below the surface are to be managed, even as it is also recognized that the involvement of other agencies such as NCIP, DAR, DILG and the Local Government Units are vital in the achievement of the over-all goal of environmental protection and poverty alleviation;

WHEREAS, the continuing deforestation and degradation of forest ecosystems and communities in the Philippines are further compounded by the multiplicity of land use tenure arrangements and instruments given by different agencies to parties under different land use contexts;

WHEREAS, there is a need to rationalize and systematize the management and issuance of land use tenure instruments on open public lands, especially but not limited to forest lands.

NOW, THEREFORE, I, ___________________, Secretary of the Department of Environment and Natural Resources of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order and declare the adoption of the Land and Environmental Resources Management Agreement (LERMA) as the single land use instrument on all open public lands under the jurisdiction of DENR.

Section 1. Declaration of Policy.

1.2. It is the policy of the State in land tenure management:
1.2.1. To take into account the more modern principles in the scientific management of forest and land resources.
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1.3. In the implementation of the LERMA, the following will be considered:

1.3.1. The eligibility for any land tenure instrument will consider above all the poorer parts of the rural population. By granting them tenure arrangements, the instrument contributes to more secure tenure, more sustainable land uses and poverty reduction.
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3.2. Party to whom the LERMA is going to be forged
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3.7. Enumeration of the duties and responsibilities of all parties involved
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3.9. Schedule of payment of revenue shares and environmental payments on the part of the contractor, and of release of financial incentives and support mechanisms, on the part of the State
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5.3. Forest lands that are declared for mining purposes

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6.3. The case of settlers -- settlers can be qualified to be organized as POs, or act as individuals, and can become eligible contractors for LERMAs, with the understanding the priorities will be given to prior rights of IPs, or earlier migrants, more so if these are already organized.

6.4. A system of qualification and accreditation will be established to guide the determination of qualified parties

Section 7. Allowed land uses within LERMA. As a general rule, LERMAs will be awarded only for land-uses that are compatible with the bio-physical characteristics of the land, as well as allowed by law. The following are the land uses which will be allowed within a LERMA.

7.1. For production purposes
   7.1.1. Tree plantation
   7.1.2. Agroforestry
   7.1.3. Non-timber forest products and services (includes both extractive, as well as farming of flora and fauna)
   7.1.4. Grazing purposes

7.2. For other purposes
   7.2.1. Tourism activities
   7.2.2. Development infrastructures, such as roads, cell-sites, transmission lines, construction of irrigation canals and water-impounding facilities, etc.
   7.2.3. Educational and research purposes
   7.2.4. Cultural activities

7.3. For protection purposes

7.4. Multiple-uses -- a LERMA can be awarded for any combination of these uses, provided that such will be indicated in the agreement

7.5. LERMAs will not be awarded for mining purposes, as this is already handled by the MGB, and a different land management agreement system applies here. However, adequate coordination will be done to ensure that issuances of mining agreements will not overlap with the LERMAs issued. The awarding of mining agreements is not permitted in protected areas and areas under LERMA, and requires FPIC from IP, in order not to undermine existing CADTs.

Section 8. Approving authorities.

8.1. For open lands: DENR Regional Director/s, with authorization from the Secretary and advise by FMB, and with clearance from IP and NCIP if the land is considered for CADT application

8.2. For protected areas: DENR Regional Director/s, with authorization from the Secretary and advise by BMB, and with clearance from the PAMB, and from IP and NCIP if the land is considered for CADT application

8.3. For lands declared as mining reservations or for mining purposes, but whose proposed land-uses may either be compatible non-mining production (i.e., establishment of plantations) or for protection purposes: MGB Regional Director, with authorization from the Secretary and advise by FMB or BMB, and with clearance from IP and NCIP if the land is considered for CADT application

Section 9. Plans and Maps

9.1. The awarding of LERMAs must be based on the CLUPs that contain the FLUPs. Hence, the existence of these land use plans is highly desired, and it is recommended
that a time-table be set to complete all the CLUPs and FLUPs, after which no LERMA will be awarded in the absence of at least a FLUP for the areas covered.

9.2. A unified spatial land information system will be established to collect and store all information on existing land titles, tenure arrangements and concessions. Such information system will be housed and managed in NAMRIA.

Section 10. Clearance requirements prior to approval of LERMA

10.1. Only if the LERMA application includes areas that are within critical zones, that an ECC will be required prior to approval.

10.2. All LERMA applications must be consistent with the FLUP and CLUP, and hence the LGU, through their planning and development officers, should certify the LERMA, including even if the LGU is the applicant, indicating that the application is consistent with the FLUP/CLUP.

10.3. For lands under CADT or which are considered for CADT applications, an NCIP clearance is required to ensure that the LERMA application is consistent with the ADSDPP. Furthermore, such clearance is required even if the applicant is the IP CADT holder.

10.4. For lands that are declared as protected areas, a clearance from the PAMB is required to ensure that the LERMA application is consistent with the PAMP.

10.5. For lands in Palawan, a clearance from the Palawan Council for Sustainable Development (PCSD) is required.

Section 11. Transfer of LERMA

11.1. LERMAs can be transferred to a qualified party, including but not limited to heirs of the LERMA holder when applicable but only upon approval by the approving authorities concerned.

11.2. Transfer may be due to justified lack of interest, or due to death or incapacitation of the LERMA holder.

11.3. Such transfer will only be for the remaining period, and will be implemented in accordance with the terms and conditions of the LERMA.

Section 12. Cancellation of LERMA

12.1. A LERMA can be cancelled only for cause, voluntary surrender of the holder, or by the act of the State in pursuance of the public interest. Such public interests will be defined in a separate regulation by the President or by law.

12.2. Cancellation due to cause will be without prejudice to the filing of appropriate administrative and criminal cases, and the collection of fines or the non-refund of applicable deposits.

12.3. Cancellation due to voluntary surrender shall be tightly regulated in order not to compromise public interest. In no way that voluntary surrender will be accepted as a way to escape liability due to violation of terms and other forest and environmental laws.

12.4. If cancellation is due to an act of the State in pursuance of public interest, appropriate remuneration will be provided to the LERMA holder in accordance with policy.

Section 13. Sub-LERMA

13.1. A LERMA holder will be allowed to sub-contract the use of the land to other parties as sub-contractors.
13.2. The subcontracted LERMA will be referred to as a “Sub-LERMA” and would have the same approving authorities as a LERMA, with the additional signatory being the primary LERMA holder.

13.3. A Sub-LERMA is awarded only upon approval by the duly-approving authority (or authorities in cases of joint issuances), and with the appropriate amendment to the main LERMA contract stipulating the shares in revenues and environmental fees to be levied on the sub-contractors, and the added duties and responsibilities.

13.3.1. A Sub-LERMA is allowed only for activities that are contained in the approved LERMA.

13.3.2. However, exceptions will be made in cases where the activity is an unanticipated use that is imbued with public interest, which the State shall determine, such as infrastructure projects like cell sites.

13.4. The Sub-LERMA holder will not be allowed, however, to further sub-contract any portion of its area to any other party.

13.5. Appropriate guidelines will be drafted to govern the issuance of Sub-LERMA, particularly on the accountability mechanisms, such as those that will pertain to the Sub-LERMA.

13.5.1. A Sub-LERMA could not be transferred to another party.

13.5.2. A Sub-LERMA, upon approval of the pertinent authorities, can continue to exist in the event that its parent LERMA is cancelled, and only in instances where the Sub-LERMA holder is not adversely implicated in the reason for the cancellation.

13.5.3. In cases of continuation of the Sub-LERMA, the government may also decide to convert the Sub-LERMA into a LERMA but only for the unexpired duration of the contract.

Section 14. Shares and fees.

14.1. The valuation mechanism will have two categories: revenue shares and environmental fees.

14.2. Revenue shares from the sale of forest goods and services – if the land use will generate the production of marketable goods and services, an appropriate sharing arrangement will be applied between the land manager (contractor) and the parties involved in the issuance of the LERMA, whether as final signatory, or as concurrent or advisory agent. This will be levied on the gross income of the LERMA holder.

14.2.1. Exception – for private titled lands that enter into a PPP, revenue shares will no longer be levied, but such land-owners will have to pay the necessary sales taxes and other taxes to government.

14.3. Environmental fees

14.3.1. This is to be based on the opportunity cost approach.

14.3.2. This would require the determination through a technical study of the environmental values, in terms of opportunity costs when a hectare of a forest land is used for a particular purpose.

14.3.4. The current land use, prior to the LERMA will then be assessed for its opportunity cost (a close forest land will have a low opportunity cost compared to a grassland, for example).

14.3.5. This will be compared to the proposed land use or land uses contained in the LERMA. The formula will be: Net Opportunity Cost = Opportunity Cost with LERMA – Opportunity Cost without LERMA.

14.3.5.1. If the value is positive, then the LERMA holder will pay the necessary environmental fees equivalent to the net opportunity cost.

14.3.5.2. If the value is negative (that is, the LERMA holder is even contributing to the protection and conservation of forest resources).
then this amount can be deducted from the collectible revenue share, or can be the amount that can be provided as subsidies or support funds for the LERMA holder.

14.3.6. Environmental fees will be paid to Government, and will again be divided according to the formula provided. However, if the fees become negative, and a subsidy needs to be provided, this will be provided by the DENR drawn from its regular budget, for which a new item has to be created as an expense in the future when it submits its budget to Congress.

14.4. The State will provide a mechanism for a socialized system, where environmental fees and revenue shares can be waived, or subsidized, for marginalized groups such as POs and IPs. It is however preferred to make it as a direct subsidy but casted as soft-loan, so that the PO/IP would at least have the mindset that they have to make the land productive and motivate them to engage in livelihood enterprises, or to source funding from LGU through the BUB or IRA processes.

14.5. Mechanisms will be established to operationalize the Payment for Ecosystem Services (PES) Scheme to levy environmental charges to user of forest-related environmental services such as energy and water, and to insure that this will go to the DENR fund to subsidize the reimbursement of negative environmental fees to LERMA holders that contribute to the protection and conservation of forest resources.

Section 15. LERMA as Investment Portfolios

15.1. DENR may package the LERMA as investment portfolios.
15.2. This is to be subjected to bidding by interested parties, and for which the rules on Bid and Awards will apply, in addition to the guidelines set herein.
15.3. Investment portfolios are complete packages that include all the plans, and which already passed the required clearance, concurrent and advisory mechanisms cited above.
15.4. Cancelled LERMAs can also be converted into investment portfolios, but only for the remaining period.
15.5. Priority shall be given to locally-based parties, as well as to qualified POs and IPs.

Section 16. Administrative provisions

16.1 Technical Working Group: Since the issuance of LERMAs will involve different units within DENR, a TWG chaired by FMB and composed of representatives from BMB, MGB, LMB, NAMRIA and the Policy and Planning office of DENR will be formed to ensure uniformity in the application of the policy.
16.2 Technical Manual: A technical manual for the implementation of the LERMA will be issued by the TWG. The technical manual shall contain all the necessary specifics of the implementation of the LERMA System, including the procedures, forms, formulas and specific values of the constants and variables necessary in its implementation. The manual will be good for 3 years, and shall be subjected to review and revision every 3 years herein.
16.3 Technical Assistance: DENR, through FMB, BMB and its field offices (Regional, PENRO and CENRO), should provide technical assistance in the preparation of the LERMA proposals. Priority will be given to those who do not have the resources to procure the services of professional planners and foresters, such as PO applicants.

Section 17. Monitoring and Evaluation

17.1 A system of monitoring and evaluation will be done on a periodic basis, and will be specified in the agreement, and will be mandatory one year prior to the expiration of the LERMA.
17.2. The monitoring and evaluation will focus on compliance of the LERMA holder to the terms and conditions of the agreement, including but not limited to timely accomplishments based on the management plan.

17.3. The monitoring and evaluation will be conducted by a multi-stakeholder body that will be formed at the regional level of operations, Chaired by the Regional DENR, and with invited representation from NCIP, the LGUs and key civil society organizations.

17.4. Results of monitoring and evaluation would be the basis for extension, renewal, or cancellation for cause of LERMA.

17.5. On adverse recommendations, such as cancellation or non-renewal, a more formal investigation will be done by an investigative panel that shall be formed by, and to make the final recommendation to, the authority channels defined above.

17.6. LERMA holders will be accorded the right to due process, and a mechanism for appeal will be promulgated.

Section 18. Transitory provisions

18.1. This policy shall apply to all applicants for land use agreements.

18.2. To harmonize existing regulatory management agreements such as CBFMA, IFMA, SIFMA, FLGMA, FLAG, FLAGT, and CSC with the new policy, a mechanism be adopted to allow the current holders of agreement to convert these to LERMA, and to make the migration as attractive as possible.

Section 19. Implementing Guidelines. FMB, within fifteen (15) days from the date of this Administrative Order, shall issue a technical bulletin specifying the implementing guidelines of the LERMA System.

Section 20. Funding Mechanisms. Funds needed for the implementation of the LERMA for the current year shall be provided by the DBM and the DENR and funding for the succeeding years shall be incorporated in the regular appropriation of DENR.

Section 21. Separability Clause. Any portion or provision of this Administrative Order that maybe declared unconstitutional shall not have the effect of nullifying other provisions hereof, as long as such remaining portions can still subsist and can be given effect in their entirety.

Section 22. Repealing Clause. All Department rules and regulations and other issuances or parts thereof, which are inconsistent with this Administrative Order, are hereby repealed or modified accordingly.

Section 23. Effectivity. This Administrative Order shall take effect immediately upon its publication in a newspaper of general circulation.

DONE in the City of Manila, this ____________________________.
References

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Mann, S.; Munez, M. 2013: Assessment of the Policy/Legal-Regulatory Framework of Community-Based Forest Management in the Philippines. Manila: GIZ.


Annexes

Annex 1. Key informant interview guide questions
Annex 2. Focus group discussion guide questions
Annex 3. List of contacted persons
Annex 4. Sample guide questions for field KII
Annex 5. Sample guide questions for field FGD
Annex 6. Consulted documents
Annex 7. Minutes of the discussion with the panel of reactors during the National Conference on the Governance of Tenure on September 22, 2015
Annex 1. Key Informant Interview (KII) Guide Questions

1. Which drivers/root causes do you consider as most important for forest destruction and land conflicts in the Philippines?
2. To which degree do the existing tenure arrangements effectively govern forestlands and create favorable frame conditions for their sustainable management? (Consider CBFMA, IFMA, PACBRMA under NIPAS, CADT and CALT, Watershed co-management agreements and others)
3. How are inequalities in forest use caused by these existing tenure agreements?
4. What are the social and economic impacts of ancestral claims land?
5. Which are the main problems on forest land, national parks and ancestral lands?
6. Which are the constraints of the State to administer, manage and control public lands?
7. Which are the constraints of your institution regarding administration, planning and control of land and forest?
8. Which are the problems of community-based forest management?
9. If the tenure of forest land was to be transferred from the State to legal entities such as PO, NGO, Corporates, LGU, Schools and Universities, Church: which would be advantages, disadvantages and what should be the conditions for such a transfer?
10. Who has legitimate user rights on forest land now and who should be granted tenure rights?
11. Millions of people live (illegally) on public forest land – how should their situation be handled (/legalized)?
12. How should forests be administered to ensure both socio-economic (livelihood) and ecological (climate, biodiversity, watersheds etc.) functions?
13. What should be done with “open access” forest land?
14. Which tenure arrangement could improve sustainable forestry (with regards to duration, control over resources, right holders etc.)?
15. What could be done to improve the livelihoods of rural communities depending on forest?
16. What should be the role of the State regarding public forest land and regarding ancestral domain land?
17. Which institution should be responsible to grant access to forests?
18. What should be the future role of LGU in forest management and control?
19. What can you say about the following alternatives:
   a. Only one tenure instrument is given to all possible parties, including PO, NGO, Corporate, LGU, Schools and Universities, Church, and that tenure may be given in the form of a comprehensive resource management agreement (CRMA), the terms and conditions of which will be negotiated between parties and customized according to capacity of contracting party and the ecological and economic character of the land in question, consistent with the principles outlined under the VGGT and taking into consideration the Comprehensive Land Use Plans of LGUs (CLUP), and wherein the principles of PES or payments to ecological services can be operationalized.
   b. Whenever appropriate, and only for some sites, the DENR may actually consider the awarding of resource management agreements as investment portfolios.
   c. Public-Private Partnerships (PPP) with those holding titles, which include both CADT holders and private land-owners, to institutionalize resource management agreements in the form of co-management or production sharing arrangements within privately owned lands but are identified as critical watershed, or are providing ecosystem services, in lieu of reversion to public lands.
20. Which factors are hindering tenure reform in the Philippines?
21. Are you familiar with the VGGT? If so, what do you think of it? Is it being consciously considered in the land tenure system of the country?
22. Other comments
Annex 2. Focus Group Discussion (FGD) Guide Questions

1. Which drivers / root causes do you consider as most important for forest destruction in the Philippines?
2. To which degree favor CBFMA, IFMA, and PACBRMA under NIPAS, CADT and CALT, Watershed Co-management and other existing tenure arrangements sustainable forest management? What impact do they have on rural people's livelihood? (The discussion may include a group rating of the different tenure instruments regarding their social and ecological impact)
3. Which are the constraints of the different public institutions to administer, manage and control public lands?
4. What should be done with “open access” forest land?
5. What should be the criteria and conditions for granting forest use to communities and other legal entities?
6. How should forests be administered to ensure both socio-economic (livelihood) and ecological (climate, biodiversity, watersheds etc.) functions?
7. What can you say about the following alternatives:
   a. Only one tenure instrument is given to all possible parties, including PO, NGO, Corporate, LGU, Schools and Universities, Church, and that tenure may be given in the form of a comprehensive resource management agreement (CRMA), the terms and conditions of which will be negotiated between parties and will be customized according to capacity of contracting party and the ecological and economic character of the land in question, consistent with the principles outlined under the VGGT and taking into consideration the Comprehensive Land Use Plans of LGUs (CLUP), and wherein the principles of PES or payments to ecological services can be operationalized.
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   c. Public-Private Partnerships (PPP) with those holding titles, which include both CADT holders and private land-owners, to institutionalize resource management agreements in the form of co-management or production sharing arrangements within privately owned lands but are identified as critical watershed, or are providing ecosystem services, in lieu of reversion to public lands.
8. Other proposals
# Annex 3. List of Contacted Persons

## National Study

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<th>Name</th>
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<td>3. Erlinda Dolatre</td>
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<td>4. Marlea Munez</td>
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<td>5. Jürgen Schade</td>
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<td>6. Ricardo Calderon</td>
<td>Director FMB</td>
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<td>7. Samson Pedragosa</td>
<td>PAFID</td>
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<td>8. Giovanni Reyes</td>
<td>KASAPI (National Coalition of Indigenous People)</td>
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<td>9. Atty. Rodolfo Ferdinand N. Quicho</td>
<td>GEF-SGP (Small Grants Programme)</td>
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<td>11. Novel V. Bangsal</td>
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<td>21. Emma N. Castillo</td>
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<td>22. Ma. Teresa G. Aguirre</td>
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## Field Case Studies

### Davao City

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<td>11. Abs Baya</td>
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<td>12. Eden Santiago</td>
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<td>Amador Tarite</td>
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<td>Elizabeth P. Manibad</td>
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**Iloilo**

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<td>Daryl Honorario</td>
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**Isabela**

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<td>Blessie Tagibao</td>
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<td>Noel Coballes</td>
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<th>Target Participants</th>
<th>Questions</th>
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| Regional Directors                                       | • Please tell me about yourself and your involvement in your place of work?  
• In the past, what were the tenure instruments that you have (processed or applied for)?  
• Please tell me about your experience in (handling, processing, or applying for) these tenure instruments. What positive or negative experiences did you encounter?  
• What do you think are the causes behind these experiences?  
• Can you tell me some problems or issues that you have to deal with the tenure instrument?  
• How do you think these problems or issues are resolved?  
• How was your cooperation with other institutions and organizations in this process?  
• Can you tell me instances where there were land use conflicts? How did you address the problem? Are the available policies on land tenure sufficient to address these conflicts? |
| Assistant Regional Directors                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| PENROs, CENROs, Municipal/City/Provincial ENROs          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Local NCIP/DAR/DILG Officials                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| LGU Heads/Councils CPDO, MPDO                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| NGO/PO Point Persons                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Indigenous Peoples                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Other CSOs                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

Annex 5. Sample Guide Questions for Field FGD

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<th>Topic</th>
<th>Questions</th>
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| Issues surrounding current tenure instrument     | • Having been involved in the implementation of [state tenure instrument], can you discuss the issues/problems surrounding this tenure instrument?  
• Which impacts had the existing tenure instruments on tenure security, forest coverage and rural livelihoods in the past?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Solutions to the problems with current tenure instrument | • What solutions have you done in the past as far as these issues are concerned?  
• Can you tell me instances where there were land use conflicts? How did you address the problem? Are the available policies on land tenure sufficient to address these conflicts?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Unified tenure instrument                         | • What do you think of a unified tenure instrument?  
• How should this be done/implemented?  
• What should be changed in the current tenure instruments? Or should we imagine a brand new system?  
• What should be included in this “brand new” unified tenure instrument system?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Policy strategies                                  | • What policy strategies should be formulated in support of this unified tenure instrument system?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
Annex 6. Consulted Documents


Congressional Policy and Budget Research Department 2011: Addressing Policy Gaps in the Land Administration System. CPBRD Policy Brief No. 2011-4


Congressional Policy and Budget Research Department 2014: Options for CARP After 2014. CPBRD Policy Brief No. 2014-08


Forest Management Bureau 2012: Philippine Forestry Statistics


GIZ 2013: Pursuing an Enabling Policy Climate for REDD-Plus Implementation in the Philippines. Review and Analysis of Forest Policy Relating to REDD-Plus


GIZ 2014b: Upland agriculture in the Philippines. Potential and Challenges

Guiang, Ernesto S., Borlagdan, Salve B. and Pulhin, Juan M. 2001: Community-Based Forest Management in the Philippines: A Preliminary Assessment. IPC – Institute of Philippine Culture. Ateneo de Manila University


Hontiveros, Gregorio Jose P. 2013: Legal Study of Land Rights and Tenurial Instruments in the Caraga Region. Ateneo de Davao Institute of Anthropology and Ponciano L. Bennagen. Submitted to GIZ


Mann, Dr. Stefan and Muñez, Marlea 2013: Assessment of the Policy/Legal-Regulatory Framework of Community-based Forest Management in the Philippines. Joint GIZ/KfW Mid-Term review Mission o f the Community-based Forest and Mangrove Management Project in Panay and Negros (CBFMMP), Republic of the Philippines


Republic of the Philippines 1936: The Public Land Act (Com. Act No 141, as amended)

Republic of the Philippines 1987: The 1987 Constitution of the Philippines


Senate and House of Representatives of the Philippines 1919: Act No. 2874 “The Public Land Act”

The Local Governance Support Program in ARMM (LGSPA) (publ.) 2009: Land tenure stories in Central Mindanao.

Davao City

The President of the Philippines 1995: Executive Order No. 263, Adopting Community-based Forest Management as the National Strategy to Ensure the Sustainable Development of the Country’s Forestlands Resources and Providing Mechanisms for its Implementation. Malacañan Palace. Manila

The President of the Philippines 2011: Executive Order No. 23, Declaring a Moratorium on the Cutting and Harvesting of Timber in the Natural and Residual Forests and Creating the Anti-Illegal Logging Task Force. Malacañan Palace. Manila

Annex 7. Minutes of the Discussion with the Panel of Reactors during the National Conference on the Governance of Tenure on September 22, 2015

The Panel of Reactors, who were present during the open forum, consisted of three experts of various backgrounds, namely: (1) Dr. Masli A. Quilaman (Director, NCIP); (2) Mr. Jose Z. Grageda (Undersecretary, DAR); and, (3) Mr. Antonio B. Quizon (Chairperson, ANGOC).

From the academe, Dr. Ben S. Malayang III (President, Siliman University) sent in his reactions and commentaries, which were presented at the end of the forum. Dr. Antonio P. Contreras (Team Leader, Governance of Tenure Study) was also seated with the panel to address the different issues and concerns aired by the reactors. Ms. Ariza facilitated the discussion among the panelists.

Brief Opening Statements from the Panel of Reactors

The panel discussion began with Ms. Ariza laying down the fundamental question on the general or initial assessment or perspectives of the reactors or reactors' institutions on the proposed LERMA.

Mr. Tony Quizon (ANGOC): Magandang umaga po. Good morning. I don't know if this will help because I have more questions. I would like to just go straight to the discussion and highlight key points that are in my mind. There are different concepts in terms of the use of the word “forest”. There are lots of confusion also even in literature, law and application when we talk about forests. It has two meanings, and this is also because of historical reasons.

First of all, the forest is a tenure regime of state ownership when you say forestlands. But this can also be a land use or description of an ecosystem. Therefore, when I use them, they tend to be interchanged and I get a little bit confused. In the context of this discussion, we are talking about forest as tenure system of the Regalian doctrine. And then I look into history, there were forests designated as hunting grounds for French kings. In Philippine history, before it was related to Regalian doctrine, forests refer to all lands outside the permanent residence and sedentary farms were taken and later formed as public domain. And later on, under the Public Lands Act of 1902 and then PD 141 and later PD 705, which created different designations, forests came to represent actually public lands or state-controlled lands. Therefore, it refers to lands of public domains, but does not necessarily mean that it is not with trees and vegetative cover whether actual or intended. This forest is sustained as tenure system.

When I look also into the scope – the scope is huge. When you talk about forestlands therefore, you are maybe talking about 16 million hectares out of the 30 million hectares of the Philippines. There are overlaps with other policies such as CLOA, CADT, CALC and CADC. Based on past estimate projected, it is probably between 25 to 30 million, which is about 30%, and you are saying here that about 22 million are those with informal tenure and the rest have formal tenure. This is very much about a-third of the country with forestlands. That amount that will be involved in this is really huge.

No. 2, DENR manages these 16 million hectares of public domain and I think, that is also one of the reasons why we have the tragedy of the commons. And it is not because of DENR. It is just the volume of work, and therefore, when you look into the management of forests and forestlands you really need to look into tenure instruments together with other strategies. The key issue when you are talking on resource rights is enforcement. Based on the rules of tenure in forestlands, forest also means the rights of exclusion – not just inclusion but also exclusion. And therefore, the unified system to me is something like a proposal of a management of contracts, managing 16 million hectares through managing contracts – which is the way I understand it in this context.

Three, the question will be, “Will the unified tenure system under DENR for forestlands address multiple land tenure claims and conflicts in forestlands?” Some of the overlapping rights come from other tenure instruments, ancestral domains, mining leases, agrarian reform versus IPRA – that even under DENR, the
untitled public and cultural lands about 77,000 hectares cannot be transferred or revert back to agricultural lands because they are still untitled and we only have tax declarations covering them.

In the past, we have Technical Working Groups for interagency discussions, and even joint administrative orders. They resolved disputes but not really resolved conflicting policies. So what I am thinking is that, yes, the unified system will be able to resolve conflicts within the different instruments within DENR, but how about the other instruments, with conflicts and overlaps with the other instruments? Therefore, I am really saying that the ancestral domains should lie outside of LERMAs. They call it under a totally different category of tenure, and you really have to focus on the ADSDPPs instead.

No. 4, the key concern should still be the tenurial security of poor people. And for me, the question I have is really still focusing on the 22 million with informal tenure.

No. 5 point, I have some specific comments. Of the list of entitlement, what is the basis for assessing eligibility when you have conflicting terms? Will there have been issuance for tree plantations? What is the size of the LERMA? I think it has to conceptualize or understand on how big is LERMA? How big is its coverage? From the Shares and Fees, there is a whole world of valuation, and I have gone through some valuation work even with the DAR. It is very complicated because you are really evaluating opportunity cost for dealing with resources. I guess, I am just wondering if you are covering 16 million hectares, we will be looking into the administrative work involved.

In terms of the requirements, how are the requirements applicable to poor people? Will they be able to make those requirements? Finally, in search for management schemes, I followed the proposal of Congressman Teddy that we should look into ICCAs, or the practice of indigenous and community conserved areas because that would be easier, and it is more organic because it already exists.

Of course, the other thing he mentioned, which I agree on, is the National Land Use Act, which we should follow say for example the one-map approach, because many agencies have their own maps that these should be transparent and available to the public. I should stop there and add later.

Ms. Ariza (MC): We would like to ask Ton if you would like to respond to the points now or you want to gather all the views first.

Dir. Caymo (DAR): Magandang umaga po sa ating lahat (Good morning to all of us). My reaction will be very short and I will be dealing more on the proposed policy, particularly on the approval process and coverage.

Let me clarify first that pursuant to RA 6657, we are covering three categories of lands. First are the titled agricultural lands above 5 hectares; then second, settlement and resettlement areas, and reservations for other agencies turned over to DAR; and also other untitled agricultural lands. With all these categories, we are not supposed to be or we are barred from giving CLOAs in areas, which are forestlands or timberlands.

But in some of the areas under the jurisdiction of DAR, there are timberlands particularly the settlement and those that were transferred by NGAs to DAR. We think that LERMA could be an opportunity for the occupants of these areas to have security of tenure on the lands because as mentioned earlier in the discussions, the security of tenure is necessary to beat the ongoing degradation in these areas. The invasion of these areas would definitely affect these areas because of the ecological impacts or effects. Haphazard activities in the timberlands are done by those who are occupying these areas.

For the approval process, we are in agreement with the proposal that it should be at the Regional Director and it should be a joint issuance between the Regional Director (RD) of DAR and the RD of DENR. After we join the group, we said that, how about the responsibilities of the DAR in the monitoring and later evaluation of these LERMAs?

Also there was a mentioning of other titled properties. By titled properties, we include A&D and CLOAs issued in these areas. In the issuance of the LERMA, we should take into considerations the rules and regulations pertaining to transferring security of our lands. We said that transfer should be to the
Improving governance of tenure
government and other qualified current beneficiaries, and that the nature of the land should be maintained, and that maybe the approval of the land and even the Presidential Agrarian Reform policy may be required for the issuance of tenure in these areas. I think that’s all for my time. Thank you.

Ms. Ariza: Thank you very much, Sir Andy. Sir Masli?

Dr. Quilaman (NCIP): Magandang umaga po sa ating lahat. My comments will be shorter. The National Commission for Indigenous Peoples (NCIP) strongly supports the LERMA, but of course, with due regards and respect to the rights of the indigenous peoples and to see more planting without diminishing the rights of the indigenous peoples as provided for in the Indigenous Peoples’ Rights Act of 1997, the provisions of the Philippine Constitution of the 1987, the United Nations Declaration of the Rights of Indigenous Peoples, and of course, the provisions on ICCAs, na palaging binabanggit ni Hon. Congressman Teddy Baguilat (that was always mentioned by Hon. Congressman Teddy Baguilat), the indigenous community conserved areas through the CBD or Convention on Biological Diversity where the Philippine government is a state-party.

The NCIP supports LERMA because we see this as an instrument that is preventive to the various human rights violations being perpetuated against indigenous peoples. I just came from Surigao and I really learn a lot of things with regards to the very cause why there were massacres … simply because of the agawan (contention) in the management of resources in the ancestral domains. Of course, we are not in agreement to the statement that ancestral domains should be exempt from LERMA. But of course, we have to look deeper into the statement as we go along discussing later on as to the provisions of LERMA and we hope that NCIP will form part of technical working group to work on this because as they say, the devil lies in the details.

Next, the NCIP also supports LERMA because this highlights actually the response of the indigenous peoples to their ancestral domains as provided for specifically under Section 9 of IPRA to restore human areas and to ensure ecological patterns. These responsibilities of the indigenous peoples have long been kept in isolation when we try to highlight these responsibilities. When I attended one of the seminar-workshops by the Forest Management Bureau, it is said that 80% of the forest cover of the country are redeemed as ancestral domains, and we owe that so much out of the ICCAs of the indigenous cultural communities through the indigenous justice and political structure systems, which sustained these things all throughout the years and even centuries.

We can cite in fact the case of Sagada. In fact, during the early part of the 20th century, Sagada was a grassland. But look at how it evolved into pine forest. As the Hon. Congressman shared the buyong of the Ifugao, I think I have to share the batangan of the Kankaney of the Sagada of the south and the rest of the Mountain Province.

Lastly, we are also supportive of the LERMA because as it abides in the Constitution, the State recognizes the rights of the indigenous peoples to self-governance and self-determination, inclusive of its responsibilities to the ancestral domains, under the framework of the national unity and development.

Thank you.

Ms. Ariza: Before I read the reactions of the President of Siliman University, Dr. Malayang III, I would like to briefly summarize the key points, which you might want to think about them later with Dr. Malayang’s reactions. So, on the positive side, our guests here – Sir Masli and Sir Andy – were saying that they will support LERMA, and three highlights were given. One of them is the opportunity for these occupants of the land to have security of tenure. It could also potentially prevent human rights violations, and the third is that it highlights the responsibilities of the indigenous peoples over their ancestral domains. So these are the opportunities that LERMA presents.

However, there were questions that our guest from ANGOC. He was saying that: (1) it was not clear how “forest” is defined in LERMA; (2) the scope seems really huge as it could be approximately one-third of the entire country; (3) DENR is saddled in so many responsibilities – is this a management of contracts because there are already so many contracts existing with various types of tenure; (4) will conflicting policies be resolved by LERMA and will this also focus on the ADSDPP of the IPs; (5) what is the basis for
assessing eligibility; (6) how will land be valued; (7) will it focus on the ICCAs; (8) how will the poor people avail of this; and lastly, (9) what is its connection with the National Land Use Act and be supportive of the Land Use Act if you have LERMA?

What does Dr. Ben Malayang think? He has five propositions: (1) agrees on the basis of the policy proposal; (2) asserts that the assumption of the policy proposal is that absolute private property rights will always be the default mode of land tenure in this country; (3) extend the purpose of LERMA by capturing the following elements, namely, mixes of different land uses, rational gatekeeping and access to LERMA, priority to those who are already on the land, compatibility to the culture and traditions of those who are already on the land, and become instrument of inclusion and not exclusion to promote cooperation and not conflict, and offer sanctuary to both people and biota; (4) clear boundaries and scope of LERMA; and (5) LERMA as an investment portfolio and the possibility of making LERMA “securitizable” from ecosystem services.

LERMA initially must be proposed as an EO, but it would be more valuable if it is promulgated by an Act of Congress. Multiple uses of the land is a welcome proposition not only for the biodiversity but also for social justice, but they must be achieved as a tapestry of uses and not one over the other. The government needs to create a harmonious T’nalak (traditional cloth of Tboli tribe in Mindanao) of a tapestry of colors creating a strong harmonious beauty as an investment of lands.

Dr. Contreras (SL): All of these are actually positive, in a sense, even the questions and issues I always see these as all opportunities. The team and I welcome all these as opportunities to improve the draft. The points that were raised by the three and also by Ben are the issue about lands, forestlands for example, is to decipher by what do we mean by forestlands. And indeed, there are many definitions of forestlands. But the way I see this is that instead of looking at this as a constraint or as a burden, it must be a call for us to finally agree on what is it. In the context of LERMA, because LERMA is clearly a regulatory instrument; so therefore, the management agreement is focused the land itself as the object of relation. So I think it is very clear that these are contracts.

The question on capacity of DENR to implement this and to enforce laws and the management of contracts must not stop us from hoping that with the possible policy or rationalization of policy, that implementation will also be streamlined. DENR has too many management contracts right now. In terms of complexity, for example, the issue on basis of eligibility, we are very clear that there is always going to be the priority given to those who are already there. We emphasize that there is a socialized component where even fees can be waived for people who cannot afford. Then technical assistance will be provided to those who could not hire professional planners.

And if opportunity cost is a challenge, the valuation is a challenge. But that does not mean that you will just accept what is the present because the option is unscientific. Zonal value is unscientific – you are treating the land as marketable good when in fact it is not. So it should not be a challenge. It could be a start by having a generic value if the land is going to be used for agroforestry as a basis, because the ideal is to calculate on a case-to-case basis that whenever there is a LERMA application, you are computing for opportunity cost.

But, indeed, it is going to be a gargantuan task. Indeed, it is going to need a lot of resource economists to do that. But you know, what we are proposing to start is for us to have a technical staff or commission to determine first on a general level a range or even a value of opportunity cost per hectare of a land use. And then improve on that because anyway, the implementing rules or guidelines will have to be modified in due time.

So in terms of the size – in terms of all this technical as to how big it is, what is its coverage – that is why they are not fixing. In current policy, there is no number or hectares, which is something that is negotiable based on the needs of the applicant. Indeed, it is an implementation challenge. The challenge is on the implementation as our colleague from NCIP said that the devil is in the details. But this is going to be as such, I think.
I really welcome very much the DAR and NCIP positions to take this as an opportunity to work together. Remember, they are having Technical Working Groups. That is why I am a bit uncomfortable with the strong recommendation from Tony here to leave the CADT areas and not to be covered with a LERMA because that is going to be problematic. In Region 11 alone, 80% of the forest areas are covered by CADT, and these are forestlands.

At the same time, whether we like it or not, whether we are happy or not, the DENR is tasked to be the regulatory body for forestland agreement management. If the IPs be allowed to do some forestland management activities in the CADT area and they require cutting for example, then they cannot transport logs outside of their territories without the approval of DENR unless we change the law. So instead of looking at this as a time to divide, I think this is an opportunity for us to work together. That is why we have joint issuances, for example, that if there are certain areas where there is a need, let there be issuances between the two agencies.

I also welcome the suggestion from the DAR to involve DAR in the monitoring and evaluation of the LERMA. So I think I need to stop there because this is an ongoing work. This is not just the work of the team; this is all our work. This is your contribution to the land use governance of the country. If it is the case, let us think positive about this, knowing that this is not something that is easy, and that governing land use is not that easy, and at times, they are a source of conflict.

And now, on the recommendation of Dr. Malayang that this should be a law, we welcome that because that is the final destination. But let us look at how the NLUA per se or even how the Sustainable Forest Management Act had progressed in Congress. *Magkakaapo na yata ako bago ma-approve* (I may even have grandchildren before they are approved).

We can have that dream; but meanwhile, let us not waste time.

**Open Forum**

**Novel Bangsal** [Read]: Will you allow foreign individuals or companies to participate in the LERMA (investment portfolios)? Allowable size of land for LERMA?

**Response (SL):** We have laws to cover that under the Philippine Constitution so we will not be allowed to violate the laws.

**Jurgen Schade** (GIZ ForClim) [Read]: What is tenure for CSC? Can they be extended as CSC? Can they be converted to LERMA? Need feasibility study, economic analysis? CSC be renewed as LERMA?

**Response (SL):** The way I understand it is that some CSCs have long been renewed. Some CSCs are about to expire; some have already expired. And at the same time, some of the CSC beneficiaries have been absorbed in CBFMAs. ... In terms of feasibility study, and that is also why we are having some problems on forest management, there is a lack of livelihood opportunity that is being implemented. Perhaps it is about time that we really expect that applicants of CBFM must also have livelihood opportunities instead of a free labor for protection.

That is why we said they could be subsidized. In fact, if you were going to contract a community for protection purposes and at the same time for agroforestry, it would be possible that the negative opportunity cost for the forest protection component can compensate for the positive opportunity cost for agroforestry. So it is possible that they would not pay for anything to the government; but it is giving them a mindset that they are capable of achieving... This is an opportunity for all agencies to help build the capacity.

We mentioned the Bottom-Up Budgeting (BUB), for example, which is being implemented by many LGUs. Very few community-based organizations participate in BUB by submitting proposals. I think this is one of the things that need to be addressed. I think it is more of a paradigm shift of looking at the perspective of Ernie Guiang, one of my colleagues who prepared the Master Plan in Forestry, and also the person who insisted to look at POs not as expense items but as revenue-generating items. In LERMA, we
are trying to push that as well by not treating the communities as just free protectors; they should be revenue generators.

Now in terms of the issue of size, that is why we do not want to box LERMA to rigid regulations because you need to assess. If LERMA is to be pursued, there is a need for social scientists and economists to do social assessment on how should the area be, and the capacity and readiness of people. That is why you just do not go for a blanketed 25 years because if the capacity of the [LERMA applicant] requires to only be given 5 years, extendable for another 5 years, then rather than being burdened for long years that he could not deliver. I think it is more on the flexibility of LERMA; but in order to be flexible, the details should be devilish. So that is the challenge.

**Question** [Unnamed] [Read]: Does your study include tenure in foreshore land for accretions? Would this be a part of LERMA?

**Response (SL):** If it is covered under the present forest policies or forestland management agreements under DENR, then it will probably be included.

**Response (NCIP):** I would like to go back to the concern with regards to the ancestral domains being exempt from LERMA. The Free and Prior Informed Consent (FPIC) will suffice to answer that concern; because we cannot also deny the indigenous peoples with whatever opportunities that the LERMA can provide them, especially the economic aspect of the LERMA. While we have our ICCAs, they are actually being limiting in terms of economic [benefits] that indigenous peoples need.

**Roger Garinga** [Read]: If CADT areas are targeted for LERMA – what’s in it for CADT holder if they have ADSDPP already? Why do they have to apply for LERMA?

**Response (SL):** The ADSDPP is a plan. CADT, as already articulated by NCIP, is an instrument for the IPs to have rights of the land. But in terms of making it productive economically, the IPRA law does not have that. So maybe in their CADT area, they can have a plantation. Of course, the theoretical construct is that they can have plantations of their own within the CADT areas. But do they have the technical capacity?

In our FGDs and KIIIs, even people from NCIP, they need partnerships from DENR. Granted that they can be given within the CADT framework by NCIP the ability to have plantations, for example; when they cut the plantations, they need permits from DENR. When they transport, they need permits from DENR.

Then, that is an opportunity for partnerships. So even if the IP would like to apply, they need a LERMA to do it. A LERMA is not a tenure; it is a management agreement that has associated benefits and responsibilities.

So in the end, it becomes further legitimized; but at the same time, there is an economic activity. And also even if the applicant is an IP-holder, they still need clearance from their own ranks because they are maintaining this venue where autonomous decisions are being made that may not be consistent with the ADSDPP.

Now, the reason also why we focus on ADSDPP through CLUPs and FLUPs is making this opportunity of using the LERMA to make LGUs, PAMBs, NCIP to be really serious in crafting these plans because if you do not have the plan, then you do not have economic activity within your area.

**Ms. Ariza:** Will an EO be sufficient, considering so many conflicting laws and policies that we already have? *(Based on Oliver Pugiurier’s question [OTC]): And if we were going to move forward with LERMA as a policy, what would be the next step that you would propose, Including the preparatory steps towards proposing this? May I have the thoughts of our panelists?*

**Response (NCIP):** Based on my experience, it is harder to implement a JAO than an EO. For one, if it is from an Executive Office, then everybody is really pressured to do his or her respective roles and functions. We have this experience with our JAO, Series of 2008 A JAO No. 1 with DENR on the recognition of the sustainable traditional indigenous forest resource management systems and practices
of the indigenous peoples that was agreed upon in 2008, but until now, I think is still on review by these agencies because of some dynamics between the offices concerned in implementing that JAO.

**Response (DAR):** I suggest that there should be an EO in governing this LERMA because of so many sectors involved, this LERMA may become conflicting with existing policies and some instruments issued by NCIP and the DENR. So I think that an EO is appropriate. But on the procedural level, I think, a JAO with the EO can suffice.

**Response (SL):** I think, the EO because I know for a fact that an EO cannot be longer than 3-4 pages. I have yet to see an EO that is like long. So an EO can be issued on the principle of the policy but the details can be more in a manual of operations enjoined by the agencies involved. That’s ideal.

**Response (ANGOC):** I think that in every legislation, you really need a learning period when working out the details, and an EO can hold on something like a convergence initiative that is something very specific, as the details will really determine a lot of things.

**Response (SL):** By the way, let us not forget the fact that the LERMA can only be applied for new applications. We still have a host of existing management agreements. So initially, much of the efforts should be done on marketing LERMA to the existing operations so that they can migrate to the new tenure system. So here we will definitely start with something small because anyway, it will only be applied to new applicants or those that are to be renewed.

**Response (ANGOC):** At the same time, the overlapping tenure question, I think will still remain. For example, if mining is not included, and there will be a lot of overlaps between mining applications with other land tenure instruments existing right now. It will harmonize a part; but to think that it will harmonize the whole forest area – no, that is not going to happen.

**Hon. Teddy Baguilat [OTF]:** Correct me if I am wrong to say if the purpose of this conference is to propose sweeping dynamic policy changes but the focus of the discussion is LERMA, and no offense to Dr. Contreras, that I am extremely disappointed. I see LERMA as a resource management agreement, but this bureau already has a lot of production-oriented resource management agreements.

So my initial question to them would be, what makes LERMA an entirely different banana from all the other rotten bananas such as TLAs, IFMAs, and Social Forestry that we had envisioned in the past? I would have thought that the saving grace of LERMA is to phase out all of these agreements and just have one formal agreement. Dr. Tony was a bit kinder to DENR, because the suggestion should have been to really do away with the previous production schemes or in LERMA, more focus on the conservation or biodiversity aspect with particular effort on the payment for the environmental services because you are looking at the whole land tenure instruments all throughout the Philippines.

Our environmental laws really are quite contradictory. We have the mining law, we have the IPRA, and we have all the forestry laws in an archipelago of an island ecosystem. So the fantasy of trying to harmonize mining, forestry, and ancestral domains in small island ecosystem is really a fantasy. Why do I say this? Because I have undergone and conducted a lot of congressional inquiries wherein IPs were in conflict against farmers because of CLOAs vs. their ancestral domain claims, IPs or local communities against DENR because of the protected areas system vis-à-vis their total community traditional forest management practices.

Therefore, if you were going to ask me, what would be our suggestion in Congress, I would say that the NLUA must be passed because that already provides or covers all the overarching policies about how to use lands. Second, I firmly believe that DENR has to be shaken up in the sense that because right now it is a dichotomy. DENR has the extractive part and under it you also have the protection agency; and sometimes, they conflict. We should remove the protection from DENR’s jurisdiction because to me, their directions are in conflict with each other. And then take a look at ICCA as a possible forest protection or biodiversity schemes.
For me, these are at least some of my suggestions in terms of major policy directives; not to talk about it, schemes or production schemes that already exist that have proved to be successful in my assessment. No offense to Dr. Contreras.

Response (SL): No offense taken by having your suggestions. Actually, your honor, I would like to assure you that it is less of being kind to DENR than it has been kind to all of us. Because you know for a fact that nowhere in Congress is less complicated; that is why passing bill takes years. That is why making a sweeping reform into a law, you might yet be tapping again … another problem on how to do it.

You asked earlier on what is the advantage of LERMA. The LERMA would like to be as dynamic and versatile as possible but also solving problems with consistency. Right now, we have IFMA, SIFMA, FLGMA, FLAg, FLAgT with different requirements, different schedules, and so on. We need to harmonize that. But at the same time, we have rigid requirements that may not be compatible with complex ecosystems and cultural requirements of governing the country. So we make it a possibility of making it a negotiable contract; so we are trying to solve many problems and we are trying to make sure that it is something that we may implement.

Now whether it is an EO or a law, I personally want to make it as a law. Although the problem with laws that is technical in nature that putting a lot of technical things into the law might be tying our hands. What if in the future we would like it changed, then we would have to amend. Then may be a law that is more general in statements that the details can be in terms of Eos, or maybe a rider in the NLUA, or a provision there in terms of a LERMA in which the details can be provided by regulations to be given by the agencies that will be involved. That can be an option. We do not need to fight for a new bill. We can amend the NLUA so that it can be a reference to LERMA.

This is something that is worth doing but it does not stop us from moving forward. But I really appreciate very that there are many inputs coming in, but I would like to make a point regarding what is special about LERMA. It is because it tries to do a lot of things, which is basically solving a lot of problems on too much overlaps with policies and then rigid requirements. So how do you get out and negotiate this tapestry? I think the best way is to recognize the diversity towards one land use tenure instrument.

Manjal (IP from Cordillera) (OTF): We have been listening to all the presentations, where we talked a lot about deforestation and reforestation, access roads, regulating or even commending access roads to the forest as a solution to the dying forests of the country. LERMA is not different from these, as I understand because it is about protecting and management of forests.

But my question is: “What use is this LERMA?” Of all these policies and laws, there are no policies to stop the destruction of natural resources; for example, mining, logging concessions, construction of dams, and similar projects that are being undertaken in the ancestral domains. These were not discussed in the presentation at all. No mentioning of mining; but how do we deal with this?

LERMA as you said is a solution to a lot of problems. LERMA should stop these big problems, these problems on IPs. Can LERMA address the infertility of forestlands due to open pit mining for example because it takes a hundred years for the soil to regain its fertility? How can LERMA for example address the problem due to toxic wastes from mining activities? Can it bring back the water resources we lost because of the toxicity of these mining wastes? If there is LERMA, according to Congressman Baguilat, how can this be different from other existing production forest management systems? How can this be not another form of preventing indigenous peoples to have access to lands for cultural and spiritual purposes? How can this be not another form of having moneyed people or corporations taking charge of our forests? How can this be not another reason to deploy military in our territory? I ask these because our problem is not about our lack of knowledge on resource management. Our problem is the big development projects coming to our territories and destroying our resources. Our problem is about laws and regulations and policies that prevent us from access and management of our resources. The solution is to totally stop or remove all destructive projects and allows us to protect and manage our natural resources in a manner that is culturally and spiritually based, guided by indigenous knowledge and
experience of resource management. So all these factor into LERMA or the policy that you are proposing. Thank you.

Response (SL): All the question you have raised, honestly, LERMA alone cannot solve them. I will be honest with you. But at the same time, LERMA is a step towards solutions, providing solutions to these, because if you are going to expect that a particular law will solve all these things, you are asking for a miracle. Let us be honest about it.

These are complicated issues – issues about land development in your lands, and when weighed against other development themes, and I do realize that indeed, there are abuses. But if you look at the provisions, for example in the LERMA, there is a statement that for example, mining will not encroach in protected areas or CADT areas, and will not compromise. But we do have a provision for that. So I guess if you are going to be honest, LERMA could not do all those things by itself. Yet I think there is no law that would ever address all those things that you have said since they are complicated issues. So I think, instead of being stocked in these contentious debates, what we should do is to move forward but we should be conscious of the fact that we should privilege the poor, the marginalized and the countless indigenous peoples. I have the confident that the way our team is crafting the LERMA right now, our team is very conscious of that, that fact that it allows the socialized mechanism for support services for those who cannot pay for the professional planners, the fact that it would like to provide for the opportunity costs so that protection functions can be privileged for negative values be taken away from their revenue shares, those are progressive mechanisms that if not outright in this case but indeed, these are political solutions. But let me just assure you that we are aware of the gravity of the situations.

Marlea Muñez (NGO) [OTF]: I would like to congratulate the team for that very provocative proposal. I have several concerns. No. 1, I think for the ways forward, the DENR should review the agreements issued before. When I say these, there have been agreements issued before that were not supposed to be issued; and therefore should be removed from the list. Even in the CBFM, in the strategic plan, we realized that there are grantees of the agreements that should have not been given such an agreement. We are still waiting for the cleaning of these documents. Hanggang 2017 naman iyong CBFM Strategic Plan (Besides, the CBFM Strategic Plan is until 2017).

I think another item that should be settled by DENR is COA. COA has been questioning that government funds should not be invested on private lands. What about the ownership item of our ancestral domains? These are private land ownership; the land is theirs. I think DENR is facing COA suspensions. Others are disallowances. Pity on those DENR personnel who are involved in these but are just doing their jobs.

It is clear that it is a management agreement, which you are proposing. I hope that the rationalization aspect of DENR has been put into the paper as well because I consider that the current proposal is business-oriented. In a sense, for management, you cannot invest on a land without capital. CBFM as a strategy failed not because of the communities themselves, but because of the budget that the government is investing on CBFM had been going down for the last how many years. I would say that it was only during the time of Ramos that this program actually propelled. The NGP is not equal to CBFM. But I beg to disagree with NGP actually promoted CBFM.

In terms of the realization and recognition that IPs and local communities actually maintained the forests that we have, what did the government do about this? This can be something that should this be in the proposal. There should be compensation for the efforts they have done. No one in this room will disagree that they actually maintain the forests that we have right now. So probably in the compensation, or in the fees, whether it is a positive or negative thing, government should invest in compensating these communities in actually maintaining and conserving these forests.

And the last item, for the ways forward, again there is an opportunity for the very famous capacity-building program for everyone. Not all foresters are into management agreements. For the batches that were the products of the curriculum that had majors, and not general forest resource management, I think it will be very difficult for this young generation to just jump into the new process that you are proposing. Major ways forward is the capacity-building. Look at the budget now – the highest budget that we have being proposed now in the House – wala halos para sa mga taong gobyerno (there is virtually
nothing for the government personnel). Not everyone is corrupt in the government. We can easily pinpoint those corrupt. Many of them are field workers who really need support. They lose their faces when we converted, I was one of those who were used by the government, to talk to people and help in forest management. And then after a while, "talikuran mo (we turned our back on them) because that was not the process that the government can afford to do.

Again, the EO should have provision for budget. Nothing moves in this country without any budget.

Response (SL): Final word. Thank you, Marlea, for pointing all these. The DENR are here to address the issues. And I think we will try our very best that all your points will be integrated into the LERMA. And I would assume that since you were also in the NCIP before, that you had jumpstarted with all these while you were there. So there is already a momentum in trying to address all of these. The LERMA cannot address those interests because they are outside of it. But you mentioned ways in moving forward – budgeting, capacity building, and those challenges. We will consider these in the drafting of final version of this proposal, which should still be undergoing a series of consultation. And on October 22nd, we will also present this in the National Conference of the Society of Filipino Foresters, and I hope you will also be there, and be a voice.

Final Statements

NCIP: I am taking this as an opportunity for us to share our own different concerns on this. As far as the National Commission on Indigenous Peoples, what we always pursue is whatever is provided in the IPRA.

ANGOC: Our main concern is how poor people can access forestlands. There are four major ways. One is what we call the market so that poor people can access the markets. Second are the people who are intra-household inheritance or sharing within the household. The third way is community membership. For example if you are a member of community groups, you have access to lands. The fourth is the state programs such as agrarian reform, restitution under IPRA, settlements, recognition, and registration, and here, we have another policy instrument being proposed; so just in the context of looking at ways by which poor people can access security of tenure over the land.

DAR: In behalf of the DAR, we are supportive of this proposal.

Other Questions

Marina Manuel [OTC]: Given the requirements for LERMA, how will the local communities/POs be able to comply with these requirements? (I am concerned that this proposal will lead further exclusion/marginalized of POs/local communities.) Now, will LERMA take into account existing tenure instruments? Will LERMA cover PAs, where PACBRMAs and SAPAs are already being issued?

Novel Bangsal [OTC]: (1) Currently, all types of forest instruments, e.g., TLA, IFMA, CBFMA, etc. cover 7-8 million hectares – give or take. To harmonize LERMA with these instruments or migrate them to the new scheme, will our land/forest-related agencies have the institutional and fiscal capacity to implement such proposal? (2) At present, the legal and institutional framework of land titling and land tenurial management is characterized by multitude of institutions, as well as conflicting mandates. Do you think it would be in the right direction to codify all land-related laws as a legal requirement to make LERMA an effective land management mechanism? (3) How can you reconcile LERMA with other tenurial instruments with an Executive Order, and not by legislation? The LERMA entails institutional arrangements, and some institutions are legally mandated to issue resource use rights. Do you think such issues can be addressed by law rather than mere EO?
Gil Mendoza [OTC]: Length of tenure has been a concern in natural forest management which is inherently long term. Don’t you think allowing short-term LERMA opens itself to speculators or opportunists whose interests are more short term economic benefits and less on long-term sustainability of the resource.

Roger Garinga [OTC]: What safeguards can LERMA provide so that sub-LERMA application will not be used as instrument of land grabbing by proponents (e.g., corporate interests for proof of maximization)?
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