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

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

On behalf of

Federal Ministry for the Environment, Nature Conservation and Nuclear Safety

of the Federal Republic of Germany

Department of Environment and Natural Resources

Imprint

This publication is by the Deutsche Gesellschaft für Internationale Zusammenarbeit through the Climate-relevant Modernization of Forest Policy and Piloting of Reducing Emissions from Deforestation and Forest Degradation (REDD) Project in the Philippines, funded by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) under its International Climate Initiative. The BMU supports this Initiative based on a decision of the German Parliament. For more information, see http://www.international-climate-initiative.com.

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Published by
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

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Printed and distributed by
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Place and date of publication
Manila, Philippines
April 2013

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Foreword

The Food and Agriculture Organization (FAO) reports that tropical forests cover 15% of the world's land surface, and scientists estimate that around 25% of the carbon in the terrestrial biosphere is contained in these rainforests. Thus, the role of forests in addressing the challenges of climate change has been underscored in climate change negotiations. Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and the enhancement of forest carbon stocks (REDD-Plus) is an innovative mechanism to provide financial incentives to countries willing and able to reduce their emissions.

The Philippines has signified its interest in REDD-Plus by the commitment to adjust its forest policy to the necessities of climate protection by crafting the Philippine National REDD-Plus Strategy (PNRPS) in 2010. With the DENR-Forest Management Bureau collaborating with civil society partners and other government agencies, the PNRPS was crafted through a participatory process and against the backdrop of the new law on climate change.

The PNRPS has identified the pursuit of a forest policy as a key area of work that would provide an effective guide to the implementation of REDD-Plus in the Philippines. The importance of this forest policy study cannot therefore be overemphasized.

Through the funding support of the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), this forest policy review was undertaken in the framework of the DENR–GIZ Project "Climate-relevant Modernization of Forest Policy and Piloting of REDD Measures in the Philippines". It is one of the four policy studies undertaken under the DENR-FMB GIZ REDD Project.

This policy review has shown that the Philippines has laws and policies that apply REDD-Plus principles even in the absence of a national legislation specific to REDD-Plus in the country. The country's policy and institutional framework on natural resource management applies REDD-Plus principles, namely, decentralized government functions; mechanisms to strengthen stakeholder participation in forest management and decision-making; recognition of the rights of indigenous peoples, farmers and coastal dwellers; and a comprehensive national system of protected areas. The existing laws and policies provide mandates and safeguards to manage the forest resources and promote the well-being of the people.

The study also underscored legal and institutional issues that have impeded the implementation of the aforementioned laws and policies. Overlapping jurisdictional issues, institutional weaknesses in government agencies and gaps in terms of the integration of lessons learned from previous legislation are among the obstacles to the effective implementation of our laws and policies.

This forest policy study identified policy options that could address existing or potential policy road blocks that could hamper REDD-Plus development and implementation. This includes the enhancement or development of policies and programs on REDD-Plus co-benefits, as well as social, environmental and governance safeguards. A policy agenda was developed that includes recommendations on necessary policy reforms and development of regulations in support to REDD-Plus strategies and objectives embodied in the PNRPS.

It is hoped that the policy agenda presented can be considered not only by the DENR but also by other government agencies whose mandates and programs relate to or have an impact on REDD-Plus implementation in the Philippines.

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Acknowledgements

The forest policy study/review was undertaken under the funding support of the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), and under the auspices of the DENR-Forest Management Bureau (FMB) GIZ Project "Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines".

Together with three other policy studies, the results of the forest policy study was presented to the participants of the various focus group discussions and key interviews, consisting of representatives from the government agencies, non-governmental organizations and people's organizations.

The draft was subjected to comments and consultations with key government officials and civil society colleagues involved in the implementation of the Philippine National REDD-Plus Strategy (PNRPS) in the Philippines. Subsequently, the draft was subjected to a peer review.

In this light, on behalf of my team members (Atty. Gidor Manero, Atty. Zhazha Maguad and Randy Labadan), I would like to thank the following persons/agencies for their invaluable contribution to the conduct and drafting of this study:

-the DENR-FMB officials, Assistant Director Mayumi Natividad, Director Ludy Wagan, and their personnel and staff involved in forest policy;

-the peer reviewers, Atty. James Kho and Atty. Jose Andres Canivel;

-Dr. Bernd-Markus Liss and members of various components of the PNRPS and members of Code-REDD who provided suggestions and comments to the draft;

-the government agencies, officials and personnel who contributed data and participated in the focus group discussions and interviews, namely:

Leyte:
1. Mayor Manuel Labrador of Silago, Southern Leyte;
2. MPDC and MENRO of Silago, Southern Leyte;
3. Director Galinato of DENR Region 8 and his key regional staff;
4. Regional Technical Director Edilberto Nasayao of DENR Region 8;
5. Southern Leyte DENR-PENRO Ricardo Tomol and his personnel;
6. CENRO Maasin, Southern Leyte;
7. City Agriculturist of Maasin, Southern Leyte;
8. PENRMO, Maasin, Southern Leyte;
9. Community Development Officer, Maasin, Southern Leyte; and
10. Planning Officer/REDD-Plus Coordinator, Southern Leyte

Palawan:
1. DENR PENRO Juan dela Cruz;
2. Quezon MENRO Esperanza Caabay;
3. Chief FMS Bernardo Francisco of DENR CENRO Quezon;
4. DENR CENRO Fernando Tactay of Narra and his staff;
5. Punong Barangay Reynaldo de Vera of Barangay Taritien, Narra; and
6. Barangay Officials of Barangays Aramaywan and Isugod, Quezon

Agusan:
1. Office of the Provincial Governor and Vice Governor, Prosperidad, Agusan del Sur;
2. OIC Provincial ENRO Ronulfo Paler of Agusan del Sur;
3. Acting DENR PENRO Emelyn Garong of Agusan del Sur and her staff;
4. Office of the Mayor and MENRO of Talacogon;
5. Municipal Councilor Florentino Mabras of Prosperidad;
6. PENRO of Agusan del Sur and Foresters of DENR-PENRO; and
7. CENRO and staff in Talacogon, Agusan del Sur.

-the non-government and people's organizations that participated in the focus group discussions and key informant interviews, namely:

PALAWAN: Samahan ng Nagkakaisang Tribu ng Sitio Parangue (SKSP), Samahan ng mga Katutubong Tagbanua ng Mariwara (SKTM), Calategas Irrigators System Association (CISA), Pamalpalen Communal Irrigation System, Bato-Bato Communal Irrigation System, Philippine Red Cross (PRC), Balintang Matugbong Association (LABAMA), Aramaywan Irrigators System Association (AISA), Isugod Multi-purpose Cooperative (IMC-CBFM), Rural Improvement Center (RIC), Lamani Ibateng Marnek Talabongan Tagbanua Association (LIMTTA), Bunyugan Palaw'an Dut Di Buat Quezon (BPDDQ), Nagkakaisang Tribu ng Aramaywan (NATRIAR) and Brgy. Officials from Aramaywan and Isugod.

SOUTHERN LEYTE: Anahao Multi-purpose Cooperative (AMPCO) of Brgy. Anahao, Bontoc, Katipunan Imelda Catmon Community Forestry Association (KICCFA) of Silago, Young Innovators for Social and Environment Development (YISEDA) of Maasin and TOMFA of Tomas Oppus.

AGUSAN DEL SUR: CBFMA PO members; Members of Casilayan Softwood Development Corporation (CSDC) and Provident Tree Farms, Inc.; MASAU FLOMPC-CBFM; Agusan Development Foundation; and Kibatasan Community-based Organization for Environmental Protection.

-the support staff of GIZ and ELAC whose tireless energy helped the study team through the logistical arrangements;

-all our friends and colleagues in government and civil society who have provided insights and support to the research and study team.

Atty. Grizelda "Gerthie" Mayo-Anda

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Executive Summary

Since 2007 when the Intergovernmental Panel on Climate Change (IPCC) alerted the world on the huge emissions from deforestation (Chee Yoke Ling, TWN, 2011), climate change negotiations have shown increasing support to the development of an approach to reduce carbon emissions through the protection of forests. Otherwise called Reducing Emissions from Deforestation and Forest Degradation (REDD-Plus), this mechanism is considered a cost-effective approach to finance forest conservation, sustainable forest management and enhancement of carbon stocks (restoration, afforestation, reforestation) (UNFCCC, 2009). REDD was introduced as an agenda in the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) in 2005, but it was not until two years later that the COP adopted a decision in Bali, Indonesia.

Designing a future REDD-Plus mechanism has been an essential part of the UNFCCC negotiations. These international climate change discussions have focused on four key areas, namely, (i) safeguards; (ii) reference levels; (iii) finance; and (iv) measuring, reporting and verifying (MRV) of carbon emissions from forest activities. The varying opinions on these critical areas have somehow derailed efforts towards the development of a global architecture for REDD-Plus.

Can REDD-Plus potentially create significant changes to forest management in tropical countries? Can it enhance existing initiatives on community-based forest management (CBFM) and address the stumbling blocks to effective CBFM? Can it provide incentives to forest dwellers and stakeholders? Can it influence efforts to build good forest governance?

Ideally, a post-2012 climate agreement must be able to address these questions and provide guidance to current efforts on REDD-Plus implementation. But while the international framework continues to take shape, existing national laws and regulations on forest and forest-related concerns need to be reviewed as they play a key role in creating and guiding REDD systems on the ground. An international REDD-Plus framework can only be effective if it operates within national legal frameworks that are customized to the specific needs of each country (IUCN, 2009).

Recognizing the necessity of such a legal framework, government and civil society groups in the Philippines developed the Philippine National REDD-Plus Strategy (PNRPS) that would provide an effective guide to REDD-Plus implementation in the country. Enabling policy is a key strategy in the PNRPS, and among its key activities is the review or re-examination of existing policies on forestry and other environmental laws that relate to REDD-Plus.

The aim of this forest policy study is to analyze existing forest policies in the context of REDD-Plus, identify the issues or gaps that could deter REDD-Plus implementation and recommend policy actions and complementary actions.

The study points to the existence of Philippine laws and policies providing social safeguards, community tenure and decentralized forest management that would enable REDD-Plus implementation. The Philippine Constitution provides for safeguards, social justice and human rights. Several laws and policies, such as the National Integrated Protected Areas System (NIPAS) law, Local Government Code (LGC), *Indigenous Peoples' Rights Act* (IPRA), and the CBFM Program implement these Constitutional guarantees and safeguards but are not well enforced.

The study focused mainly on two key areas that would influence REDD-Plus implementation – the legal/policy environment and the institutional/governance mechanisms implementing the existing laws and policies.

The study suggests that the overarching legal and policy framework in the Philippines needs to be streamlined, clearly delineated and effectively implemented to augur for an effective REDD-Plus implementation.

Conflicting government policies vis-à-vis forest management and utilization of natural resources will hinder REDD-Plus implementation as they spawn confusion among various implementing agencies. Straightforward policies on forest management exist, and implementing programs addressing key concerns, such as strengthening of tenurial instruments, have been in place for decades. Conversely, there is dissonance in policies that facilitate forest land conversion and are biased toward resource extractive activities that encourage or tolerate deforestation.

A case in point is mining exploration activities in protected areas, mining activities in CBFM areas, the establishment of plantations in forest areas or in edges of forests, and the conversion of forestland into agricultural lands subject to agrarian reform. The point of legally allowing mining exploration but at the same time precluding commercial mineral extraction makes for a confused overall direction for both forestry management and minerals policy. Expansion of plantations and the promotion of agrarian reform or development in forest areas illustrate a confused policy direction. Allowing mining in CBFM areas virtually defeats the objective of sustainable forest management.

Consistency and intensity of government action to support what are otherwise clear cut strategies for forest management, such as the encouragement of tenurial instruments as mechanisms for forest protection, and provision of incentives to forest stakeholders leave much to be desired. Resources, both technical and financial, to support and implement such policies have been wanting at the least and neglected at worse.

Institutional mechanisms such as watershed management bodies, CBFMA management bodies, protected area management boards, indigenous council of elders in ancestral domains, and similar forest management or local forest governance bodies exist and provide a welcome headstart in the advancement of REDD-Plus interventions. There is urgent need, however, to streamline functions of government agencies with interlocking mandates impacting on forest management. The Aquino government's National Convergence Initiative comprised by the Department of Environment and Natural Resources (DENR), Department of Agriculture (DA), Department of Agrarian Reform (DAR) and Department of the Interior and Local Government (DILG) is an attempt to resolve such institutional issues.

Finally, the study recommends that the government should prioritize streamlining measures that will ensure effective and smooth implementation of REDD-Plus strategies and interventions. The country's laws, in addition to clearly stated policy commitments adopted by the Philippine government, are in themselves ideal springboards to address this challenge. These policy commitments need to be translated into governance strategies or measures that would enable such rhetoric become a reality on the ground.

Acronyms

CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CALC	Certificate of Ancestral Land Claim
CBFM	Community- Based Forest Management
CBFMA	Community-Based Forest Management Agreement
CENRO	Community Environment and Natural Resources Office
CEP	Coastal Environment Program
CFP	Community Forestry Program
CFSA	Certificate of Forest Stewardship Agreement
COP	Conference of the Parties
CRMF	Community Resource Management Framework
CSC	Certificate of Stewardship Contract
DAO	DENR Administrative Order
DENR	Department of Environment and Natural Resources
EO	Executive Order
FGD	Focus Group Discussion
FLMP	Forest Land Management Program
FMB	Forest Management Bureau
FSP	Forestry Sector Project
GIZ	Gesellschaft für Internationale Zusammenarbeit (German Development Cooperation)
ICCs	Indigenous Cultural Communities
IFMA	Integrated Forest Management Agreement
IPs	Indigenous Peoples
IPAF	Integrated Protected Area Fund
IPRA	Indigenous Peoples Rights Act
IRMP	Integrated Rainforest Management Project
ISF / P	Integrated Social Forestry Program
KII	Key Informant Interview
LGU	Local Government Unit
LIUCP	Low Income Upland Communities Project
MENRO	Municipal Environment and Natural Resources Office
MRV	Measuring, Reporting and Verification
NGO	Non-Governmental Organization
NIPAS	National Integrated Protected Areas System
NMRC	National Multistakeholder REDD-Plus Council
PAMB	Protected Area Management Board
PCSD	Palawan Council for Sustainable Development
PD	Presidential Decree
PENRO	Provincial Environment and Natural Resources Office
PNRPS	Philippine National REDD-Plus Strategy
PO	People's Organization
RA	Republic Act
REDD	Reducing Emissions from Deforestation and Forest Degradation
RRMP	Regional Resources Management Project
SEP	Strategic Environmental Plan for Palawan
SFM	Sustainable Forest Management
SIFMA	Socialized Integrated Forest Management Agreement
UDP	Upland Development Project37
UNFCCC	United Nations Framework Convention on Climate Change

1.0 Background of the study

Background of the Study[1]

The Philippine National REDD-Plus Strategy (PNRPS) acknowledged that although the Philippines has a comprehensive policy and institutional framework on natural resources management, there is yet no specific national legal framework on REDD-Plus. Currently, the policy and institutional framework on natural resource management has decentralized government functions; provided mechanisms to strengthen stakeholder participation in decision-making; recognized the rights of indigenous peoples, farmers and coastal dwellers; and expanded the role of civil society groups. There is also a comprehensive national system of protected areas and a wide variety of institutions to administer this policy and legal framework.

However, the implementation of these natural resource management and environmental laws and regulations have been affected by, among others, overlapping jurisdictional issues and institutional weaknesses that have beleaguered most government agencies. In addition, there are gaps in terms of the integration of lessons learned from previous legislation and aligning conflicting laws and policies among different sectors, as well as legal social and environmental safeguards for REDD-Plus implementation.

Given these considerations, the PNRPS has underscored strategies to achieve a REDD-Plus policy that is stable, enforced and enabling; integrates local community practices; and help achieve legal arrangements under which payment is made for the outcome of protecting standing forests. Recognizing the necessity of such a legal framework that would provide an effective guide to REDD-Plus implementation, the PNRPS has identified the need to reexamine existing policies on forestry and other environmental laws that relate to REDD-Plus. Ideally, a solid network of cohesive laws, policies and regulations will be necessary beyond existing forestry, protected areas and other environmental laws to efficiently govern REDD-Plus concerns, such as ownership and property rights; decision-making processes; access to information; dispute settlement; payment schemes; implementation mechanisms; and measuring, reporting and verification, among others. The framework of laws should be mutually reinforcing and should clearly establish rights, responsibilities and management systems while at the same time flexible enough to be applicable in new and different situations.

Likewise, the pursuit of an enabling and stable policy for REDD-Plus must take into account the weaknesses in institutional and political arrangements that have hampered the implementation of natural resource management laws and policies. The responsiveness of implementing institutions to REDD-Plus concerns will have a significant impact on the implementation of the legal framework on REDD-Plus.

The review of forest laws and policies is therefore being undertaken to come up with an in-depth study that analyzes the present and proposed forest policies in the context of the aforementioned policy issues, climate change, and the impact of such policies on climate protection and biodiversity. The study will also come up with concrete proposals for needed actions to address the policy gaps already mentioned.

This review will not only consider existing national and local legislation but also pending bills in the Philippine Congress. One such proposed legislation relates to the amendment of the antiquated forestry code and toward the passage of a law on sustainable forest management. At the local level, local ordinances have been promulgated as regards environment and natural resources management. New proposals are being forwarded in specific provinces.

1 Mayo-Anda, G., Inception Report on Review and Analysis of Forest Policy, March 2011.

The review of forest policy is one of the four policy studies to be undertaken in the framework of the DENR-FMB GIZ Project "Climate-relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines" [2] under the auspices of the PNRPS together with the DENR Forest Management Bureau, and CodeRedd Philippines, a coalition of NGOs and forest communities advancing the cause of forest and biodiversity conservation and climate protection through REDD-Plus. The other policy studies are: (i) Analysis of key drivers of deforestation and forest degradation (DD), (ii) Clarifying Carbon Rights (CCR), and (iii) Assessment of FPIC Implementation (FPIC).

Specifically, the forest policy study seeks to:

(i) Review and analyze existing and proposed forest policies that relate to REDD-Plus;
(ii) Identify policy options that could address existing or potential policy road blocks that could hamper REDD-Plus development and implementation, including REDD-Plus co-benefits and social and environmental safeguards; and
(iii) Develop a policy agenda that includes recommendations on necessary policy reforms and development of regulations in support to REDD-Plus strategies and objectives embodied in PNRPS.

The research on forest policy entailed the gathering of literature and secondary data, particularly, copies of existing and proposed laws, cases (jurisprudence from the Supreme Court), previous policy studies and case studies involving forest management. The gathering of secondary data will be complemented by the conduct of gender-sensitive key informant interviews (KIIs) and focus group discussions (FGDs) involving community stakeholders, local officials and DENR personnel with the aim of determining the impact and implementation of forest policies on the ground.

2 The project is funded under the International Climate Protection Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

2.0 Legal and policy framework in relation to REDD-Plus

LEGAL AND POLICY FRAMEWORK IN RELATION TO REDD-Plus

In 2010, the COP adopted a REDD-Plus decision that "encourages developing country parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each party and in accordance with their respective capabilities and national circumstances: (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; (e) Enhancement of forest carbon stocks" (Paragraph 70, 1/CP.16). Such decision provided for a list of agreed safeguards where these activities are to be undertaken, namely:

"(a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;

(b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;

(e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivise the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits; [Footnote: 'Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.']

(f) Actions to address the risks of reversals;

(g) Actions to reduce displacement of emissions."

Following the Cancun decision, negotiations on REDD-plus have centered around four key areas – safeguards, reference levels, finance and measuring, reporting and verifying (MRV) of carbon emissions from forest activities. In the recent climate change talks in Durban, South Africa, decisions were made on safeguards and MRV. Varying views expressed on the progress made on REDD-plus during the climate change talks show that the global architecture for REDD-plus is still a work in progress.

Regardless of the form of a post-2012 climate agreement, national laws and regulations are likely to play a key role in creating and guiding REDD systems on the ground. Once a future global REDD regime is established, it is essential that it operates within national legal frameworks that are customized to the specific needs of each country, but which strive to achieve the "three e" REDD goals of equity, efficiency, and effectiveness, as well as clarity (IUCN, 2009).

In this context, and as articulated in the PNRPS, an extensive policy review is needed in order to identify possible policy options toward the development of a national REDD-Plus framework.

5.1. POLICY ON REDD-PLUS

Despite the absence of a national legislation specifically devoted to REDD-Plus, the Philippine government has recognized REDD-Plus as a mechanism or an approach to address climate

change and achieve sustainable forest management. Executive Order No. 881, issued during the Arroyo administration in April 2010, specifically mentions REDD-Plus as one of the mechanisms that the Climate Change Commission[3] (CCC) is authorized to coordinate. Under such executive issuance, the CCC is tasked to include REDD-Plus programs and plans among its coordinative concerns, and the DENR is identified as the operational implementor of REDD-Plus.

The passage of the *Climate Change Act* in 2009 led to the adoption of the National Framework Strategy on Climate Change (NFSCC) in April 2010. Likewise, combined efforts of government and civil society from 2009 to 2010 led to the development of the PNRPS, which is identified under the NFSCC as an important element for mitigation and adaptation.

The Aquino government's Philippine Development Plan (PDP) for 2011 to 2016 mentions the PNRPS as a major activity to implement the government's strategy to "sustainably manage forests and watersheds" under Goal No. 1 on "Improved Conservation, Protection and Rehabilitation of Natural Resources". Last November 2011, the PNRPS was identified as one of the key actions in the Resolution of the CCC adopting the National Climate Change Action Plan (NCCAP).

The PNRPS provides a strategic outlook for REDD-Plus development by laying down various strategies and actions organized into seven overlapping components - Enabling Policy; Governance; Resource Use, Allocation and Management; Research and Development; Monitoring, Reporting and Verification; Research and Development, and Capacity Building and Communication.[4]

5.2. LEGAL AND POLICY FRAMEWORK ON FORESTS, LAND AND NATURAL RESOURCE USE

The Philippines has laws and policies that provide opportunities for moving ahead with REDD-Plus. In addition to the laws and policies on climate change, there are existing laws on forestry and other natural resources, the environment and on local governance that contain the elements needed to implement or operationalize REDD-Plus.

This framework is a combination of antiquated and new laws. The ***Revised Forestry Code***[5] ***(1975)*** and the ***Public Land Act***[6] ***(1936)*** continue to be regarded by government implementors as the basic laws on forestry and public land, respectively. For almost two decades now, there has been a thrust toward decentralization and comprehensive resource management reflected in the ***National Integrated Protected Areas System***[7] ***(NIPAS, 1992)***, the ***Strategic Environmental Plan for Palawan***[8] ***(SEP law, 1992)*** and the ***Local Government Code***[9] ***(LGC, 1991)***.

The national laws, institutions and processes that govern the environment and natural resources in the Philippines have been shaped by the country's colonial history. Because the Spanish colonial regime introduced the concept of State ownership over all natural resources[10], also known as "Regalian Doctrine", the use, development and management of the country's natural resources and its environment have largely been under State control. This basic policy establishes the responsibility of the State to protect and conserve these resources for the present and future generations. Under this policy, the government aims to spur growth and development through raising revenues and imposing penalties relating to natural resource use. This policy is explicitly stated in *Article XII of the Constitution* as follows:

> *Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration,*

3 CCC was created under the Climate Change Act of 2009.
4 Philippine National Redd-Plus Strategy or PNRPS, June 2010.
5 Presidential Decree (PD) No. 705 (1975).
6 Commonwealth Act (CA) No. 141 (1936).
7 Republic Act (RA) 7586 (1992).
8 RA 7611 (1992).
9 RA 7160 (1991).
10 See Article 12, Section 2, Philippine Constitution (1987).

development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens.

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks.

Section 4. The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

This State policy falls short in applying direct accountability on the part of government where the negative effect of environmental abuse is borne by affected residents or local communities. Because the government often lacks the will and the capacity to regulate the use of the environment and natural resources, and enforce environmental laws, these have become accessible for everyone to use and destroy.

Moreover, the State policy on resource use is alien to indigenous peoples and conflicts with their customary laws. Customary law on land and natural resources is founded upon the traditional belief that no one owns the land except the gods and the spirits, and that those who work the land are its mere stewards.[11] Such concepts of "possession" and "ownership", which are described by the existing legal framework as the exclusive right to possess, own and alienate as one sees fit, contradicts the traditional beliefs of indigenous communities.

The Regalian Doctrine has been repeatedly upheld by the Supreme Court against claims of private individuals alleging ownership of tracts of forestland that they have continuously possessed and developed for a very long time. The High Court held that:

> "Public forests are inalienable public lands. The possession of public forests on the part of the claimant, however long, cannot convert the same into private property. Possession in such an event, even if spanning decades or centuries, could never ripen into ownership. It bears stressing that unless and until the land classified as forest is released in an official proclamation to that effect so that it may form part of the disposable lands of the public domain, the rules on confirmation of imperfect title do not apply (*Heirs of the Late Spouses Pedro S. Palanca et al. vs. Republic et al., G.R. No. 151312, August 30, 2006*)

Not all lands classified as forests look like forests or have trees on it. Thus, in one case, the Supreme Court ruled that "Forests, in the context of both the Public Land Act and the Constitution (classifying lands of the public domain into agricultural, forest or timber, mineral lands and national parks), do not necessarily refer to a large tract of wooded land or an expanse covered by dense growth of trees and underbrush". As stated in the case of *Heirs of Amunategui*:

> A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out [sic] of the way places. ... The classification is merely descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. … (*Republic vs. Naguiat, G.R. No. 134209, January 24, 2006, citations omitted*)

However, this doctrine on State ownership could only be applied if there has been a clear showing that the area being claimed by private individuals is indeed part of forest land. Unfortunately, because the demarcation and delineation of forest lands in the country have not yet been completed, encroachment into forest lands has continued.

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11 See Ponciano L. Bennagen, "Indigenous Attitudes toward Land and Natural Resources of Tribal Filipinos," NCCP Newsletter, vol. 31 (National Council of Churches in the Philippines, October-December, 1991).

5.2.1. Policies and laws influencing forest management, environmental conservation and enforcement

The Constitution protects the right of the people to a "balanced and healthful ecology in accord with the rhythm and harmony of nature"[12]. The State is mandated to protect, advance and promote the people's right to ecological security and health. In the case of Oposa vs. Factoran[13], the Supreme Court declared the "right to a balanced and healthful ecology" as a self-executory right and recognized the primacy and centrality of ecological security and health among the many rights assured by the Constitution.

In line with this Constitutional guarantee, a Filipino citizen can assert his/her right to ecological security and health when certain policies, projects and activities threaten watersheds, forests reserves and protected areas, and can hold government officials accountable for negligence or for allowing such threats to take place.

The ***Revised Forestry Code (PD 705)*** has shaped the country's national efforts on the management of forests since its enactment in 1975. The law does not specifically define what is forest but classifies all lands 18% in slope or over (subject to certain exceptions) as forestland. A definition has been provided by DENR Department Memorandum Circular No. 2005-005 (dated May 26, 2005), adopting the definition of the Food and Agriculture Organization (FAO), as follows:

> Forest - land with an area of more than 0.5 hectare and tree crown (or equivalent stocking level) of more than 10 percent. The trees should be able to reach a minimum height of 5 meters at maturity in situ. It consists either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest formations with a continuous vegetation cover in which tree crown cover exceeds 10 percent. Young natural stands and all plantations established for forestry purposes, which have yet to reach a crown density of more than 10 percent or tree height of 5 meters are included under forest. These are normally forming part of the forest area which are temporarily unstocked as a result of human intervention or natural causes but which are expected to revert to forest. It includes forest nurseries and seed orchards that constitute an integral part of the forest; forest roads, cleared tracts, firebreaks and other small open areas; forest within protected areas; windbreaks and shelter belts of trees with an area of more than 0.5 hectare and width of more than 20 meters; plantation primarily used for forestry purposes, including rubber wood plantations. It also includes bamboo, palm and fern formations (except coconut and oil palm).

Senate Bill 1353 on Sustainable Forest Management defines forest as:

> "Forest" shall refer to land with tree crown cover or equivalent stocking level of more than ten percent (10%) and an area of more than half a hectare. The trees should be able to reach a minimum height of five (5) meters at maturity in situ. It may consist either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest formation with a continuous vegetation cover in which tree crown cover exceeds ten percent (10%). Young natural stands and all plantations established for forestry purposes which have yet to reach a crown density of ten percent (10%) or tree height of five (5) meters are included under forest, as are areas normally forming part of the forest area which are temporarily unstocked as a result of human intervention or natural causes but which are expected to revert to forest. Forests include such stand types as dipterocarp, pine, mossy, molave, beach and mangrove. For the purpose of this Act, natural forests may be classified according to: (1) primary-use and management, a forest shall be classified as either protection forest or production forest after its most suitable and dominant multi-use function has been determined pursuant to this Act; and (2) growth formation, a forest is classified as either closed forest or open forest. Closed forests have trees in various storeys and undergrowth that cover a high proportion, greater than forty percent (40%) of the ground and do not have a continuous dense grass layer. Closed forests are either managed or unmanaged forests, primary or in advanced state of reconstitution, and may have been logged over one or more times but have kept their characteristics of forest stands, possibly with modified structure and composition. Open forests have trees that are of discontinuous layer, with a coverage of at

12 Constitution, Article 2, Section 16.
13 224 SCRA 792.



least ten percent (10%) and less than forty percent (40%).

The definition of forest under the DENR's existing circular and the proposed Senate Bill is almost similar as the terms plantation and unstocked areas are included as forest. The adoption by the DENR of the FAO forest definition has received criticism from civil society groups on two key issues:

a) minimum tree crown cover of 10% - Critics say that this definition would draw forest conservation efforts toward more degraded forests (with only a "collection of trees") without targeting closed canopy or old growth forests, which are in danger of conversion (Guerrero and Batangan, 2009)[14]
b) absence of ecological parameters due to the inclusion of areas "which are temporarily unstocked as a result of human intervention or natural causes but which are expected to revert to forest" and plantations as part of the forests – There is fear that if natural forests with high conservation value are not incentivized, forest carbon market schemes could favor plantations instead of achieving the full potential of providing co-benefits such as biodiversity conservation and ecosystem services (Guerrero and Batangan, 2009).

Biodiversity is one of the primary and crucial features of a forest. The loss of biodiversity means losing the natural resources of the forest, which are important for the sustenance and continuation of human existence. Although the existing DENR definition expressly excludes coconut and oil palm plantations, other kinds of plantations that have similar trait or effect, such as rubber wood plantation, still form part of the forest.

According to Sasaki and Putz (2009), great quantities of carbon and other environmental values will be lost when natural forest are severely degraded or replaced by plantations but technically remain "forests". Although a definition of "forest" that is globally acceptable and appropriate for monitoring using standard remote sensing options will necessarily be based on a small set of easily measured parameters, there are dangers when simple definitions are applied locally. At the very least, we recommend that natural forest be differentiated from plantations and that for defining "forest", the lower height limit defining "trees" be set at more than 5 meters tall with the minimum cover of trees set at more than 40%. These changes will help reduce greenhouse gas emissions from what is now termed forest "degradation" without increasing monitoring costs. Furthermore, these minor changes in the definition of "forest" will promote the switch from degradation to responsible forest management, which will help mitigate global warming while protecting biodiversity and contributing to sustainable development (Sasaki and Putz, 2009).

According to Cadman (2008), a natural forest is a terrestrial ecosystem generated and maintained primarily through natural ecological and evolutionary processes. Natural forests are an essential part of the global carbon cycle, and have played, and continue to play, a major role in modulating the strength of the greenhouse effect. A plantation is a crop of trees planted and regularly harvested by humans.

14 Non-Timber Forest Product – Exchange Programme or NTFP, 2009 http://www.ntfp.org/sub.php?gosub=exchangenews-art&page=8&year=2009

The Environmental Science for Social Change, a Jesuit research institute, has expressed its concern on the DENR's forest definition[15]:

> "… definition is a corruption and a fallacy and denigrates the value of forests. The best forests in the world where trees reach heights of 45 meters and crown cover of 90% are denigrated by such classification. With this, it is no wonder that there is an increase of forest cover in the country. We not only lost our forest, but also our concept of what a forest is".

Some civil society groups advocating for a sustainable forest management bill have proposed a more nuanced and qualitative definition of forest as follows:

> "land consisting of trees with overlapping crown covering of at least sixty percent (60%) with a biotic community mainly composed of woody and non-woody vegetation and the wildlife therein."

The Revised Forestry Code seeks the protection and rehabilitation of the forests, provides for a system of land classification[16], the basis for utilization and management (including reforestation and forest protection)[17], and penalties for illegal logging and other forms of forest degradation[18]. These provisions can provide for good forest rehabilitation and management required under the REDD-Plus mechanism.

However, the Revised Forestry Code is essentially utilization-oriented and the main thrust of the law is to maximize the utilization of the forests and ensure its productivity. It is the basic source law for commercial timber extraction. Incentives are provided to wood processing industries. No specific and permanent forest boundaries and use limitations are clearly provided. Mining is allowed in forest lands including prospecting, exploration and exploitation.

As such, the policy is not completely in line with efforts to reduce the drivers of deforestation. The focus on utilization has somehow been counterbalanced by implementing rules and regulations on forest stewardship and resource management.

Sustainable Forest Management (SFM; Executive Order 318, 2004) was articulated as a national strategy in the Philippines in keeping with the international strategy on SFM adopted in the World Summit on Sustainable Development in Johannesburg in 1992. Under this policy, logging or any commercial exploitation of forestry resources in old growth forests, proclaimed watersheds and other areas covered by the National Integrated Protected Areas System (NIPAS) is prohibited to ensure the perpetual existence of all native plants and animals. The policy is guided by the following principles:

a) Delineation, Classification and Demarcation of State Forestlands
b) Holistic, Sustainable and Integrated Development of Forestry Resources
c) Community-Based Forest Conservation and Development
d) Incentives for Enhancing Private Investments, Economic Contribution and Global Competitiveness of Forest-Based Industries
e) Proper Valuation and Pricing of Forest Resources and Financing SFM
f) Institutional Support for SFM.

The ***National Integrated Protected Areas System Act (NIPAS; RA 7586)*** is a landmark legislation that recognizes the importance of the integrated protected areas system as a powerful mechanism for the conservation of Philippine biodiversity. It aims to preserve biodiversity through a system of protected areas in order to maintain essential ecological processes and life support systems, preserve genetic diversity, ensure the sustainable use of resources, and maintain natural conditions to the greatest extent possible.[19] The NIPAS law is process legislation in that it defines a mechanism by which the national park system will be governed more realistically, using biodiversity principles, site-specific management strategies and public participation. Under this law, all parks and protected areas, reserves and sanctuaries existing prior to 1992 are considered as initial components of the protected area system. Management of the protected area is exercised by the Protected Area Management Board (PAMB) composed of representatives from the DENR, the local government unit, affected communities and private sector.

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15 Environmental Science for Social Change, Figuring Philippine Forests, March 24, 2010, http://essc.org.ph/content/view/286/153/
16 See Chapter II, P.D. 705.
17 See Chapter III, infra, Ibid.
18 Sections 78-84, Ibid.
19 Sec 4(a), RA 7586.

The NIPAS law has features that lend themselves to REDD-Plus requirements, such as administration/ governance (Protected Area Management Board or PAMB), participatory planning and management processes, recognition of ancestral domains and tenure for local communities. NIPAS clearly articulates the need to counteract the major drivers of Philippine deforestation[20]. The REDD-Plus mechanism can provide opportunities for the Philippines to draw on the provisions of the NIPAS in order to expand the coverage of protected areas. As of June 2011, there are 178 protected areas with organized/appointed PAMBs, and 97 of these protected areas were proclaimed under the NIPAS system. Twelve of these protected areas have specific legislation for their establishment (DENR-PAWB, 2011).

Although the PAMB, a multisectoral body, is given the authority to administer the protected area, the DENR exercises supervision over it. For instance, the DENR has the authority to cause the preparation of, and exercise the power to, review all plans and proposals for the management of protected areas. A unique exception is the case of the Puerto Princesa Subterranean River National Park (PPSRNP), a World Heritage Site[21] and home to the world-renowned underground river, where the PAMB is directly governed by the City of Puerto Princesa. Such arrangement was made possible in 1993 when former DENR Secretary Angel Alcala entered into an agreement with Mayor Edward S. Hagedorn, waiving or transferring full authority to the city government in the protected area management. A similar institutional arrangement was made between the DENR and the Palawan Council for Sustainable Development (PCSD) with respect to the management of the Tubbataha Reefs Natural Park (TRNP), likewise a World Heritage Site.

The ***Strategic Environmental Plan for Palawan (SEP; RA 7611)*** is a national legislation focused on the province of Palawan, recognized for, among others, its unique biodiversity and high endemism. The SEP law seeks the protection of natural resources in Palawan Province, which hosts a majority of the Philippines' remaining forests, and identifies all natural forests of Palawan as areas of maximum protection. The SEP provides for a zonation mechanism called the Environmentally Critical Areas Network (ECAN) and a governing body called the Palawan Council for Sustainable Development (PCSD).

The ECAN prescribes specific uses for each designated zone. The terrestrial zone covers mountains, ecologically important low hills and lowland areas in the province. The coastal zone covers foreshore areas, mangrove areas, coral reefs and fishing grounds. Tribal land zones are areas traditionally claimed by indigenous communities as their ancestral territories. The ECAN strategy considers the following in its implementation:

a) forest conservation and protection through the imposition of a total commercial logging ban in all areas of maximum protection and in such other restricted use zones as the PCSD may provide;
b) protection of watersheds;
c) preservation of biological diversity;
d) protection of tribal people and their culture;
e) maintenance of maximum sustainable yield;
f) protection of rare and endangered species and their habitat;
g) provision of areas for environmental and ecological research, education and training;
h) provision of areas for tourism and recreation.

The SEP law was envisioned to protect and manage the natural resources of Palawan as the country's bastion of biodiversity. It imposes a total commercial logging ban in all core zones and in such other restricted use zones as the Palawan Council for Sustainable Development may provide.

Palawan's rich forests and key biodiversity areas are potential REDD-Plus areas. The challenge, however, is in the implementation of the law. On several occasions,

20 For example, see Secs. 12 and 14, ibid.
21 Heritage Sites are established by the United Nations Economic, Social and Cultural Organization (UNESCO), pursuant to International Convention on Heritage Sites.

political and economic interests have shaped decision-making, such as in the revision of ECAN zones to allow the entry of resource extractive activities into core and restricted zones.

The ***Local Government Code (LCG)*** gives local government units (LGUs) an array of powers on environmental protection and governance. LGUs share with the national government, particularly the DENR, the responsibility of maintaining ecological balance within their respective territories. Certain forest management functions have been devolved to the LGUs, pursuant to national policies and subject to the supervision, control and review of the DENR. Consequently, LGUs also exercise allocation functions over devolved areas, but subject to sustainable forest management plans prepared in coordination with the DENR, and jointly monitored by the two agencies.

To carry out the devolution of forest management functions and partnership mechanisms, the DENR and the Department of the Interior and Local Government (DILG) entered into a Joint Memorandum Circular (JMC). DENR-DILG JMC 98-01 (Manual of procedures for DENR-DILG-LGU partnership on devolved and other forest management functions, 1998) provides that forest land use planning is an area where the DENR-LGU partnership on forest management is undertaken. The DENR and the LGUs can therefore come up with Joint Orders or Memoranda of Agreement (MOA) for the co-management of certain forest areas (Philippine Environmental Governance Program, DENR, 2004).

Forest Land Use Planning is an area where LGUs are to be involved, and forest land use plans (FLUPs) must be integrated into comprehensive land use plans (CLUPs). The CLUP is a long-term guide for the LGUs in the formulation of programs and projects in order ensure continuity, rationality and stability in local development efforts[22].

DENR-DILG JMC 2003-01 reiterates LGU participation in the issuance of tenure instruments and permits. It states that before DENR can issue tenure instruments and permits, the application must first be submitted for comments to the concerned LGUs, which shall have 15 days to act on the application. If the tenure instrument or permit is issued without the LGU's comments, activities in the forest area shall be suspended until such time that the LGU's comments are received (Philippine Environmental Governance Program, DENR, 2004).

LGUs are empowered to pass local ordinances oriented towards forest conservation and management that could, in turn, provide legal basis to enable LGUs to support and participate in REDD-Plus implementation.

The ***Wildlife Resources Conservation and Protection Act (Wildlife Act; RA 9147)*** specifically provides for the protection of not only the wildlife species to enhance biodiversity but their habitats as well. The Wildlife Act also calls for the establishment of critical habitats by DENR, which is protected from any form of exploitation and destruction.

The setting up of critical habitats in the country would respond to the need of establishing more protected areas under the NIPAS Act, which can be potential sites for REDD-Plus projects. Unfortunately, the DENR does not establish critical habitats as often as it should. Many upland and lowland forests have been identified as habitats for rare and threatened species but have not been established as critical habitats under the Wildlife Act. Some of these forest areas have been subjected to resource-extractive development activities, such as mining.

The ***National Environmental Awareness and Education Act of 2008 (RA 9512)*** reiterates the State policy to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. The law further recognized the vital role of the youth in nation building, and the role of education to foster patriotism and nationalism, accelerate social progress and provide total human liberation and development. It concretized the country's support to the United Nations Decade of Education for Sustainable Development (2005-2014) and the ASEAN Environmental Education Action Plan for Sustainable Development (2008-2012) (Philippine Development Plan, 2011 – 2016).

22 Sections 447, 458 and 468, RA 7160 or Local Government Code.

The ***Climate Change Act of 2009 (RA 9729)*** incorporates climate change in government policy formulation and establishes the framework strategy for climate change. It also provides for the establishment of the Climate Change Commission (CCC) as the sole policy-making body of the government tasked to coordinate, monitor and evaluate the programs and action plans of the government relating to climate change. Attached to the Office of the President, the CCC is an independent and autonomous agency with the same status as that of a national government. It has formulated the National Framework Strategy on Climate Change (NFSCC), National Climate Change Action Plan (NCCAP) and guidelines for Local Climate Change Action Plan (LCCAP). In 2010, the National Framework Strategy on Climate Change (2010 to 2022) was formulated with the goal of building the adaptive capacity of communities, increasing the resilience of natural ecosystems to climate change and optimizing mitigation opportunities towards sustainable development.

The ***Philippine Disaster Risk Reduction and Management Act of 2010 (DRRMA, RA 10121)*** reinforces the Climate Change Act by addressing the need to determine the "causes of vulnerabilities to disasters" including climate change impacts. Impacts of climate change are included in the definition of disasters. Forests, watersheds and protected areas affected by climate change can be considered in vulnerability assessments, and such studies can be used in reviewing policies and programs in specific areas.

Executive Order No. 23 (2011) imposed a moratorium on cutting and harvesting of timber in natural and residual forest. Unfortunately, community forestry activities were covered by the ban. Under this EO, the DENR is prohibited from issuing logging contracts/agreements in all natural and residual forests such as Integrated Forest Management Agreements (IFMA), Socialized Integrated Forest Management Agreements (SIFMA), Community-based Forest Management Agreements (CBFMA) and other contracts/agreements with logging components in natural and residual forests. Also prohibited is the issuance and renewal of tree cutting permitted in all natural and residual forest nationwide. Sawmills, veneer plants and other wood processing plants are ordered closed and not allowed to operate unless they can show proof of sustainable sources of legally cut logs for a period of at least five years. A forest certification system is also sought to be strictly implemented in accordance with the United Nations standards/guidelines to ascertain the sustainability of legal sources of timber.

The moratorium, to the disappointment of community forestry and environmental groups, exempted six mining firms, including Oceana Gold Corp., Riotuba Nickel Mining Corp. and FCF Minerals Corporation. These companies sought clarification from the executive department after their applications for tree cutting permits were disapproved by the DENR. The DENR Mines and GeoSciences Bureau (MGB) clarified that projects with environmental mitigation measures, such as Environmental Protection and Enhancement Programs, are exempted from the ban (TJ Burgonio, Philippine Daily Inquirer, November 2011). EO 23 also exempts the clearing of road rights of way by the public works department, site preparation for tree plantations, silvicultural treatments and similar activities.

Executive Order No. 26 (2011) providing for a National Greening Program (NGP) was issued less than a month after the issuance of EO 23. Under this program, all government agencies, institutions, instrumentalities including government-owned and -controlled corporations, and state universities and colleges are enjoined to provide full support and assistance to the program. The program aims to pursue sustainable development for poverty reduction, food security, biodiversity conservation, climate change mitigation and adaptation.

All greening efforts and tree planting initiatives of the governments as well as of private sectors and societies shall be harmonized with the NGP. The program targets 1.5 billion trees to be planted within six years from 2011 to 2016.

5.2.2. Laws and policies influencing safeguards

Social and environmental safeguards constitute a significant part of the REDD-Plus mechanism. Safeguards are contained in many international agreements relating to human rights and sustainable development, and developed in such a way as to encourage state or non-state actors to adhere to specified standards

(Bernadinus Steni, 2010)[23]. A good example is Principle 10 of the 1992 Rio Declaration on Environment and Development and the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention"). The values contained in the Aarhus Convention are also set forth in several international environmental conventions.

The Philippines has laws and policies that provide opportunities for the participation of communities in the formulation and implementation of local policies as well as in the actual management of resources. The Constitution embodies the following provisions:

a) *Democratization of Access to Resources:* Direct users of natural resources, such as farmers, forest dwellers, marginal fishermen, men or women, are guaranteed the right to continue using such resources for their daily sustenance and survival in accordance with existing laws[24]. The concept of small-scale utilization of natural resources as a mode of natural resource utilization[25] was introduced.

b) *Social Justice[26]:* There is a bias for the underprivileged as regards the development and management of natural resources such that land and other natural resources shall be made accessible to them.

c) *Right of the People to a Balanced and Healthful Ecology:* The Constitution protects the right of the people to a "balanced and healthful ecology in accord with the rhythm and harmony of nature"[27]. The State is mandated to protect, advance and promote the people's right to ecological security and health.

d) *Due Process Clause:* The Constitution guarantees the right of the people to life, liberty and property from undue intervention and usurpation without due process of law. Surface owners or occupants can assert their right to due process when their rights, based on a Torrens title or valid tenurial instrument issued by the government, may be impaired by development and exploration activities.

e) *Right to Information:* The Constitution guarantees the right of its people to information on matters of public concern. "Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law"[28] (Section 7, Bill of Rights). The Supreme Court has declared that the right to information is a public right that may be asserted by any citizen and that the Constitutional provisions on the right to information are self-executing[29].

f) *Other Fundamental Liberties:* Besides the right to due process and the right to information, important provisions include other governance safeguards, such as public participation, access to justice, transparency and public accountability[30]. The State recognizes and promotes the right of the youth, women, labor, indigenous communities, non-governmental organizations (NGO), and community-based or sectoral or people's organizations (PO)[31]. There is a provision for a people's initiative and referendum in proposing, amending, rejecting or enacting laws. These policies serve as basis for community groups to participate in establishing, conserving, managing and formulating policies and resource management plans. The Bill of Rights of the Constitution can be invoked to ensure that safeguards are properly observed, including the right to a healthy environment.

Decentralized forest management

For almost 20 years now, there has been a thrust towards decentralization, devolution and comprehensive resource management. The Local Government Code concretizes the constitutional policy on government decentralization, devolution and democratization. Where in the past resource management programs originated from national government agencies such as the Department of Environment and Natural Resources (DENR) and the Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR), the LGC substantially reversed this process and gave primary management responsibilities to local government units.

23 Bernadinus Steni, ed. (2010), Beyond Carbon: Rights-based Safeguard Principles in Law, HuMa, Jakarta, Indonesia.
24 Constitution, Article 13, Sections 4, 6 and 7.
25 Constitution, Article 12, Section 2, paragraph 3.
26 Constitution, Article 2, Section 10; Article 13.
27 Constitution, Article 2, Section 16.
28 Constitution, Article 3, Section 7.
29 Legaspi vs. Civil Service Commission, GR No. 72119; 29 May 1987.
30 Constitution, Article 2, Sections 27, 28.
31 Constitution, Article 2, Sections 14, 22, 23.

The LGC gives local government units greater fiscal autonomy through various powers to levy taxes, fees or charges. This law also provides for people's direct participation in the planning and implementation of resource management plans, thus establishing a system where local communities, non-government organizations, and academic and scientific institutions can become partners of LGUs.

On the provincial, municipal or village level, however, the municipal governments exercise management functions. Section 17 of the Local Government Code identifies and provides for the devolution of some environmental and natural resource management functions from the DENR to the LGUs. Said law provides, among others, that:

- It is the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland or forest cover, and extinction of animal or plant species to consult with the local government units, non-governmental organizations and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof [32];
- Prior consultations are required and the approval of the local council concerned must first be had before any such project or program may be implemented[33];
- Every local government shall exercise those powers that are essential to the promotion of general welfare and shall enhance the right of the people to a balanced ecology[34].

The LGC also provides for participatory policy-making, as follows:

a) representatives of NGOs and people's organizations (POs) have seats in almost all councils, leagues and boards;
b) resource use or management plans can be enacted into ordinances through the local people's initiative[35].

With the broad range of management powers exercised by the LGUs within their territorial jurisdictions, environmental and natural resource management can be considered as among their inherent functions. LGU powers and responsibilities include protection, regulation, revenue generation, local legislation, enforcement, provision of services, extension and technical assistance, and establishing inter-government relations and relations with NGOs and people's organizations.

Some of the functions of the DENR have also been devolved to the LGUs by the Local Government Code, such as the following:

> "Sec 17 (b)
>
> (2) For a Municipality:
> (ii) Pursuant to national policies and subject to supervision, control and review of the DENR, implementation of community-based forestry projects which include integrated social forestry programs and similar projects; management and control of communal forests with an area not exceeding fifty (50) square kilometers; establishment of tree parks, greenbelts, and similar forest development projects;
>
> (3) For a Province:
> (iii) Pursuant to national policies and subject to supervision, control and review of the DENR, enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment; and mini-hydroelectric projects for local purposes;
>
> (4) For a City:
> All the services and facilities of the municipality and province."

32 Section 26, RA 7160.
33 Section 27, RA 7160.
34 Section 16, RA 7160.
35 Section 120, RA 7160.

The implementation of such functions is still subject to the supervision and control of the DENR. DAO 1992-30 ("Guidelines for the Transfer and Implementation of DENR Functions Devolved to LGUs") was issued to clarify the devolution of such functions. Because of this restriction, the exercise of the LGUs of such functions is still subject to the influence exerted by the DENR, be it implied or otherwise, whose existing policies can have political considerations. To cite an example, although the enforcement of small-scale mining has been transferred to the provincial government, the DENR is still represented in the regulatory body, such as the provincial mining regulatory board, that awards small-scale mining permits.

There are other functions that should have been completely devolved to the LGUs, such as the establishment and management of watersheds. The role of a watershed is significant to the community because the livelihood, food and drinking water of the community members primarily depend on it. Although the protection and maintenance of small watersheds has been granted to the LGUs, the important function of its identification and delineation is still lodged with the DENR. Thus, unless the DENR segregates a small watershed from other areas, local initiatives to protect such area may be in vain.

The management of forests is still largely centralized, with the burden of ensuring the maintenance of forested lands in the archipelago still reposed with the DENR. A continuing question is whether the devolution of the functions of DENR to the LGUs has resulted in an effective management of forests. One key consideration is the capability of the LGU on forest management and the political will of the local officials to enforce the laws. Not all LGUs have formed Environment and Natural Resources Councils (ENRCs), which are special bodies for engaging civil society in local governance (Magno, published in Contreras [2003], "Creating Space for Local Forest Management in the Philippines").

Note that existing DENR guidelines on FLUPs implementing DENR-DILG JMC 98-01 provide for participatory and comprehensive approaches. According to the guidelines, a good forest land use plan is expected to:

- provide continuity and rationality to otherwise disjointed sometimes overlapping and even conflicting projects in the uplands;
- avoid improper land uses and their disastrous impacts;
- provide the framework for identifying sustainable management strategies and investment priorities;
- promote the sustainable production of desired goods and services; and
- **promote community participation in the planning and management of forest resources.** (underscoring supplied)

Likewise, there must be a participatory, cross-sectoral allocation of forest lands to their appropriate uses to ensure the integration of the Forest Land Use Plan with the Provincial and Municipal Comprehensive Land Use Plans. Forestland allocation decisions must be elevated from the barangay and municipal levels to the provincial level, using the appropriate biophysical integrator of watersheds.

Community-based forest management as a strategy

In the last two decades, the Philippines has seen the evolution of the state property regime toward community-based natural resource management and decentralization of government functions, following a recognition that such state tenurial regime gave rise to widespread *de facto* open access situations and resultant resource overexploitation[36]. This is reflected in various laws, policies, programs and tenurial instruments, which provide for the control, management and conservation of natural resources to individuals, local and indigenous communities and the private sector.

Tenurial instruments have been developed for forests. There are two basic tenurial instruments. One is the community-based forest management agreement (CBFMA), which is awarded by the DENR to people's organizations (POs) for 25 years and renewable for another 25 years. The second is the certificate of stewardship contract (CSC), which is granted by the DENR to individuals and families for 25 years and renewable for the same duration. Such tenurial instruments are also awarded to indigenous community holders of certificates of ancestral domain claims and ancestral land claims who enter into community-based forest management agreements within their ancestral territory. With the passage of IPRA, the certificates of ancestral domain claim (CADC) can be converted to certificates of ancestral domain title (CADT).

36 Philippine Governance of Natural Resources, DENR, 2002.

The ***Community-based Forest Management (CBFM, EO263)*** is a flagship DENR program established in 1995 that provides a strong foundation for communities to be primary stakeholders in REDD-Plus development. Participating organized communities may be granted access to the forestland resources under long-term tenurial agreements provided they employ environment-friendly, ecologically sustainable, and labor-intensive harvesting methods. Extractive components of the program could also be replaced with revenue-earning streams from REDD-Plus activities.

Specifically, the CBFM strategy aims to protect Filipinos' right to a healthy environment; improve the socio-economic conditions of the participating communities; and promote social justice and equitable access to, and benefits from, forest resources. These objectives highlight the important role expected of local communities, not only in promoting forest development but also to help advance the overall socio-economic development in the Philippine uplands (Bacalla, 2000).

CBFM evolved from the past people-oriented forestry programs and projects such as the Integrated Social Forestry Program (ISFP), Upland Development Project[37] (UDP), Forest Land Management Program (FLMP), Community Forestry Program (CFP), Low Income Upland Communities Project (LIUCP), Regional Resources Management Project (RRMP), Integrated Rainforest Management Project (IRMP), Forestry Sector Project (FSP) and Coastal Environment Program (CEP), and recognition of Ancestral Domains claims.[38]

Under the CBFMA or CSC, the community is required, among others, to develop a community resource management framework (CRMF) and annual work plan, which must be approved by local DENR offices, and obtain a DENR permit to use forest resources for commercial purposes.

Main Legal Instruments for Forest Ownership, Access and Control[39]

Legal Instrument	Legal Basis	Nature/Definition
Community-based Forest Management Agreement (CBFMA)	DENR Department Administrative Order (DAO) 22-93; Executive Order (EO) 263 (1995); DENR DAO 96-29 (1996)	A production sharing agreement between a community and the government to develop, use, manage and conserve a specific portion of forestland, consistent with principles of sustainable development and pursuant to a community resource management framework.
Certificate of Stewardship Contract	EO 263 (1995); DENR DAO 96-29 (1996)	A 25-year contract, renewable for another 25 years, awarded to individuals or families occupying or tilling portions of forests.
Industrial forest management agreement (IFMA)	DENR DAO 04-97	A 25-year production sharing agreement between the DENR and an individual or corporation to develop, use and manage a tract of forestland, other public land, or private land to grow timber species (including rubber) and non-timber species (including bamboo and rattan).
Socialized industrial forest management agreement (SIFMA)	DENR DAO 24-96	An agreement in which the DENR grants a natural or juridical person the right to develop, use and manage a small tract of forestland (1 to 10 hectares for individuals or single families, 10 to 5,000 hectares for associations or cooperatives), consistent with the principle of sustainable development.
Certificate of ancestral domain claim (CADC)	DENR DAO 02-93	A certificate issued by the DENR to an indigenous community or people declaring, identifying, and recognizing their claim to a territory they have possessed, occupied and used, communally or individually, in accordance with their customs and traditions since time immemorial.
Certificate of ancestral land claim (CALC)	DENR DAO 02-93	A certificate issued by the DENR to an indigenous Filipino individual, family, or clan declaring, identifying, and recognizing their claim to an area they have possessed, occupied, and used, by themselves or their predecessors, since time immemorial.

Community forestry puts communities at the forefront in protecting, developing, and managing their communally held resources covered by such CBFM tenurial instruments as the Certificate of Ancestral Domain Claim (CADC), Certificate of Ancestral Land Claim (CALC), Certificate of Stewardship Contract (CSC), Community-Based Forest Management Agreement (CBFMA), Certificate of Forest Stewardship

37 UDP is a project that has been replaced by the National Greening Program.
38 DENR-JICA E-CBFM, Compilation of Policy Recommendation Reports by the Policy Component, May 2009.
39 DENR, Philippine Governance of Natural Resources, 2002.

Agreement (CFSA), and Sustainable Industrial Forest Management Agreement (SIFMA) (Guiang, Borlagdan, Pulhin, 2001).

It is notable that although the various tenurial instruments enable the private sector (the communities and business enterprises) to manage the forest resources and share profits derived from the use of these resources, the enjoyment and possession of such instruments are mere privileges as the absolute ownership of such resources remains with the State. The State can therefore revoke or cancel the tenurial instruments if so required by public interest or if it finds the tenure holder violating the instrument's terms and conditions. The holder cannot claim that such revocation is an undue exercise of State power. Thus, in a long line of cases, the Supreme Court has held that:

> "…Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause.…
>
> All Filipino citizens are entitled, by right, to a balanced and healthful ecology as declared under *Section 16 Article II of the Constitution*. This right carries with it the correlative duty to refrain from impairing the environment, particularly our diminishing forest resources. To uphold and protect this right is an express policy of the State. The DENR is the instrumentality of the State mandated to actualize this policy. It is "the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos."
>
> Thus, private rights must yield when they come in conflict with this public policy and common interest. They must give way to the police or regulatory power of the State, in this case through the DENR, to ensure that the terms and conditions of existing laws, rules and regulations, and the IFMA itself are strictly and faithfully complied with. (*Republic vs. Pagadian City Timber Co., Inc.,* September 16, 2008, G.R. No. 159308, citations omitted)

Recognition of the rights of indigenous peoples/communities

The conflict between national law and customary law has been counterbalanced by constitutional provisions on the rights of indigenous peoples and the current *Indigenous People's Rights Act (IPRA)*[40]. The Constitution provides that the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development[41]. It further provides that the State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

The extensive rights of indigenous peoples recognized by IPRA could extend to REDD-Plus activities. With many forested areas lying within ancestral domains claims, the IPRA law is highly significant to REDD-Plus implementation. The IPRA law gives indigenous peoples the ownership rights to ancestral domains, and presents the foundation for decision-making on these lands and local access to benefits from associated natural resources, thus:

> Sec. 7. *Rights to Ancestral Domains.* – The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:
> a. *Rights of Ownership.* – The right to claim ownership over lands, bodies of water traditionally

40 Republic Act (RA) No. 8371.

41 See Article 2, Section 22, Philippine Constitution.

and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b. *Right to Develop Lands and Natural Resources.* – Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights.

The recognition of the right of the indigenous communities to control and use their natural resources, including the forests in their ancestral land, however, has led to debates on the impact of the IPs' traditional agricultural practice (i.e., slash-and-burn farming) to the forests. Non-IPs have perceived such agricultural practice as destructive to the forest and often blame the IPs for denuding the mountains. IP communities have refuted this and have claimed that their traditional way of undertaking slash-and-burn farming takes into account the protection of the mountains as they do not enter old growth forest areas. IPs blame the non-IPs who undertake slash-and-burn farming for deforestation.

A significant outcome of IPRA is the recognition given to IPs to decide for themselves the development programs they will undertake or accept in their community. A proponent of any project or program that will affect the IP community will have to obtain the consent of the IP community before the government can approve the same. Thus, in the case of *Alvarez et al. vs. PICOP,* G.R. No. 162243, December 3, 2009, the Supreme Court held that:

> … Ancestral domains, therefore, remain as such even when possession or occupation of these areas has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals/corporations. Consequently, the issuance of TLA No. 43 in 1952 did not cause the ICCs/IPs to lose their possession or occupation over the area covered by TLA No. 43. …
>
> As its subtitle suggests, [*Section 59 of R.A. No. 8371*] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie within any ancestral domain. … It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto has been obtained. Note that the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. …

Other opportunities for participation and forest protection

Under the NIPAS law, the establishment of protected areas requires public participation, as follows:

> Section 5. *Establishment and Extent of the System.* - The establishment and operationalization of the System shall involve the following:
>
> (i) Notify the public of the proposed action through publication in a newspaper of general circulation, and such other means as the System deems necessary in the area or areas in the

vicinity of the affected land thirty (30) days prior to the public hearing;
(ii) Conduct public hearing at the locations nearest to the area affected;
(iii) At the least thirty (30) days prior to the date of hearing advise all local government units (LGUs) in the affected areas, national agencies concerned, people's organizations and nongovernment organizations and invite such officials to submit their views on the proposed action at the hearing not later than thirty (30) days following the date of the hearing; and
(iv) Give due consideration to the recommendations at the public hearing; and provide sufficient explanation for his recommendations contrary to the general sentiments expressed in the public hearing;

Section 13. *Ancestral Lands and Rights Over Them.* - Ancestral lands and customary rights and interest arising shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, That the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community.

Under the IPRA law, a key concept is the "free and prior informed consent" (FPIC) provision, with which all REDD-Plus projects in ancestral domains areas would be required to comply. The pertinent provision is in Section 59 on Certification Precondition, thus[42]:

Sec. 59. *Certification Precondition* - All department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certificate shall only be issued after a field-based investigation is conducted by the Ancestral Domain Office of the area concerned: Provided, That no certificate shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is pending application CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

Free and prior informed consent as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.

Because of IPRA, the recognition of the ownership by the indigenous communities over their ancestral domains cannot now be denied nor refused. Part of the recognition of their ownership is that any government agency or private entity must secure their consent before any program or project can be permitted to be undertaken in their domain or land. However, many indigenous communities continue to be marginalized and would remain vulnerable to irresponsible REDD-Plus development.

The SEP law for Palawan identifies tribal ancestral zones as part of the environmentally critical areas network (ECAN), the main zonation strategy of the law. The establishment of the ECAN must be undertaken through participatory approaches. IP communities play a key role in the management of this ECAN zone.

Likewise, the PCSD has issued guidelines to carry out the ECAN provisions of the SEP law, specifically, the establishment of ECAN boards. ECAN boards are multisectoral bodies that are supposed to assist LGUs in localizing the implementation of the SEP law.

Under the Local Government Code, periodic consultations must be undertaken with all stakeholders, thus:

Section 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing

42 An extensive discussion on FPIC will be made in a separate policy study on Clarifying Carbon Rights.

> or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.
>
> Section 27. *Prior Consultations Required.* - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

In addition to the foregoing provisions on public consultation, the Local Government Code expressly requires that the public must be consulted on matters affecting the environment. The absence of any consultative process renders the issuance of permits for the program or project defective. Elucidating on the need to comply with Sections 26 and 27, the High Court held that:

> Finally, the devolution of the project to local government units is not required before Sections 26 and 27 would be applicable. Neither Section 26 nor 27 mentions such a requirement. Moreover, it is not only the letter, but more importantly the spirit of Sections 26 and 27 that show that the devolution of the project is not required. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that "may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species." The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the resources in the area, and deserve to be adequately compensated when these resources are exploited.
>
> Indeed, it would be absurd to claim that the project must first be devolved to the local government before the requirement of the national government seeking approval from the local government can be applied. If a project has been devolved to the local government, the local government itself would be implementing the project. That the local government would need its own approval before implementing its own project is patently silly. (*Alvarez, et al. vs PICOP, supra*)

The Environmental Impact Statement System (EIS, PD 1586) provides a legal basis for determining the environmental impacts of proposed activities that are considered as environmentally sensitive or to be conducted in environmentally critical areas. In relation to REDD-Plus, the EIS could be a safeguard against the possibility of conversion of natural forests to establish plantations for carbon sequestration.

However, administrative orders issued in the last ten years have diluted the effectiveness of the EIS. For instance, the definition of social acceptability remains as an issue, notwithstanding the existence of an operations manual. The vagueness of social acceptability has led to the uncertainty of the outcome of the EIS process. The study on the "Strengthening the Environmental Performance Monitoring and Evaluation System of the Philippine EIS System" noted that the sources of the problem include: (i) nonstandardized proofs of social acceptability; (ii) lack of guidelines on stakeholder participation; and (iii) no weight given to the relevant considerations (World Bank group, 2007). Thus, additional safeguards to address this concern should be developed.

The NIPAS law also provides for the conduct of an environmental impact assessment, as follows:

> Section 12. *Environmental Impact Assessment.* - Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as

required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process. No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippines Environment Impact Assessment (EIA) system. In instances where such activities are allowed to be undertaken, the proponent shall plan and carry them out in such manner as will minimize any adverse effects and take preventive and remedial action when appropriate. The proponent shall be liable for any damage due to lack of caution or indiscretion.

5.2.3 Laws and policies on benefit sharing

There are laws that would ensure local ownership rights, where they are due, and rights to equitable income from the use of forest resources by local communities, employees and LGUs.

The IPRA law clearly expresses the rights of ownership of IPs over lands, waters and natural resources; rights to the fruits; right to possess; right to use; right to consume; right to exclude and recover ownership; and rights of interests over land and natural resources. They have the right to benefit from environmental gains and draw redress for social and environmental costs to such activities.

The Revised Forest Code requires any party that applies for a license or permit to utilize, occupy or possess forestland, or conduct any activity therein, to allocate at least 20% of its subscribed capital stock in favor of its employees and laborers, which allows for benefit sharing within corporations.

The LGC, along with the Constitution, provides that LGUs are entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, including sharing of the same with the inhabitants.[43]

The NIPAS prescribes reasonable protected area fees to be collected from government agencies or any other persons, firm or corporations that derive benefits from within a protected area. These fees form part of the Integrated Protected Area Fund (IPAF), which is to be used for the management of the protected area articulated in the protected area management plan.

Existing and past social forestry programs provide for various incentives to enable participating communities and groups to pursue forest management activities:

(i) CBFMA (under DAO 29, 2004, Revised Implementing Rules and Regulations)

- occupy, develop, protect, manage and utilize the forestlands and its resources within a designated CBFM area and claim ownership of introduced improvements;
- when appropriate, allocate to members and regulate rights to use, and sustainably manage forestland resources within CBFM areas;
- exemption from paying land rental for use of the CBFM area;
- be properly informed of and be consulted on all government projects in the area (A PO's consent shall be secured by the DENR prior to the granting and/or renewal of contracts, leases and permits from the extraction and utilization of resources within the area to a third party; provided that an equitable sharing agreement shall be executed by such third party with the PO prior to any grant or renewal of such contracts, leases and permits.);
- be given preferential access by the DENR to all available assistance in the development and implantation of the Community Resource Management Framework and 5-year work plan of the PO;
- enter into agreements or contracts with private or government entities for the development of the whole or portion of the CBFM area and/or economic activities within the area.

(ii) Integrated Social Forestry under LOI 1260 (1982)

- no fees shall be collected for the use of the allocated land during the first five years of the Stewardship Agreement, provided that annual fees that shall not exceed ten pesos (P10.00) per hectare may thereafter be collected as determined by the Secretary of the Department of Environment and Natural Resources (DENR);

43 Section 7, Article X of the 1987 Constitution, and Sections 18 and 289 of the Local Government Code.

- all income/proceeds derived from the land shall accrue to program participants;
- forest products derived and/or harvested from the project area shall be exempted from the payment of forest charges;
- program participants may mortgage or assign their allocated land to any financial institution as collateral for loans to be used in developing the land;
- technical, legal, financial, marketing and other needed assistance shall be extended to program participants;
- program participants may avail of assistance provided by the government national livelihood Bagong Kilusang Kabuhayan at Kaunlaran (BKKK) movement; and
- upon expiration of the Stewardship Agreements, program participants or their direct heirs shall have the right of preemption to any subsequent Stewardship Agreement covering their allocated land, and when, for some reason, the government opts not to allocate the land for Stewardship, the participants concerned shall be entitled to just compensation for permanent improvements, introduced, including trees that will not be removed.

(iii) Community Forestry Program under DAO 123 (1989)
- forest products utilization privileges;
- alternative sources of livelihood shall be implemented prior to forest resources utilization;
- assistance in establishing community organization, issuance of CFMA, on-the-job training in forest management planning and conservation, livelihood opportunities in forest resource rehabilitation, developing alternative livelihood opportunities that do not necessarily depend on extraction and utilization of forest products, preparation of Community Resources and Management Plan and organizational development.

(iv) Forestland Management Program, DAO 23 (1993)
- free technical assistance in the implementation and management of the program;
- financial assistance for the reforestation and rehabilitation of denuded and degraded lands;
- exclusive privilege to harvest, sell and utilize forest products;
- tenurial security;
- transferability of Forest Land Management Agreement (FLMA);
- bankability of FLMA.

(v) Upland Agroforestry Program, DAO 25(2005)
- technical assistance from the CENRO and LGU;
- transferability or rights;
- land tenure and other incentives that may be granted under existing laws, rules and regulations.

Under the *National Greening Program* or *EO 26*, the following incentives are provided:
- All proceeds from agroforestry plantations duly accounted by the DENR shall accrue to the NGP beneficiary communities to address food security and poverty reduction;
- NGP beneficiary communities shall be considered priority in the Conditional Cash Transfer (CCT) Program;
- Appropriate incentives shall be developed by the Convergence Initiative to encourage rainforestation particularly in the protected area.

Based on the focus group discussions (FGDs) and key informant interviews (KIIs)[44], a persistent recommendation is for the government to continue the CBFM program and encourage the forest dwellers or people living near forest areas to participate in the program. Forest communities maintain that under the CBFM program, local communities become protectors of the forest, and this can prevent the indiscriminate cutting and poaching of forest products. CBFMA holders maintain that the tenurial arrangement enables them to protect the forest, and they see no need for another law to protect the forests. They lamented the inclusion of CBFMA harvesting and resource use activities in the coverage of the logging moratorium under EO 23. Community members also claim that besides national and local forestry laws, they have their own constitution and by-laws that govern their actions.

44 FGDs and KIIs were conducted in Agusan del Sur, Southern Leyte, and Palawan where there are ongoing forest tenure arrangements as well as forest management initiatives. The summation in this study is culled from the results of these field visits.

5.2.4. Policies and laws to address governance challenges

The aforementioned laws and policies provide for institutional mechanisms to implement their objectives, principles and strategies. Although the DENR is mandated under EO 192 to be the primary agency in charge of natural resources and the environment, including forest protection, there are existing agencies or bodies established by existing laws and policies that complement or support DENR in its activities. The DENR has organized Multisectoral Forest Protection Committees (MFPC) that serve as repository of information on forest-related problems, projects and initiatives. MFPCs in the local level perform monitoring and enforcement functions.

LGUs are supposed to complement DENR initiatives and are mandated to prepare FLUPs and integrate this into their CLUPS. PAMBs are multisectoral bodies mandated to provide oversight to the PA management plan and its implementation. Watershed management bodies/councils and similar governance mechanisms covering a watershed area also exist. There are several site-specific bodies such as the PCSD and ECAN Boards that have policy-making, management planning, monitoring and enforcement functions.

REDD-Plus implementation involves technical issues, such as reference levels and MRV. These technical matters coupled with the challenges of REDD-Plus project design, implementation, financing and monitoring require good governance mechanisms to make sure that the objectives of REDD-Plus are achieved. The capacity of existing institutions (DENR, LGUs, PAMBs, local community groups) will be a critical factor in the delivery of meaningful results on the ground. Such institutional capacity will determine the extent to which transparency, accountability and participation mechanisms are fulfilled.

In addition to Constitutional provisions on transparency, accountability and participation, the Philippines has anti-graft and corruption laws, such as the *Anti-Graft and Corrupt Practices Act*[45], *Code of Conduct and Ethical Standards of Public Officials and Employees*[46] and the *Law on Plunder*[47]. The Office of the Ombudsman is mandated by the Constitution.

Consistent with the Philippines' ratification of the United Nations Convention against Corruption (UNCAC), the first global anti-corruption treaty, the government has established a National Anti-Corruption Program of Action (NACPA) and the Multi-Sectoral Anti-Corruption Council (MSACC). The MSACC serves as the coordinating body of the NACPA.

5.2.5. Local policies on forest protection and environmental conservation

Laws and policies on devolution have enabled LGUs to pass ordinances and resolutions, and establish programs to protect their forests and watersheds. As earlier discussed, FLUPs serve as an important tool or mechanism for LGUs in the management of their forests.

PROVINCE-WIDE

At the provincial level, a look at the local policy efforts of the provincial governments of Southern Leyte and Agusan del Sur showed the existence of province-wide ordinances on forest protection and environmental management.

Province of Southern Leyte

Ordinance No. 2008-06 "An Ordinance Approving the Environmental Code of the Province of Southern Leyte"

The Environmental Code aims to promote principles of ecologically sustainable development and ensure that all reasonable and practicable measures are undertaken by the local government units to prevent harm to the environment.

45 RA 3019.
46 RA 6713.
47 RA 7080.

This ordinance provides for areas of concerns and strategies relating to the development, management and utilization of forest resources such as:

a. development of production forest,
b. management of protection forest,
c. natural resources inventory,
d. forest protection and law enforcement,
e. management of watersheds by municipalities,
f. protection and conservation of mangroves,
g. development of recreation forest, and
h. forest resources information system.

In 2009, Implementing Rules and Regulations (IRR) to ensure the effective implementation of the Environmental Code were issued through Executive Order No. 06.

Although not in the nature of local legislation, it is worth mentioning that in 2009, Congress passed RA 9772 imposing a logging ban in the whole province. This log ban exempts the harvesting of planted species within tree plantations as well as tree cutting activities for projects approved by the government for such basic services as public works, energy development or water utilities.

The results of key informant interviews and focus group discussions showed community awareness of the Provincial Environmental Code and the log ban law. The challenge is weak law enforcement. The community members are aware that the community has a role in the protection of the forests, and they will benefit from such forest protection efforts. But they also stress on the need for government agencies to help them in protecting and managing the forests. They also recommend the intensification of information and education efforts on forestry laws and programs.

Province of Agusan del Sur

Ordinance No. 03, Series of 2007 "Providing for Forest Resource Management Strategies of Forestlands and in Alienable and Disposable Lands"

Under the ordinance, the development of forest and wood-based industries in alienable and disposable lands is based on the following strategies:

a. agroforestry projects in private lands with 18% slope;
b. plant-now, pay-later scheme;
c. establishment of provincial tree nursery for the production of planting materials;
d. inventory and verification of planted trees within alienable and disposable lands; and
e. tax incentives to small-scale tree farmers and those engaged in commercial timber plantation.

In forest lands, the management, development and utilization of forest resources are based on the following strategies:

a. tree plantation development;
b. community-based forest management;
c. allocation of open access areas;
d. management of small watershed areas by every municipality;
e. establishment of communal forest in every municipality; and
f. prohibition on clear cutting within timberland areas.

The provincial government adopts a policy of supporting the issuance of tenurial instruments such as CSC, SIFMA and IFMA to allow the development of tree plantations and agroforestry projects in idle and unproductive lands of the public domain. They also support the provision of tax incentives to the holders of such tenurial instruments, through the grant of exemption from forest charges. Moreover, co-management of other forest areas shall be pursued in areas outside the devolved areas but need protection and development.

FGDs and KIIs showed the continuing problem of weak law enforcement. Interviewees suggested the implementation of the following with respect to forest: forest management should be sustainable; forest protection should be included in the barangay development plan; restructure other guidelines and directives

of the DENR; more directives and policies focusing on forest protection; update obsolete provisions of law; and there should be separation of protection and regulatory functions of the DENR.

MUNICIPALITY -WIDE

At the municipal level, a look into two municipalities of Palawan, which form part of the Victoria-Anepahan Range and currently part of a REDD-Plus preparedness project, reveal the existence of local legislation on forest protection. The two municipalities have CLUPs, but only the municipality of Narra has an existing FLUP.

Municipality of Quezon, Palawan

Ordinance No. 99-17 "An Ordinance on Forest Fire Prevention and Suppression for the Municipality of Quezon"

Ordinance No. 99-17 protects the forests of the municipality from destruction by fire. However, it also allows clearing by controlled burning in certain areas such as private lands, alienable and disposable lands, and those lands covered by tenurial arrangements such as CBFM, CSC, CADC, etc.

Ordinance No. 2002-027 "An Ordinance Declaring Buffer Zones around the Museum Reservation Site Known as the Tabon Caves Complex, Lipuun Point, Quezon Palawan"

Ordinance No. 2002-027 protects also the forest within the declared buffer zones around the Tabon caves complex by prohibiting the removal and destruction of any plants; cutting and removal of trees; and burning of trees, bushes and dried branches.

Municipality of Narra, Palawan

There are seven ordinances relating to forest and watershed protection.

Ordinance No. 7 series of 1981 - "An Ordinance Declaring Estrella Falls to be Narra Municipal Park"

Legislated in 1981, this ordinance only declares the Estrella Falls and its surrounding area of 100 meters radius as a municipal park.

Ordinance No. 94-07 - "An Ordinance that Prohibits the Cutting, Destroying or Injuring Planted Growing Trees, Flowering Plants and Shrubs or Plants, Tree Guards of Scenic Value along Public Roads, in Plazas, School Premises or in any Other Public Pleasure Ground"

This ordinance has for its object the protection of growing trees and other plants of scenic value. It is the policy of the municipality that such protection is a continuing program for aesthetic development of the municipality.

Ordinance No. 94-16 - "An Ordinance Maintaining the Environmental Trees and Free Flow of Clean Uncontaminated Body of Water in All Rivers, Narra, Palawan and Providing Penalties thereof"

This ordinance requires residents near rivers to plant and maintain environmental trees. It also prohibits and penalizes the cutting of trees in any area within the perimeter of all rivers in the municipality.

Ordinance No. 94–42 - "An Ordinance Penalizing any Persons, Owner or Operator of any Type or Kind of Water Transport Facility whom maybe Found Transporting Illegally and Unlawfully Cut Logs, Fletches, Timbers, Lumber Materials and Other Natural Resources Products within the Juridical Limits of this Municipality and Providing Funds therefor"

This ordinance seeks to deter any illegal and unlawful forest activities that may endanger the national and municipal forest resources and encourage the active participation of LGU officials and employees and the general public in combating illegal forest activities.

Ordinance No. 98-009 - "An Ordinance Adopting the Forest Land Use Plan and Forest Zoning Ordinance of the Municipality of Narra, Province of Palawan"
This ordinance provides for a forest land use plan and zoning of forest, and classifies forest lands into Protection Forest and Production Forest. It also identified 12 watersheds in the municipality. The protection forest is a zero utilization zone. No human activities are allowed except for "viewing and visiting the area". In the production forest, allowed activities include CBFMA activities, reforestation, agroforestry, sloping agricultural land technology, gathering of minor forest products requiring permits and licenses, grazing, mining, industrial projects and biodiversity conservation.

Ordinance No. 99-29 - "An Ordinance on Forest Fire Prevention and Suppression for the Municipality of Narra"
This ordinance aims to protect the forest through prevention and suppression of forest fire. It also allows controlled burning. It is almost similar to Ordinance No. 99-17 of the Municipality of Quezon.

Ordinance No. 2002-37-A - Narra Environmental Code
This ordinance that adopted the Environmental Code of Narra has ten areas of concern for its development, utilization, management and protection. They are the following: Wildlife resources, Forest Resources, Mineral resources, Water resources, Integrated waste management, Coastal resources, Air and noise pollution management, Ecotourism, Environmental impact assessment, and Land use planning.

Chapter III B of the ordinance provides for the management, protection and conservation of forest resources in the municipality of Narra and includes reforestation projects such as development of production forest and recreation forest, and the conservation and protection of mangrove and watersheds. It "promotes commercial tree farming, harvesting, artisanal and industrial wood processing enterprise through the provision of conducive policy, technical assistance, information flows, capability building, law enforcement, loan assistance and tenurial security services".

FGDs and KIIs conducted in Quezon and Narra revealed that almost all of the respondents had no knowledge of their local ordinances regarding forest protection. Their knowledge on forestry laws relates mainly to national laws. Their knowledge on national forestry and environmental laws and policies was gained through seminars, paralegal trainings, media programs and information dissemination activities given by different groups.

3.0 Issues and gaps

ISSUES AND GAPS

The implementation of aforementioned laws and policies has not been effective owing to policy and institutional gaps.

6.1. LEGAL AND POLICY CONFLICTS

6.1.1. Inconsistent and conflicting policies, thrusts and development perspectives

The bias toward resource extraction is evident in Philippine forestry law and policy (La Vina and Yu III, published in After the Romance, edited by Karin Gollin and James Kho, 2008).

The Forestry Code, which is the primary law on forest protection, focuses on utilization and allows mining and plantations in natural forest. The Mining Act also allows mining in natural forests. These activities are drivers of deforestation.

CBFMA areas have been the site of mining activities. The 2008 Policy Study on CBFM and mining showed that "one of the concerns of CBFM holders are reported cases and complaints that some mining companies applied for several small-scale mining permit [sic] and operated on a large-scale" (Oposa, 2008).

The NIPAS law gives premium to biodiversity conservation contrary to the utilization focus of the Forestry Code. NIPAS is also in conflict with the Philippine Mining Act in that it prohibits resource-extractive activities in protected areas, which include forests and key biodiversity areas. However, the Mining Act allows mineral exploration even in protected areas.

Titling of forestlands under the agrarian reform law through the issuance of Certificate of Land Ownership Awards (CLOAs) threatens reforestation and community forestry areas.[48] This indicates the absence of an integrated and coordinated development plan (land use, forest management or agricultural development) between national and local government agencies.

The moratorium imposed by EO 23, which has exempted tree cutting permit applications of mining companies covering natural forests, has been perceived as a disincentive by CBFMA and IFMA holders. As stated earlier, the moratorium covers harvesting rights (except non-timber forest products) of CBFMA and IFMA holders in residual forests. CBFM areas include natural, residual forest and portions of protected areas.

The SEP Palawan law provides for a total commercial logging ban in Palawan and categorizes natural forests as core zones. However, mining and plantation (palm oil, jathropa and rubber) activities have encroached upon natural forests.

There is lack of consistent government support (technical and financial) to community forestry groups. The country has declared that Sustainable Forest Management is the overarching policy thrust in the forestry sector. However, SFM has yet to be fully operational on the ground with an action program for implementation supported by a solid enabling environment. Most forest policies are tied up with outdated provisions of the 1975 Forestry Reform Code, and the new forest policies based on SFM have not been adopted. A proposed SFM Act remains pending in Congress for several years now, and the DENR still has to formulate an action program to implement SFM. The government also has to adopt and implement an appropriate system for criteria and indicators for reporting and monitoring progress toward or away from SFM (DENR-FMB, 2009).

48 FGDs and KIIs in Palawan and Leyte.

A CBFM Strategy was prepared in consultation with various CBFMA holders and CSO support groups. Although there was support for the CBFM strategy at some sections of the DENR-FMB, it failed to get support from higher management.

The lack of enabling environment policy and loopholes in the existing system of land laws, the lack of demarcation for the production and protection forests and other categories of land, and the status of extensive stretches of land as open access have affected the integrity and security of the forest (DENR-FMB, 2009).

The promotion of tree plantations, agroforestry and reforestation in CBFMA areas might affect the implementation of REDD-Plus insofar as forest degradation is concerned. The CBFMA regulations do not provide specific safeguards as to the introduction of exotic species of flora and fauna. Exotic species can be invasive and might degrade the natural physical attribute of the forest. Great quantities of carbon and other environmental values will be lost when natural forests are severely degraded or replaced by plantations but technically remain "forests" (Sasaki and Putz, 2009).

The DENR implementing order on EO 26 (NGP), DAO No. 2011-01, prescribes ratios for specific species and planting areas. The ratio promotes the production and planting of exotic species over large areas of forestlands. EO 26 does not encourage the planting of exotic species. This must be a consideration in CBFMA areas.

6.1.2. Unclear definition of forest

The current forest definition adopted from FAO does not clearly consider ecological parameters in determining a forest area. For purposes of establishing solid reference levels in relation to REDD-Plus, a more appropriate definition must be adopted that must include ecological considerations.

As previously discussed, the definition of forests that the Philippine government adopted from the FAO can potentially include plantations that are not trees and dilute efforts to restore degraded areas.

6.1.3. Forest management is still generally centralized

The national government, through the DENR, continues to assume a significant role in the management of forests, especially in light of PD 705 and the DENR's mandate under EO 192. Programs on community forestry and forest land use planning are still dependent on the DENR's priorities, resources and technical assistance. Co-management agreements between the DENR and the LGU have been explored and need to be further encouraged.

6.1.4. Insufficient incentives

Until now, CBFMA holders and CADT holders complain of the forest charges imposed on non-timber forest products they gather from their areas (NTFP-EP, 2006).

CBFMA applicants complain of the stringent requirements in applying for a CBFMA. Lengthy processes and documentation, financial constraints and perceived biases by government officials have discouraged certain groups to organize and apply for CBFMA. There are perceptions that those with financial capabilities and influence are given preferential treatment. There were even allegations that some businessmen financed the CBFMA application in exchange for the exclusive trading of the forest products[49].

6.2. INSTITUTIONAL AND GOVERNANCE CONCERNS (JURISDICTIONAL OVERLAPS AND FRAGMENTATION)

The Aquino government in its Philippine Development Plan (2011-2016) underscored the following key institutional issues[50]:

(i) implementation is confused by overlapping and conflicting policies;
(ii) government capacity for resource management is wanting;
(iii) enforcement of environmental laws and policies is inadequate; and
(iv) absence of a financing strategy for environment and natural resources programs and Climate Change Act.

To be effective, REDD must work within a stable and streamlined institutional arrangement. However, with the variety of laws concerning forestry and the environment, a range of management bodies have been established without full or detailed institutional assessments. These have resulted in the overlapping of mandates of different bodies tasked to manage the forestry resources and enforce these laws.

National and LGU projects either overlap or are in conflict with one another. For instance, mining has been allowed in CBFMA areas, watershed areas, protected areas or restricted zones. Palm oil plantations have been allowed in degraded forest areas that are the object of rehabilitation or reforestation.

The case of the provincial government of Rizal versus DENR on the establishment of the sanitary landfill is another example. The local government opposed vigorously the establishment of a sanitary landfill in an area that forms part of their watershed. In addition, several LGUs have issued moratorium ordinances to suspend or stop mining operations in their provinces and municipalities. The DENR has continuously assailed these ordinances.

Despite the range of management and enforcement bodies tasked to manage, protect and develop forestry resources, weak enforcement continues to be a challenge. Such weak enforcement is attributed to the lack of technical capability and proper funding and conflicts among mandated agencies.

Weak enforcement by national and local government agencies of their mandates and responsibilities, such as monitoring, education and development of forest land use plans, has contributed to poor forest management. Roles are not well defined as regards the monitoring of "carbon traders" encroaching upon ancestral domains and CBFMA areas.

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49 Interviews in Agusan del Sur.
50 PDP (2011-2016), Chapter 10 on Conservation, Protection and Rehabilitation of the Environment and Natural Resources.

An important policy that needs to be implemented is EO 318 on SFM. To date, the operating guidelines and strategies of EO 318 that would effectively implement SFM have not yet been issued.

Another important concern is the government's passive role in disseminating vital information to the public with regard to forest management and other related laws and programs. Although government research agencies collect and gather data, the dissemination to the public of vital information is very limited.

Special bodies like PAMBs have their own boundaries, which can cover barangays and municipalities. Large number of PAMB members can make governance processes, especially decision-making and planning, quite cumbersome.

Inadequate financial resources can be the toughest institutional challenge. Broadening existing forest management efforts entails costs, and most often, national and local government resources are insufficient to adequately carry out these concerns. The DENR however is able to budget almost P2 billion pesos for the National Greening Program, with 80% of the budget going to seedling procurement.

Funding opportunities such as fees from integrated protected area funds (IPAF) can be explored by the DENR and LGU. These agencies, together with other stakeholders, can include specific provisions in the protected area management plan on how to raise funds or generate income.

4.0 Conclusions and recommendations: Bridging the gap between policy rhetoric and reality

CONCLUSIONS AND RECOMMENDATIONS: BRIDGING THE GAP BETWEEN POLICY RHETORIC AND REALITY

Although there is no national REDD-specific legislation in the Philippines, there are laws and policies that apply REDD-Plus principles. These policies provide mandates and safeguards to promote the well-being of the people, community forest tenure, people's participation, transparency and accountability. Despite the existence of these laws, policies and regulations, legal and institutional issues have weakened and impeded their implementation.

7.1. RECOMMENDATION: ADAPT THE EXISTING LEGAL FRAMEWORK TO ENABLE REDD-PLUS IMPLEMENTATION

A key challenge, therefore, is to address the policy and institutional gaps and issues, and adapt the existing framework to enable the successful implementation of REDD-Plus initiatives over the long term. An important yet immediate step is for key agencies such as the CCC, DENR and NCIP to work with key stakeholders (both government and non-government) to establish the institutional mechanism to implement the PNRPS. The PNRPS has lined up several activities and action plans that require solid support from both national and local government agencies.

At the national level, the National Convergence Initiative of three national agencies consisting of DENR, DA and DAR can take up such policy issues and discuss feasible options. This convergence initiative includes an environmental component among its key areas and, quite recently, has taken up the issue of land use conflicts. However, more efforts are needed to ensure the clear implementation of key laws and policies that could enable REDD-Plus implementation.

7.2. RECOMMENDATION: DEVELOP A ROADMAP FOR ENGAGEMENT WITH EXISTING MANAGEMENT BODIES TO BROADEN KNOWLEDGE AND PARTICIPATION IN REDD-PLUS

PAMBs, CBFMA and IP-managed areas can serve as take-off points for REDD-Plus approaches and strategies. As articulated in the PNRPS, REDD-Plus activities must build on whatever gains have been achieved by existing community forest management initiatives. Studies on existing carbon forestry projects in the Philippines (e.g., Ikalahan Ancestral Domain forest carbon development) can be instructive in the development of REDD-Plus strategies.

There is a need to engage management bodies governing these protected and community-managed areas in order to revisit or review their management plans in the context of REDD-Plus. It can start by engaging first the active management bodies in biodiversity hotspots, and then developing them as possible demonstration sites for other areas.

7.3. RECOMMENDATION: LOCALIZE EFFORTS ON INTEGRATION OF SECTORAL OR AREA-SPECIFIC PLANS

Amending laws is a tedious and time-consuming process. Pending legislative amendments in Congress, LGUs, PAMBs, community forestry groups, and IP communities can work with the DENR-FMB to agree on the integration of their sectoral plans and the full implementation of their CLUPs (or CLWUPs), FLUPs or area-specific (PA or watershed) management plans. The plan will be the basis for strengthening forest management efforts.

7.4. RECOMMENDATION: ENHANCE SCHEMES FOR INCENTIVES AND BENEFIT SHARING

A REDD-Plus mechanism must provide the right incentives to enable local communities to protect forest areas. A range of options must be considered and can include the following:

- Simplifying process for CBFMA applications
- Clear guidelines on how monetary and non-monetary benefits are given (e.g., excise tax, revenue share) to ensure share of various stakeholders (e.g., communities, LGUs, others)
- Develop clear principles and procedures for determining benefit-distribution arrangements for REDD-Plus-related activities and guaranteeing opportunities to reward local and indigenous communities
- Develop mechanism/s to ensure equitable distribution of benefits within the community (through, among others, studying different models)
- Pursue CBFMA within the Payment for Ecosystems Services (PES) concept

7.5. RECOMMENDATION: DEVELOP A ROBUST FOREST MANAGEMENT POLICY AGENDA

An advocacy agenda among concerned stakeholders must be developed with champions in mind to push for policy proposals. While this is being developed, these concerns must be presented to the concerned Cabinet Clusters. The DOE, DENR, DA and other agencies are part of the Cabinet Cluster on Climate Change and Environmental Protection.

The advocacy agenda must take up the following:

- Passage of local legislation on Forest Land Use, which is consistent with ecological principles
- Passage of legislation that would enable REDD-Plus implementation (Sustainable Forest Ecosystems Management, National Land Use, Alternative Mining Bill and Freedom of Information Bill); the proposed forestry bill can improve on the current forest definition and provide for more incentives to community forest stewards
- Implementation of the Philippine Development Plan's strategies on forest management
- Issuance of administrative issuances
  - Revised forest definition achieved through dialogue among DENR, LGUs, forest users, conservation groups and other stakeholders
  - Explicit support to SFM and community forestry through the passage of implementing rules for EO 318
  - Application of the Payment for Ecosystems Services (PES) concept
  - Simplified process for CBFMA applications
  - Clear guidelines to ensure incentives and equitable distribution of benefits among key stakeholders (e.g., CBFMA holders, CADT holders, LGUs), by looking into studies on different models.

7.6. RECOMMENDATION: PROMOTE TRANSFORMATIVE FOREST GOVERNANCE THROUGH THE NATIONAL MULTISTAKEHOLDER REDD-PLUS COUNCIL (NMRC)

To achieve its objectives, REDD-Plus must avoid the same governance and corruption-related challenges that caused the failure of previous forestry projects. Building on existing governance safeguards, the NMRC should be established and in the short-term develop the following protocols:

(i) monitoring and evaluating REDD-Plus projects;
(ii) transparent and accountable management of REDD-Plus funds;
(iii) accessing information on forest inventories, carbon baselines, success criteria and project goals;
(iv) insulating MRV from manipulation and corruption.

Ideally, existing anti-corruption measures must be integrated in REDD-Plus implementation in a systematic way. The NMRC, with the support of other agencies, can pursue studies to assess where corruption takes place in processes relevant to forest tenure and resource use (permits, licenses, agreements); how it impacts on forest resources; and how it can be addressed. The information and knowledge resulting from the assessment must feed into the PNRPS governance strategy and the implementation of the government's PDP on forest management.

Annexes

ANNEXES

ANNEX 1: PROPOSED BILLS RELEVANT TO REDD-PLUS

Most of the proposed bills reviewed were filed with the Senate of the Philippines and were introduced during the 14th Congress and re-filed in the present 15th Congress, and all are pending in the committees where the bills were referred to. Almost all of the proposed bills filed in the House of Representatives have their Senate versions. The bills cited herein are those filed and/or re-filed recently.

SB 1353, An Act Providing For Sustainable Forest Management
This bill seeks to conserve and manage the forestlands through integrated and sustainable management focusing on the resource and the people who manage, conserve and benefit from it. It promotes the participation from different sectors in its management. A permanent forestland is sought to be established and maintained. This includes all lands of the public domain classified as forestlands as well as those remaining unclassified lands of the public domain. A reforestation of 50% for the first 5 years and 80% from the implementation of this Act is targeted on denuded forestlands. A communal forest is also sought to be established by LGUs. There is also a requirement of establishment of urban forest or parks in every LGU. Subdivisions are also required to develop green parks at least 50% of their open space. Incentives may be given to individuals or juridical persons who want to avail of the programs under this law. Programs under this Act may be undertaken either through production sharing agreements, co-production agreement and joint venture agreement.

Permanent commercial logging ban is also sought to be implemented in forest protection. Illegal cutting under this bill is considered an act of economic sabotage.

SB 940, An Act Institutionalizing Private Land Forestry to Enhance Reforestation and Environmental Protection and Providing Incentives thereof, and for Other Purposes
This bill seeks to establish permanent agroforestry zones from those lands under the integrated forestry program of the DENR and those classified as special agricultural lands. These lands may be available for ownership or titled to qualified beneficiaries. Under this Act, at least 20 percent of the land shall be devoted to tree farming of suitable species for reforestation. The Local Government Unit shall exercise primary jurisdiction for the implementation and enforcement of this program. Beneficiaries shall be the actual tillers living within the project area or at the adjacent barangay or sitio. Area allowed under this program shall not exceed seven (7) hectares for an individual.

SB 1091, An Act to Conserve and Protect Philippine Public Forests, Mangroves and Wildlife through a Comprehensive Environmental Program of Renewal, Replanting and Reforestation, and for Other Purposes
This bill seeks to establish a comprehensive program for the protection of public forest, mangrove and wildlife through reforestation and renewal of the destroyed environment. A coordinating council for the conservation, protection and renewal of the country's patrimony is sought to be established to formulate policies and program framework to carry out the provision of this Act. Under this bill, a specific forest limit is sought to be determined to be done by the DENR through a participatory process. Public consultation is also required. Virgin forests and public parks and forest reserves declared as such shall in no case be opened for exploitation or reclassification, and shall remain so unless otherwise declared by law. Areas of the public forests leased or tolerated for use for social forestry or agro-forestry shall be limited to the area and percentage of the total public forests as may be indicated in the implementing rules and regulations that will be issued for the purpose.

This bill also seeks to create a program for the youth in the reforestation and renewal of public forest, mangrove and wildlife. Students who avail of this program by rendering service shall be credited for the required units of the National Service Training Program.

SB 1185, An Act Providing for the Preservation, Reforestation, Afforestation and Sustainable Development of Mangrove Forests in the Philippines, Providing Penalties therefor and for Other Purposes

This bill seeks to establish a program for the preservation, reforestation, afforestation and sustainable development of the mangrove forests through the establishment of reservation areas exclusively for mangrove trees. Reservation is required to be established and set aside in coastal areas in each municipality. Existing mangrove area automatically forms part of the reservation.

SB 748, An Act Providing for the Preservation, Reforestation and Sustainable Development of All Philippine Mangrove Resources, Defining for that Purpose the Acts Prohibited within Mangrove Forests, and for Other Purposes

This bill is almost the same as above. But under this bill, no afforestation was provided. There shall also be a mandatory prior consultation from LGUs, POs, NGOs, and other sectors before any program that may affect the mangrove be implemented.

SB 1186, An Act Establishing Forest Management, Utilization, Conservation and Preservation Centers In Provinces Inhabited Predominantly by Members of Indigenous Cultural Communities (ICCS) and Upland Families

This bill focuses only in areas inhabited by ICCs. The center to be established has the primary functions, such as to:

Design and implement a forest management, utilization, conservation and preservation program appropriate to the locality, incorporating therein indigenous and traditional customs and practices pertaining to the proper utilization of forests and its resources and to the effective protection, conservation, preservation and sustainable management of forest resources.

SB 6, An Act to Promote Greening and Forestland Rehabilitation and Protection in the Barangay Level, Spurring Local Climate Change Action, Appropriating Funds therefor and for Other Purposes

This bill seeks to advance climate change adaptation strategies from the national to the barangay level in the rehabilitation and management of forest. Local greening programs aim to build, develop and maintain forest parks in provincial, city, municipal, barangay parks, roads, elementary school grounds and other public open spaces where appropriate. The LGUs shall conduct information and advocacy drives to promote local greening and forestland rehabilitation and protection programs.

The Climate Change Commission, as the sole government agency tasked to coordinate, monitor and evaluate government programs and action plans relating to climate change, shall coordinate and synchronize programs on forestland rehabilitation to ensure harmonization with national plans and programs, and to facilitate the provision of resources.

The implementation and monitoring of this program is also through a participatory process.

There is no specific incentive provided under this bill, but it mandates to grant fiscal and non-fiscal incentives to participating institutions.

SB 350, An Act Protecting the Environment thereby Establishing a Basic Policy for Nature Restoration, Providing Funds therefor, and for Other Purposes

This bill seeks to conserve, restore or create and maintain the conditions of the environment through a participatory process from different agencies and individuals. "*Nature restoration*" means the conservation, restoration or creation, and maintenance of the conditions of rivers, marshes, tidal flats, seaweed, seagrass beds, community-based woods, rural landscapes, forests, and other natural environments, with the participation of various actors in the community, including concerned governmental agencies, concerned municipal governments, local residents, specified nonprofit corporations, and individuals with specialized knowledge of the natural environment, with the objective of recovering the ecosystems and other natural environments that have been damaged or destroyed in the past. This bill also seeks the implementation of nature restoration through a participatory process.

SB 927, An Act Defining the Offense of Illegal Logging in Watersheds and Other Protected Areas and Providing Penalties therefor
This bill imposes strict protection and provides for heavy punishment of reclusion perpetua in cutting of trees in watershed areas; no mitigating circumstance to be appreciated and the Indeterminate Sentence Law cannot be applied.

SB 1325, An Act Providing for the Development of Parks and Mini-Parks in Barangays, Municipalities, Cities and Provinces, and, for Other Purposes
This bill seeks to establish and develop parks and mini-parks in all Barangays, Cities, Municipalities and Provinces, and requires the planting of suitable species of tree in the said parks. Incentives provided under this bill are planting materials and technical assistance from participating agencies.

SB 1354, An Act to Spur the Planting of a Billion Trees through Complementary Tree Planting Programs of the DENR and Various Government Agencies, Local Government Units and Communities, Schools and Universities, and Civic and Nongovernmental Organizations, Protecting the Remaining Natural Forests and Forest Plantations, and Creating a Fund therefore, and for Other Purposes
This bill has for its object the increase of reforestation efforts of the government and sustainable management of forest resources to be participated by different sectors. At least one million (1,000,000) hectares of open and denuded public forestlands, private lands, and idle portions of alienable and disposable (A & D) lands are targeted for the first five (5) years to be planted to both forest and fruit tree species. Reforestation program under this bill may be availed of through CBFM from cooperatives and associations. Incentives will be the right to harvest, sell, process and utilize the products covered by CBFMA. It is also required to be replanted after one year from harvest.

Subdivisions are also required to establish parks at least 25% of its open space.

A forest protection team is also sought to be established from different sectors with the incentives to include, but not limited to, higher base pay, hazard pay, uniform allowance, group insurance, and a reward system of twenty percent (20%) of the value of the confiscated materials.

There shall also a recognition awards to be given to agencies, corporations and NGOs who participated in environmental projects. There shall also be an award to be given to the outstanding greenest LGU.

SB 1355, An Act Providing for the Urban and Countryside Greening in the Philippines
This bill aims to improve the country's environmental conditions by building, developing and maintaining forests parks in local areas, educational institutions and public roads; promoting environmental consciousness among the Filipinos; and protecting the existing trees from further harm. A National Greening Committee is also sought to be created to implement this Act.

Under this bill, it is mandatory to plant trees in urban and countryside parks as well as in school grounds, vacant lots and other unutilized sites. Cutting of trees planted under this law may be allowed provided there is a permit from DENR.

SB 1360, An Act Totally Banning Logging Operations for the Next Twenty Five Years, and for Other Purposes
This bill seeks to prohibit logging operations of any kind in any forest, timber land, forest reserve or watershed areas for the next 25 years. This ban does not apply to trees grown in legitimate commercial tree farms.

SB 1361, An Act Granting Incentives to Subdivision Homeowners Associations to Develop and Maintain Forested Areas within their Subdivisions, and for Other Purposes
This bill requires subdivisions projects to set aside 5% of its gross area for the establishment of green parks. *Green park* refers to an area designated on the subdivision plan as forested land, developed and maintained by the Association, and reserved for public use as an ecological refuge. Such green park shall be devoted exclusively to the planting and growing of trees of any kind, flowering or ornamental plants and shrubs, or plants of scenic, aesthetic and ecological values.

SB 1367, An Act Providing for the Delineation of the Specific Forest Limits of the Public Domain and for Other Purposes
This bill seeks to determine and delineate specific forest limits, clearly mark its boundaries, establish permanent forestlands and provide permanency of specific forest limit.

SB 2018, An Act Instituting a Self-Sustaining Forest Management Program, by Providing Incentives to Tree Planters on Private Lands, Forest Lands, and Other Public Lands and for Other Purposes
This bill has for its object the promotion of reforestation program by encouraging public participation on environmental restoration and protection through tree planting. It is a nationwide reforestation program to be administered by the LGU in coordination with DENR and other agencies. This shall cover private lands, protection forests, productions forests, open lands and other lands deemed appropriate by the DENR. It shall also encourage the participation of different sectors and concerned citizens, and provide incentives as well as rights and privileges to tree planters. A Tree for Legacy Contract (TLC) shall be entered into between the proponent and the DENR, Certificate of Tree Ownership (CTO), Certificate of Usufruct (COU), Permit to Harvest and Permit to Cut and Transport will be issued.

SB 2711, An Act Promoting a National Strategy for the Sustainable Development, Management, and Protection of Mangrove Resources in the Philippines and for Other Purposes
This bill seeks to protect, develop and rehabilitate the country's mangrove forest through broad-based community participation.

Conversion of all natural mangrove forests into non-mangrove land uses shall not be allowed, and all existing natural mangroves shall be strictly protected.

CBFM approach and Mangrove Forest Adoption by private organizations are the main strategies for the protection, development and rehabilitation of mangrove forests.

SB 2708, An Act Promoting Urban Farming and Providing Funds and Incentives therefor
This bill seeks to promote urban farming with the primary goal of promoting a healthy environment, one of which is improvement of air quality. In its explanatory note, the author explained the benefits of urban farming to the community such that vegetation absorbs water runoff, improves air quality, reduces noise pollution and mitigates urban heat. It can also serve as wildlife habitat and acts as carbon sink.

An Act Promoting the Use of Urban Agriculture and Vertical Farming in the Country's Metropolitan Areas to Address Food Security concerns and Regenerate Ecosystem Functions Appropriating Funds therefor and for Other Purpose.
This bill seeks to promote urban farming not only for food production but also the regeneration of ecosystems functions. According to the author, it also promotes healthy environment by alleviating climate change produced by excess atmospheric carbon.

SB 2725, An Act Requiring that a Tree be Planted for Every Child Born in the Philippines, Providing a Framework for Its Implementation, and for Other Purposes
This bill requires every parent or guardian to plant a tree for every child born in the Philippines. The LGU is required to issue certification that a tree was planted in behalf of the child. In addition, such certification is required before a child is admitted in schools.

SB 2733, An Act Establishing an "Adopt-A-Wildlife Species Program", Providing Incentives therefor and for Other Purposes
This bill seeks to conserve and protect biological diversity, and promote ecologically sustainable development and to encourage the conservation of threatened species and their habitats through the active participation of the private sector and all other sectors of society. Any donation, contribution, bequest or grant that shall be made to the "Adopt-a-Wildlife Species Program" under the DENR, the DA and the PCSO shall be exempt from the donor's tax and the same shall be considered as allowable deduction from gross income in the computation of the donor's income tax, in accordance with the provisions of the National Internal Revenue Code of 1997, as amended.

ANNEX 2: RESULT OF THE FOCUS GROUP DISCUSSIONS AND KEY INFORMANT INTERVIEWS

(a) Palawan

Focus Group Discussion

The focus group discussions that were conducted in the municipalities of Quezon and Narra were participated in by representatives from different sectors such as barangay officials, people's organizations, indigenous groups, farmers' group and other civil societies. The attendees actively participated in the discussions.

The common issues and problems they identified with respect to forests are illegal logging, kaingin, charcoal making, mining and encroachment of non-Indigenous Peoples to the ancestral land/domain of the IPs. They also raised the issue of the weak or absence of serious enforcement of the forestry laws and the lack of interest of the pertinent government officials in trying to stop or curb illegal activities affecting the forests.

The participants stated that they have a limited knowledge of environmental laws as well as the government programs concerning the forests. They have knowledge of laws on illegal logging, wildlife and mining, which they got from trainings conducted by DENR and NGOs, media, from what they have read and what their friends are discussing. However, these laws do not fully address their environmental concerns. Violators of these laws are seldom caught.

Some groups from the municipality of Narra stated that they have heard of programs on forests like REDD, reforestation and inventory of forest.

They all agreed that forests provide fresh air and water, habitat for the wildlife, livelihood and building materials for their homes. Everyone, including the government, communities and the future generations, should benefit from the forests.

The various activities that violate the environmental laws include illegal logging, illegal mining, poaching of wildlife, charcoal-making and revision of ECAN Map of the municipalities. Unfortunately, the government agencies are unable to stop these illegal activities due to bribery, negligence of duty or the violators have connections with the public officials.

They suggested that there should be strict, fair and serious enforcement of environmental laws. They also hoped to be provided with livelihood assistance and incentives that should be equitably and justly shared so that the people would not engage in illegal activities anymore. The communities in the barangays should also be deputized to be able to apprehend the violators.

The programs and activities that would encourage the communities to participate in the protection of the forests include IECs, dialogues, trainings and partnerships with government agencies.

Key Informant Interviews

Officials from the Municipal Environment and Natural Resources Office (MENRO), the Community Environment and Natural Resources Office and barangays said that the threats to the forest, such as timber poaching and kaingin, are due to the desperate attempt of the people to alleviate themselves from poverty. Mining, charcoal-making, forest fire, climate change, flash flood and encroachment to forest by the migrants also threaten the forest.

They know about environmental laws such as PD 705, SEP Law, DENR regulations, Local Government Code, the law on informer's reward, and provincial and municipal ordinances, which they learned from trainings, seminars and instructions from their officials. However, these laws do not fully address the challenges and problems they face regarding forest protection due to various reasons, including political interventions and financial constraints.

Everyone must share not only with the benefits provided by the forest but also with the responsibility of protecting and conserving it.

They said that there are provisions of forest laws that are already antiquated or obsolete. The imposition of light penalty to violations also hinders the enforcement of such laws. Budget and staff constraints also pose a challenge to their implementation, and the lack of knowledge on environmental laws of people contributes to the problems. They said that forest protection should be given priority; there should be sufficient funding, proper equipment for hauling confiscated forest products and information dissemination to the communities.

They have close coordination with the local government units, which sometimes provide them with vehicle or fuel. The CENRO/MENRO officials also attend barangay sessions regarding concerns on the environment. Some of them have experienced interacting with prosecutors, some of whom are knowledgeable of the new rules for environmental cases. However, they are averse whenever the prosecutors allow plea bargaining by the accused. They felt their efforts and time are wasted whenever such happens.

They suggested programs or policies that would address the problems on forest protection such as upland development program, private public plantation, alternative livelihood programs, values formation, national greening program, adopt-a-mountain program, execution of memorandum of agreement with other stakeholders and strict implementation of laws. The capacities of the communities should be strengthened so that they would fully understand the significance of the forests. They should not only be ordered to participate in the reforestation, but they must also be provided with livelihood programs so that they can reap benefits while planting and growing trees.

(b) Southern Leyte

Key Informant Interviews

Fifteen key personnel from the Community Environment and Natural Resources Office (CENRO), Provincial Environment and Natural Resources Office (PENRO) and Regional Office of the DENR, along with the other public officials of the municipalities of Southern Leyte, were interviewed with respect to their perspective on the impact and implementation of forest policies in their respective areas.

On the issue of whether their forests are in danger of deforestation or degradation, 40% of them answered categorically in the affirmative, whereas the others made some qualifications to their answers, such as only portions of the forests facing threats. They listed kaingin and timber poaching as the main threats to the forests. They also included settlement and fuel gathering in mangrove areas, land conversion and mining. When asked on what environmental laws they are aware of, it is interesting to note that only 40% of them specifically mentioned PD No. 705. Likewise, 40% expressly mentions the Environmental Code of the province. Other national (e.g., NIPAS, Wildlife Act) and local (e.g., mangrove ordinance) laws were also mentioned. More than half (53.33%) of the interviewees stated that forestry laws sufficiently address the threats to the environment, although there is still a problem with implementation of the same. A few feel that there is a need to enact local legislation to address some of the local environmental issues. All of them believe that it is the public/community who should benefit from the forestry resources. The community, together with the government, must also be the ones responsible for taking care of such.

With respect to the apparent inadequacies they perceive in the forestry laws, a few stated that they are inconsistent, antiquated or with unclear provisions. However, many of them attribute such inadequacy to the problem of proper implementation of such laws, with 60% of them equating inadequacies of forestry laws with lack or weak implementation. In connection to the prosecution of the environmental cases and judges handling such cases, 60% of them agreed that they are knowledgeable of the law, whereas the others refused to give their comment on such issue. When asked to elaborate on the challenges in the enforcement of laws, the answers they gave varied, from lack of funds, equipment or personnel to monitoring the forests, lack of information about the law, political influence / pressure exerted by the leaders, to lack of cooperation of the community.

To address the lack of such cooperation from the community, they suggested providing them with livelihood programs and intensifying the information dissemination on the importance of the forests.

They also recommended, in order for the community to benefit from the resources of the forests, to strengthen the community / people's organizations and to involve them with reforestation projects.

Focus Group Discussions

Four FGDs were conducted in Southern Leyte, which were participated by members of Anahao Multi-purpose Cooperative (AMPCO) in Brgy. Anahao, Bontoc; Katipunan Imelda Catmon Community Forestry Association (KICCFA) in Silago; Young Innovators for Social and Environment Development (YISEDA) in Maasin; and TOMFA (Tomas Oppus Malitbog Farmers Asso., Inc.) in Tomas Oppus.

The participants are well aware of the significance and benefits of a forest, such as being source of air, water and food necessary for one's existence. Other benefits mentioned are as a protection of the community (i.e., preventing landslide; minimizing the effect of typhoon) and the world (i.e., mitigating climate change; enriching biodiversity). According to the two associations, their forests are not threatened due partly to the protection offered by the people's organizations. But the other two organizations admitted that their forests are threatened by illegal activities, such as timber poaching and gathering of wood for fuel. They also know that illegal mining and illegal farming are being conducted in the forests. The DENR and other government agencies are trying to curb the illegal activities by arresting the offenders, providing IEC and patrolling the area. However, when the offender is a politician, they refused to intervene and prosecute him. They added that there are enough laws for the protection of the forests; what is needed is strict implementation of the law regardless of who the offender is and strengthening of IEC on forestry laws.

The participants know national and local forestry laws, for example, P.D. No. 705 and the logging ban ordinance, which they learned from seminars such as those sponsored by government agencies. Interestingly, some include their by-laws in the list of laws that are enforced in the protection of the forests. On the questions of whether the laws sufficiently provide for their needs and are enforced in the community, all groups answered in the affirmative, although one group qualified their answer, saying that they could feel the enforcement only if it is the poor who violates the law. It added that the people's organization would find it hard to follow the permitting process due its legal intricacies and to secure the needed permits. Although they welcome any program that would benefit them, they hope that they will have the opportunity to participate in the planning and implementation of such programs.

Although the participants are aware that the forests are owned by the state, they know that the community has a role in the protection and taking care of them as they will be the ones that will benefit from them. But the government agencies must help them in protecting and managing the forests. In order for the community members to be involved in the protection of the forests, the IEC on forestry laws and programs must be intensified and strengthened.

(c) Agusan del Sur

Agusan del Sur has a total production forest of 435,970 hectares. 272,988 hectares of these areas are tenured, whereas 162,982 hectares are untenured (GIS Generated Data, CY 2010 ENR Statistical Profile).

The residents of Agusan del Sur derive many benefits from the forest, such as source of livelihood and their construction materials. It protects them from the floods. It also provides them fresh air and water, watershed and herbal medicine.

They said that the threats of deforestation are still prevalent because of encroachment or influx of the people in the forest, conversion of forestland into agricultural land, timber poaching, illegal logging, open and easy access to forests due to the construction of roads, kaingin, flash flood, banana and oil palm plantation, introduction of exotic species and invasive species in watersheds and occurrence of pests and diseases. The abuse in using Private Land Timber Permit (PLTP) was also considered as a threat. However, two of the interviewees said that there are no more threats because the CBFM and IFMA members are closely guarding the forest. The IFMAs, especially, are heavily guarded so that no illegal activity can be undertaken.

Other interviewees considered the issuance of CADT to indigenous peoples as a threat because the latter may regard the CADT as a license in unrestrained utilization of the forest. They further believed that there is no proper implementation of the guidelines in the issuance of CADTs, leading to uncontrolled disposition of lands.

They also alleged that some businessmen were behind the application not only of CADT but also of CBFM. The businessmen financed the application because they were very eager to exploit and earn profit from the utilization of timber products. Some even said that the CBFM stands for "Chinese-Based Forest Management."

The laws being implemented in the area include PD 705, rules and regulations from DENR, E.O. No. 263, NIPAS Act, Wildlife Act and Indigenous Peoples Rights Act and the Provincial Environmental Code of Agusan del Sur. Their knowledge of forestry laws came from trainings and seminars conducted by different agencies, studies, IEC, actual experience, and research and study on forest management, forest protection and reforestation.

Some of them asserted that the forestry laws are effectively implemented in their area, especially in the protection of forests, because timber poachers were actually apprehended including the equipment. However, there are instances when they would face challenges in the apprehension of illegal activities. For instance, although the logs may come from illegal sources, the violators could not be apprehended because during inspection, they may have already secured proper documents for their logs. Others would claim that such action of the concerned agency is only "*ningas cogon*" (or temporary).

The problems they considered about the forestry laws include the imposition of light penalty in some cases, and there are provisions in PD 705 that are already obsolete. They claimed that forestry laws are primarily geared toward utilization of natural resources and not their protection and conservation. Economic-wise, the law has not sufficiently addressed their problems and needs because it requires too many documents before they could utilize the forest. However, there are others who claimed that there is no need for new forestry laws because the current laws are sufficient. The laws only need strict implementation.

The gaps and obstacles in the implementation of laws include lenient implementation, lack of funds, lack of manpower in DENR, lack of capabilities, insurgency, lack of political will by LGU officials, absence of regulatory function of LGU on forest resources, absence of clear and defined responsibilities of national and local agencies especially on shared responsibility, and the people who are protecting the forests are not being given a livelihood opportunity. There is also lack of financial resources to develop CBFM. The IFMA and SIFMA operators were favored in terms of being given more harvesting rights than the CBFM. The budget for the implementing agencies such as for the confiscation and for vehicles / equipment is not sufficient. They added that they do not have legal counsel in their area to seek opinions on their cases. They said further that because of the shortage of personnel, they have to do multi-tasking in their duties.

Some of the interviewees claimed that prosecutors and judges in their area are not fully knowledgeable or not well versed in forestry laws. However, others disagree with this opinion, claiming that they are sufficiently knowledgeable with forestry laws.

Everyone agreed that protecting the forest is a shared responsibility. Those who benefit from the forest such as the direct stakeholders, Indigenous Peoples or lumad in CADC areas, actual occupants in forestlands, CBFMA holders, IFMA holders, and the general public have to do their share in protecting the forest. On the part of the government, the DENR, as the mandated lead agency, and the Local Government Units and multi-sectoral group organized by the government also have such responsibility.

In order that the responsibility of the community in protecting the forest would get across and be understood, there must be IECs and interactions with them. They also should be organized. There must also be close coordination with the LGU / barangay, PNP, military, NGOs, IPs and DENR through linkaging or networking.

The foresters claimed that the IFMA is an effective means of protecting the forests. The IFMA has a definite logging area where the government agencies could regularly monitor the activities. Were it not for the IFMA, they alleged that any person could just encroach the forest and undertake indiscriminate logging.

They suggested the following policies that must be implemented with respect to forest policies: forest management should be sustainable; forest protection should be included in the barangay development plan; restructuring other guidelines and directives of DENR; more directives and policies focusing on forest protection; updating obsolete provisions of law; and there should be a separation of protection and regulatory functions of the DENR. There must also be a validation of the faithfulness of consultation and endorsement from Indigenous Peoples before the government issues permits.

They added that once the IFMA is issued, it should be respected because IFMA has big role in managing and protecting the forest. IFMA areas should not be encroached and claimed by IPs as their own ancestral land. They said that the moratorium on cutting in natural forest should be made permanent and must involve all levels of the government. They also said that there is a need for serious and strict implementation of the laws. Logged-out areas should be reforested with endemic trees and should be maintained until the trees have grown. Also, there must be an establishment of specific forest limit per barangay / LGU.

There must also be a livelihood or employment program that will give incentives in plantation development. The deputation of forest guards must be continued and strengthened. There must be compensation for those protecting the forest for them to be active. The CBFM program must be continued, and the people must be encouraged to become members of CBFM. The community members may be given incentives by providing them with seedlings for free.

G.R. No. L-21814 July 15, 1975
THE DIRECTOR OF LANDS, petitioner,
vs.
MELECIO ABANZADO, ET AL., claimants. THE DIRECTOR OF FORESTRY, claimant-appellant, vs. PERPETUO SILVA, ET AL., claimants-appellees.

To repeat, the order denying the petition for review should be reversed.

1. xxx Appellant based his motion on the claim that a portion of the land in question either is needed for river bank protection or forms part of permanent timberland. If this claim that any portion of the land in question still forms part of the public forests is true, then possession thereof, however long, cannot convert it into private property ..., and such portion would fall within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and jurisdiction of the cadastral court to register under the torrens system ... . Hence, the lower court should have set appellant's motion for hearing to receive evidence on his allegations, in order that any portion or portions of the land in question that should form part of the forest or timber zone may be excluded and segregated from the decree of registration in favor of appellees." 8

2. xxx The Constitution then in force, as is similarly the case with the present Charter, was quite explicit on the point of forest resources being inalienable. That is a paramount state objective. The fundamental law left no doubt. It is not to be thwarted. A lower court that is not duly mindful of such grave responsibility is recreant to its trust. Regrettably, that was what happened here.

3. xxx "To prove title, open, continuous, exclusive, and notorious occupation of the land by the applicant and his predecessors in interest since 1882, interrupted by the revolution, is relied upon. Included within the perimeter of the tract are approximately 685 hectares of forest land and four logging trails in the nature of highways. These portions should, without question, be eliminated from the claim. The Government concedes, however, that approximately 1,060 hectares are under cultivation and that certain other portions have been used by the claimant for pasturage. But the doctrine of constructive possession announced in Ramos v. Director of Lands ... cannot be successfully advanced, for the claimant is not holding the land under color of title. To the tracts, of which applicant is in actual possession, he can secure title, on submission of proper plans." 17 The reference to Ramos v. Director of Lands, 18 decided two years previously with the same jurist as ponente, is understandable. It is a leading case. It was Justice Malcolm who, by reference to the first Organic Act, the Philippine Bill of 1902, stressed the significance of timberlands for the national economy thus: "Indubitably, there should be conservation of the natural resources of the Philippines. The prodigality of the spendthrift who squanders his substance for the pleasure of the fleeting moment must be restrained for the less spectacular but surer policy which protects Nature's wealth for future generations. Such is the wise stand of our Government as represented by the Director of Forestry who, with the Forester for the Government of the United States, believes in 'the control of nature's powers by man for his own good.'" 19 Such an observation has not lost pertinence with the passage of time as shown by reference to Ramos in subsequent cases. 20

4. xxx He reiterated the basic state objective on the matter in clear and penetrating language: "The view this Court takes of the cases at bar is but in adherence to public policy that should be followed with respect to forest lands. Many have written much, and many more have spoken, and quite often, about the pressing need for forest preservation, conservation, protection, development and reforestation. Not without justification. For, forests constitute a vital segment of any country's natural resources. It is of common knowledge by now that absence of the necessary green cover on our lands produces a number of adverse or ill effects of serious proportions. Without the trees, watersheds dry up; rivers and takes which they supply are emptied of their contents. The fish disappear. Denuded areas become dust bowls. As waterfalls cease to function, so will hydroelectric plants. With the rains, the fertile topsoil is washed away; geological erosion results. With erosion come the dreaded floods that wreak havoc and destruction to property — crops, livestock, houses and highways — not to mention precious human lives. ..." 23

WHEREFORE, the order denying the petition for review of appellant Director of Forestry dated November 15, 1962 is reversed and set aside, and the case is remanded to the aforesaid Court of First Instance of Negros Oriental of the 12th Judicial District, to enable appellant Director of Forestry to

present evidence on his allegation that the land in question forms part of the Bais Communal Forest, which is not disposable public land, after which a decision on the merits of the petition for review may be promulgated in accordance with law and the controlling decisions of this Honorable Tribunal. Costs against private respondents.

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G.R. No. 79538 October 18, 1990
FELIPE YSMAEL, JR. & CO., INC., petitioner,
vs.
THE DEPUTY EXECUTIVE SECRETARY, THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, THE DIRECTOR OF THE BUREAU OF FOREST DEVELOPMENT and TWIN PEAKS DEVELOPMENT AND REALTY CORPORATION, respondents.
Tañada, Vivo & Tan for petitioner.
Antonio E. Escober and Jurado Law Office for respondent Twin Peaks Development Corporation.
COURTS, *J.:*

3. xxx

A cursory reading of the assailed orders issued by public respondent Minister Maceda of the MNR which were ed by the Office of the President, will disclose public **policy** consideration which effectively forestall judicial interference in the case at bar.

Public respondents herein, upon whose shoulders rests the task of implementing the **policy** to develop and conserve the country's natural resources, have indicated an ongoing department evaluation of all timber license agreements entered into, and permits or licenses issued, under the previous dispensation. In fact, both the executive and legislative departments of the incumbent administration are presently taking stock of its environmental policies with regard to the utilization of timber lands and developing an agenda for future programs for their conservation and rehabilitation.

The ongoing administrative reassessment is apparently in response to the renewed and growing global concern over the despoliation of **forest** lands and the utter disregard of their crucial role in sustaining a balanced ecological system. The legitimacy of such concern can hardly be disputed, most especially in this country. The Court takes judicial notice of the profligate waste of the country's **forest** resources which has not only resulted in the irreversible loss of flora and fauna peculiar to the region, but has produced even more disastrous and lasting economic and social effects. The delicate balance of nature having been upset, a vicious cycle of floods and droughts has been triggered and the supply of food and energy resources required by the people seriously depleted.

While there is a desire to harness natural resources to amass profit and to meet the country's immediate financial requirements, the more essential need to ensure future generations of Filipinos of their survival in a viable environment demands effective and circumspect action from the government to check further denudation of whatever remains of the **forest** lands. Nothing less is expected of the government, in view of the clear constitutional command to maintain a balanced and healthful ecology. Section 16 of Article II of the 1987 Constitution provides:

> SEC. 16. The State shall protect and promote the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Thus, while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will stand clear. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. More so where, as in the present case, the interests of a private logging company are pitted against that of the public at large on the pressing public **policy** issue of **forest** conservation. For this Court

recognizes the wide latitude of discretion possessed by the government in determining the appropriate actions to be taken to preserve and manage natural resources, and the proper parties who should enjoy the privilege of utilizing these. Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of **forest** resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the **forest** products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See Sections 3 (ee) and 20 of Pres. Decree No. 705, as amended. Also, Tan v. Director of Forestry, G.R. No.L-24548, October 27, 1983, 125 SCRA 302].

In fine, the legal precepts highlighted in the foregoing discussion more than suffice to justify the Court's refusal to interfere in the DENR evaluation of timber licenses and permits issued under the previous regime, or to pre-empt the adoption of appropriate corrective measures by the department.

Nevertheless, the Court cannot help but express its concern regarding alleged irregularities in the issuance of timber license agreements to a number of logging concessionaires.

The grant of licenses or permits to exploit the country's timber resources, if done in contravention of the procedure outlined in the law, or as a result of fraud and undue influence exerted on department officials, is indicative of an arbitrary and whimsical exercise of the State's power to regulate the use and exploitation of **forest** resources. The alleged practice of bestowing "special favors" to preferred individuals, regardless of merit, would be an abuse of this power. And this Court will not be a party to a flagrant mockery of the avowed public **policy** of conservation enshrined in the 1987 Constitution. Therefore, should the appropriate case be brought showing a clear grave abuse of discretion on the part of officials in the DENR and related bureaus with respect to the implementation of this public **policy**, the Court win not hesitate to step in and wield its authority, when invoked, in the exercise of judicial powers under the Constitution [Section 1, Article VIII].

However, petitioner having failed to make out a case showing grave abuse of discretion on the part of public respondents herein, the Court finds no basis to issue a writ of certiorari and to grant any of the affirmative reliefs sought.

WHEREFORE, the present petition is DISMISSED.

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G.R. No. 162243 December 3, 2009
HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources, Petitioner,
vs.
PICOP RESOURCES, INC., Respondent.

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G.R. No. 164516
PICOP RESOURCES, INC., Petitioner,
vs.
HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources Respondent.

x -x

G.R. No. 171875
THE HON. ANGELO T. REYES (formerly Hon. Elisea G. Gozun), in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), Petitioner,
vs.

PAPER INDUSTRIES CORP. OF THE PHILIPPINES (PICOP)

NCIP Certification

The Court of Appeals held that PICOP need not comply with Section 59 of Republic Act No. 8371, which requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government. According to the Court of Appeals, Section 59 should be interpreted to refer to ancestral domains that have been duly established as such by the continuous possession and occupation of the area concerned by indigenous peoples since time immemorial up to the present. The Court of Appeals held that PICOP had acquired property rights over TLA No. 43 areas, being in exclusive, continuous and uninterrupted possession and occupation of these areas since 1952 up to the present.

In the assailed Decision, we reversed the findings of the Court of Appeals. Firstly, the Court of Appeals ruling defies the settled jurisprudence we have mentioned earlier, that a TLA is neither a property nor a property right, and that it does not create a vested right.82

Secondly, the Court of Appeals' resort to statutory construction is misplaced, as Section 59 of Republic Act No. 8379 is clear and unambiguous:

SEC. 59. *Certification Precondition.* – All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

PICOP had tried to put a cloud of ambiguity over Section 59 of Republic Act No. 8371 by invoking the definition of Ancestral Domains in Section 3(a) thereof, wherein the possesssion by Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) must have been continuous to the present. However, we noted the exception found in the very same sentence invoked by PICOP:

a) Ancestral domains – Subject to Section 56 hereof, refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

Ancestral domains, therefore, remain as such even when possession or occupation of these areas has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals/corporations. Consequently, the issuance of TLA No. 43 in 1952 did not cause the ICCs/IPs to lose their possession or occupation over the area covered by TLA No. 43.

Thirdly, we held that it was manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that the lands are not part of ancestral domains can be required,

and invoked the separate opinion of now Chief Justice Reynato Puno in Cruz v. Secretary of DENR83:
As its subtitle suggests, [Section 59 of R.A. No. 8371] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie within any ancestral domain. The provision does not vest the NCIP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto has been obtained. Note that the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.

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We are not sure whether PICOP's counsels are deliberately trying to mislead us, or are just plainly ignorant of basic precepts of law. The term «claim» in the phrase «claim of ownership» is not a document of any sort. It is an attitude towards something. The phrase «claim of ownership» means «the possession of a piece of property with the intention of claiming it in hostility to the true owner.»86 It is also defined as «a party's manifest intention to take over land, regardless of title or right.»87 Other than in Republic Act No. 8371, the phrase «claim of ownership» is thoroughly discussed in issues relating to acquisitive prescription in Civil Law.

Before PICOP's counsels could attribute to us an assertion that a mere attitude or intention would stop the renewal or issuance of any concession, license or lease or any production-sharing agreement, we should stress beforehand that this attitude or intention must be clearly shown by overt acts and, as required by Section 3(a), should have been in existence «since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations.»

Another argument of PICOP involves the claim itself that there was no overlapping:

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Sanggunian Consultation and Approval

While PICOP did not seek any certification from the NCIP that the former's concession area did not overlap with any ancestral domain, PICOP initially sought to comply with the requirement under Sections 26 and 27 of the Local Government Code to procure prior approval of the Sanggunians concerned. However, only one of the many provinces affected approved the issuance of an IFMA to PICOP. Undaunted, PICOP nevertheless submitted to the DENR the purported resolution89 of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion, apparently hoping either that the disapproval of the other provinces would go unnoticed, or that the Surigao del Sur approval would be treated as sufficient compliance.

Surprisingly, the disapproval by the other provinces did go unnoticed before the RTC and the Court of Appeals, despite the repeated assertions thereof by the Solicitor General. When we pointed out in the assailed Decision that the approval must be by all the Sanggunians concerned and not by only one of them, PICOP changed its theory of the case in its Motion for Reconsideration, this time claiming that they are not required at all to procure Sanggunian approval.

Sections 2(c), 26 and 27 of the Local Government Code provide:
SEC. 2.x xx.
x xxx
(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* – It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the

planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SEC. 27. *Prior Consultations Required.* – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

As stated in the assailed Decision, the common evidence of the DENR Secretary and PICOP, namely, the 31 July 2001 Memorandum of Regional Executive Director (RED) Elias D. Seraspi, Jr., enumerated the local government units and other groups which had expressed their opposition to PICOP's application for IFMA conversion:

7. During the conduct of the performance evaluation of TLA No. 43 issues complaints against PRI were submitted thru Resolutions and letters. It is important that these are included in this report for assessment of what are their worth, viz:
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7.2 Joint Resolution (unnumbered), dated March 19, 2001 of the Barangay Council and Barangay Tribal Council of Simulao, Boston, Davao Oriental (ANNEX F) opposing the conversion of TLA No. 43 into IFMA over the 17,112 hectares allegedly covered with CADC No. 095.

7.3 Resolution Nos. 10, s-2001 and 05, s-2001 (ANNEXES G & H) of the Bunawan Tribal Council of Elders (BBMTCE) strongly demanding none renewal of PICOP TLA. They claim to be the rightful owner of the area it being their alleged ancestral land.

7.4 Resolution No. 4, S-2001 of SitioLinao, San Jose, Bislig City (ANNEX I) requesting not to renew TLA 43 over the 900 hectares occupied by them.

7.5 Resolution No. 22, S-2001 (ANNEX J) of the Sanguniang Bayan, Lingig, Surigao del Sur not to grant the conversion of TLA 43 citing the plight of former employees of PRI who were forced to enter and farm portion of TLA No. 43, after they were laid off.

7.6 SP Resolution No. 2001-113 and CDC Resolution Nos. 09-2001 of the SanguniangPanglungsod of Bislig City (ANNEXES K & L) requesting to exclude the area of TLA No. 43 for watershed purposes.

7.7 Resolution No. 2001-164, dated June 01, 2001 (ANNEX M) SanguniangPanglungsod of Bislig City opposing the conversion of TLA 43 to IFMA for the reason that IFMA do not give revenue benefits to the City.90

PICOP had claimed that it complied with the Local Government Code requirement of obtaining prior approval of the Sanggunian concerned by submitting a purported resolution91 of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. We ruled that this cannot be deemed sufficient compliance with the foregoing provision. Surigaodel Sur is not the only province affected by the area covered by the proposed IFMA. As even the Court of Appeals found, PICOP's TLA No. 43 traverses the length and breadth not only of Surigaodel Sur but also of Agusan del Sur, Compostela Valley and Davao Oriental.92

On Motion for Reconsideration, PICOP now argues that the requirement under Sections 26 and 27 does not apply to it:

97. PICOP is not a national agency. Neither is PICOP government owned or controlled. Thus Section 26 does not apply to PICOP.
98. It is very clear that Section 27 refers to projects or programs to be implemented by government

authorities or government-owned and controlled corporations. PICOP's project or the automatic conversion is a purely private endevour. First the PICOP project has been implemented since 1969. Second, the project was being implemented by private investors and financial institutions.

99. The primary government participation is to warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project. To rule now that a project whose foundations were commenced as early as 1969 shall now be subjected to a 1991 law is to apply the law retrospectively in violation of Article 4 of the Civil Code that laws shall not be applied retroactively.

100. In addition, under DAO 30, Series of 1992, TLA and IFMA operations were not among those devolved function from the National Government / DENR to the local government unit. Under its Section 03, the devolved function cover only:
    a) Community Based forestry projects.
    b) Communal forests of less than 5000 hectares
    c) Small watershed areas which are sources of local water supply

All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and can never be purely private endeavors.

Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to «warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project.»

PICOP is indeed neither a national agency nor a government-owned or controlled corporation. The DENR, however, is a national agency and is the national agency prohibited by Section 27 from issuing an IFMA without the prior approval of the Sanggunian concerned. As previously discussed, PICOP's Petition for Mandamus can only be granted if the DENR Secretary is required by law to issue an IFMA. We, however, see here the exact opposite: the DENR Secretary was actually prohibited by law from issuing an IFMA, as there had been no prior approval by all the other Sanggunians concerned.

As regards PICOP's assertion that the application to them of a 1991 law is in violation of the prohibition against the non-retroactivity provision in Article 4 of the Civil Code, we have to remind PICOP that it is applying for an IFMA with a term of 2002 to 2027. Section 2, Article XII of the Constitution allows exploitation agreements to last only «for a period not exceeding twenty-five years, renewable for not more than twenty-five years.» PICOP, thus, cannot legally claim that the project's term started in 1952 and extends all the way to the present.

Finally, the devolution of the project to local government units is not required before Sections 26 and 27 would be applicable. Neither Section 26 nor 27 mentions such a requirement. Moreover, it is not only the letter, but more importantly the spirit of Sections 26 and 27, that shows that the devolution of the project is not required. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that «may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species.» The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the resources in the area, and deserve to be adequately compensated when these resources are exploited.

Indeed, it would be absurd to claim that the project must first be devolved to the local government before the requirement of the national government seeking approval from the local government can be applied. If a project has been devolved to the local government, the local government itself would be implementing the project. That the local government would need its own approval before implementing its own project is patently silly.

PICOP's cause of action consists in the allegation that the DENR Secretary, in not issuing an IFMA, violated its constitutional right against non-impairment of contracts. We have ruled, however, that the 1969 Document is not a contract recognized under the non-impairment clause, much less a contract specifically enjoining the DENR Secretary to issue the IFMA. The conclusion that the 1969 Document is not a contract recognized under the non-impairment clause has even been disposed of in another case decided by another division of this Court, PICOP Resources, Inc. v. Base Metals Mineral Resources Corporation,94 the Decision in which case has become final and executory. PICOP's Petition for Mandamus should, therefore, fail.

Furthermore, even if we assume for the sake of argument that the 1969 Document is a contract recognized under the non-impairment clause, and even if we assume for the sake of argument that the same is a contract specifically enjoining the DENR Secretary to issue an IFMA, PICOP's Petition for Mandamus must still fail. The 1969 Document expressly states that the warranty as to the tenure of PICOP is «subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.» Thus, if PICOP proves the two above-mentioned matters, it still has to prove compliance with statutory and administrative requirements for the conversion of its TLA into an IFMA.

While we have withdrawn our pronouncements in the assailed Decision that (1) PICOP had not submitted the required forest protection and reforestation plans, and that (2) PICOP had unpaid forestry charges, thus effectively ruling in favor of PICOP on all factual issues in this case, PICOP still insists that the requirements of an NCIP certification and Sanggunian consultation and approval do not apply to it. To affirm PICOP's position on these matters would entail nothing less than rewriting the Indigenous Peoples' Rights Act and the Local Government Code, an act simply beyond our jurisdiction.
WHEREFORE, the Motion for Reconsideration

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REPUBLIC OF THE PHILIPPINES, represented by the Department of Environment and Natural Resources (DENR),
Petitioner,
- versus -
PAGADIAN CITY TIMBER CO., INC.
September 16, 2008 G.R. No. 159308

The petition is impressed with merit.

IFMA No. R-9-040 is a license agreement under Presidential Decree (P.D.) No. 705 (Revised Forestry Code), the law which is the very basis for its existence.26 Under Section 3, paragraph (dd) thereof, a license agreement is defined as «a privilege27 granted by the State to a person to utilize forestresources within any forest land with the right of possession and occupation thereof to the exclusion of others, except the government, but with the corresponding obligation to develop, protect and rehabilitate the same in accordance with the terms and conditions set forth in said agreement.» This is evident in the following features, among others, of IFMA No. R-9-040, to wit:

1. The State agreed to devolve to the holder of IFMA No. R-9-040 the responsibility to manage the specified IFMA area for a period of 25 years, specifically until October 14, 2019, which period is automatically renewable for another 25 years thereafter;
2. The State imposed upon respondent, as holder of IFMA No. R-9-040, the conditions, the means, and the manner by which the IFMA area shall be managed, developed, and protected;
3. The State, through the DENR Secretary, shall not collect any rental within the first five (5) years of the IFMA, after which it shall be entitled to annual rental of fifty centavos (P0.50) per hectare from the sixth to the tenth year thereof, and one peso (P1.00) per hectare thereafter;
4. The IFMA area, except only the trees and other crops planted and the permanent improvements constructed by the IFMA holder, remains the property of the State; and
5. Upon cancellation of the IFMA through the fault of the holder, all improvements including forestplantations existing within the IFMA area shall revert to and become the property of the State.

An IFMA has for its precursor the Timber License Agreement (TLA), one of the tenurial instruments issued by the State to its grantees for the efficient management of the country's dwindling forest resources.

Jurisprudence has been consistent in holding that license agreements are not contracts within the purview of the due process and the non-impairment of contracts clauses enshrined in the Constitution. Our pronouncement in Alvarez v. PICOP Resources, Inc.28 is enlightening –

In unequivocal terms, we have consistently held that such licenses concerning the harvesting of timber in the country's forests cannot be considered contracts that would bind the Government regardless of changes in policy and the demands of public interest and welfare. (citing Oposa v. Factoran, Jr., G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811) Such unswerving verdict is synthesized in Oposa v. Factoran, Jr., (id., at pp. 811, 812) where we held:

In the first place, the respondent Secretary did not, for obvious reasons, even invoke in his motion to dismiss the non-impairment clause. If he had done so, he would have acted with utmost infidelity to the Government by providing undue and unwarranted benefits and advantages to the timber license holders because he would have forever bound the Government to strictly respect the said licenses according to their terms and conditions regardless of changes in policy and the demands of public interest and welfare. He was aware that as correctly pointed out by petitioners, into every timber license must be read Section 20 of the Forestry Reform Code (P.D. No. 705) which provides:

«x xx Provided, that when the national interest so requires, the President may amend, modify, replace or rescind any contract, concession, permit, licenses or any other form of privilege granted herein x xx.»

Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the constitution. In Tan vs. Director of Forestry, [125 SCRA 302, 325 (1983)] this Court held:

«x xx A timber license is an instrument by which the State regulates the utilization and disposition offorest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

«A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights. (People vs. Ong Tin, 54 O.G. 7576). x xx»

We reiterated this pronouncement in Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary [190 SCRA 673, 684 (1990):
«x xx Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause. [See Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, Tan v. Director of Forestry, G.R. No. L-24548, October 27, 1983, 125 SCRA 302].»

Since timber licenses are not contracts, the non-impairment clause, which reads:
«SEC. 10. No law impairing, the obligation of contracts shall be passed.»
cannot be invoked.

Even assuming arguendo that an IFMA can be considered a contract or an agreement, we agree with the Office of the Solicitor General that the alleged property rights that may have arisen from it are not absolute. All Filipino citizens are entitled, by right, to a balanced and healthful ecology as declared under Section 16,29 Article II of the Constitution. This right carries with it the correlative duty to refrain from impairing the environment,30 particularly our diminishing forest resources. To uphold and protect this right is an express policy of the State.31 The DENR is the instrumentality of the State mandated to actualize this policy. It is «the primary government agency responsible for the conservation, management, development and proper

use of the country's environment and natural resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.»32

Thus, private rights must yield when they come in conflict with this public policy and common interest. They must give way to the police or regulatory power of the State, in this case through the DENR, to ensure that the terms and conditions of existing laws, rules and regulations, and the IFMA itself are strictly and faithfully complied with.

Respondent was not able to overturn by sufficient evidence the presumption of regularity in the performance of official functions of the Evaluation Team when the latter inspected, assessed, and reported the violations respondent committed under DAO No. 97-04 which eventually led to the cancellation of IFMA No. R-9-040.

It is worthy to note that petitioner followed regular procedure regarding the assessment of IFMA No. R-9-040. It gave notice of the evaluation on October 22, 1998 to be held within the period October 22-30, 1998. Respondent admitted through the affidavits of its President,33 Operations Manager,34 and workers35 that an Evaluation Team arrived at the IFMA area on October 23, 1998. On October 23, 1998, prior to the actual assessment, a briefing was held on the conduct thereof in the presence of the IFMA representatives. On October 29, 1998, an exit conference with IFMA Operations Manager Inocencio Santiago was held at the CENRO Office, Pagadian City, where the results of the assessment were presented. That day, the DENR officials asked Santiago if he had any questions or comments on the assessment results and on the manner the evaluation was conducted, but the latter replied that he had none.

We do not understand why Santiago did not lift a finger or raise an objection to the assessment results, and only much later in his Affidavit executed almost ten months thereafter, or on August 12, 1999, to claim so belatedly that there was no notice given on October 22, 1998, that the Evaluation Team did not actually extensively inspect the IFMA area on October 23, 1998, and that there was no proper exit conference held on October 29, 1998. The same observation applies to respondent's President herself, who instead claimed that she vehemently opposed the appointment of then DENR Secretary Cerilles because he was bent on canceling the IFMA at all costs, prior to the cancellation of IFMA No. R-9-040.

Besides, the detailed findings on the failure of respondent to implement its CDMP under its IFMA, as shown by the November 6, 1998 Report of the Evaluation Team and the Memoranda dated April 7, 1999 and April 21, 1999, together with all its attachments, belie respondent's claim that there was no actual evaluation and assessment that took place on October 23, 1998. That the Evaluation Report was dated November 6, 1998 does not conclusively show that the evaluation was actually held on that date. Neither was this properly proven by the Memoranda of RED Mendoza which stated that the evaluation was conducted on November 6, 1998, since RED Mendoza could have been merely misled into such an assumption because of the date of the Evaluation Report. The sweeping denials made by the IFMA representatives and their self-serving accomplishment reports cannot prevail over the actual inspection conducted, the results of which are shown by documentary proof.

Respondent, likewise, cannot insist that, pursuant to Section 35 of IFMA No. R-9-040, it should have been given notice of its breach of the IFMA and should have been given 30 days therefrom to remedy the breach. It is worthy to note that Section 35 uses the word «may» which must be interpreted as granting petitioner the discretion whether or not to give such notice and allow the option to remedy the breach. In this case, despite the lack of any specific recommendation from the Evaluation Team for the cancellation of the IFMA, DENR Secretary Cerilles deemed it proper to cancel the IFMA due to the extent and the gravity of respondent's violations.

It is also futile for respondent to claim that it is entitled to an arbitration under Section 36 of IFMA No. R-9-040 before the license agreement may be canceled. A reading of the said Section shows that the dispute should be based on the provisions of the IFMA to warrant a referral to arbitration of an irreconcilable conflict between the IFMA holder and the DENR Secretary. In this case, the cancellation was grounded on Section 26 of DAO No. 97-04, particularly respondent's failure to implement the approved CDMP and its failure to implement or adopt agreements made with communities and other relevant sectors. The contrary

notwithstanding, what remains is that respondent never refuted the findings of the Evaluation Team when given the opportunity to do so but waited until IFMA No. R-9-040 was already cancelled before it made its vigorous objections as to the conduct of the evaluation, harping only on its alleged right to due process. Indeed, respondent was given the opportunity to contest the findings that caused the cancellation of its IFMA when it moved to reconsider the Order of cancellation and when it filed its appeal and motion for reconsideration before the OP.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is the absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.36

WHEREFORE, the Decision dated October 18, 2001 and the Resolution dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 59194 are REVERSED and SET ASIDE, and the Order dated June 7, 1999 of then DENR Secretary Antonio Cerilles, and the Resolutions of the Office of the President dated January 12, 2000 and May 8, 2000 affirming the said Order, are REINSTATED and AFFIRMED. No pronouncement as to costs.
SO ORDERED.

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ANNEX 4 - RELEVANT INTERNATIONAL TREATIES AND AGREEMENTS

The Philippines is a signatory to several international agreements concerning activities and policies that have global environmental impact and that shape the REDD mechanism. The treaties, agreements and conventions summarized below support and apply REDD objectives and principles in terms of protection, conservation, management and development of natural resources, specifically forests. They also provide for participatory processes and respect for rights of the communities and indigenous peoples.

(i) Convention on Wetlands (1971)
The Convention on Wetlands, which was held in Ramsar, Iran, in 1971 and amended in 1982 and 1987, considered the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl.

Wetlands was defined as areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters.

Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as "the List", which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map, and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six meters at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.

Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance, wetlands of international importance to waterfowl at any season should be included.

(ii) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
Agreed upon in 1973 and amended in 1979, CITES sought to protect the wild fauna and flora of threatened extinction by regulating their international trade in various forms and species. Flora and fauna are an irreplaceable part of the natural system of the earth. They are usually found in a natural forest ecosystem.

(iii) The Rio Declaration on Environment and Development (1992)
In 1992, the United Nations Conference on Sustainable Development (UNCSD) took place in Rio de Janeiro, Brazil. With the aim of establishing a global partnership and cooperation on environmental protection and sustainable development, the Conference proclaimed 27 principles on environmental and developmental systems. One of the principles provides that, "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it".

It also promotes participatory process in handling environmental issues, decision-making, transparency and access to information concerning the environment, gender equality in environmental management and development, and respect for indigenous peoples and other local communities of their traditional practice of environmental management and development.

(vi) AGENDA 21 (1992)
As a major outcome of the UNCSD, Agenda 21 calls for international cooperation in combating deforestation through strengthened protection, sustainable management and conservation of all types of forests. Four program areas were identified to combat deforestation, thus:

1. Sustaining the multiple roles and functions of all types of forests, forestlands and woodlands;
2. Enhancing the protection, sustainable management and conservation of all forests, and the greening of degraded areas, through forest rehabilitation, afforestation, reforestation and other rehabilitative means;
3. Promoting efficient utilization and assessment to recover the full valuation of the goods and services provided by forests, forestlands and woodlands;
4. Establishing and/or strengthening capacities for the planning, assessment and systematic observations of forests and related programs, projects and activities, including commercial trade and processes.

(v) Convention On Biological Diversity (1992)
This Convention has for its object the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, through international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector. The Convention On Biological Diversity (CBD) also promotes the protection of ecosystem by establishing a system of protected areas; promote environmentally sound and sustainable development in areas adjacent to protected areas, and rehabilitation and restoration of degraded ecosystems; prevent the introduction of, control or eradicate those alien species that threaten ecosystems, habitats or species; respect indigenous practice of conservation and sustainable use of biological diversity; and develop or maintain necessary legislation and / or other regulatory provisions for the protection of threatened species and populations.

(vi) United Nations Framework Convention on Climate Change (1992)
The UN Framework Convention on Climate Change (UNFCCC) encourages its party-signatories to promote sustainable management and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems (Article 4).

The UNFCCC has for its object the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

To control or reduce or prevent anthropogenic emissions of greenhouse gases, an international cooperation is sought to promote sustainable management, conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems.

National legislations have been enacted echoing the intent of the UNFCCC. For instance, the Climate Change Act of 2009 adopts the ultimate objective of the UNFCC, "which is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system which should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner".

(vii) Kyoto Protocol (1998)
The Kyoto Protocol is a policy instrument under the UNFCCC. Under the Kyoto Protocol, for instance, any party thereto may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, subject to certain conditions (Article 6).

This agreement also provides for the protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation; and promotion of sustainable forms of agriculture in light of climate change considerations.

(viii) Millennium Declaration and Millennium Development Goals (2000)
This declaration resolved to adopt in all environmental actions a new ethic of conservation and stewardship. As its first step, it resolved to make every effort to ensure the entry into force of the Kyoto Protocol and intensify collective efforts for the management, conservation and sustainable development of all types of forests.

The Millennium Development Goals (MDG) reflect this objective, especially under *Goal 7: Ensure environmental sustainability*, and other related provisions such as *Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources*, and indicators 25 on forest cover and 26 on biological diversity.

(ix) Report of the World Summit on Sustainable Development (2002)

The report on the World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa, in 2002, provides that:

"45. Forests and trees cover nearly one third of the Earth's surface. Sustainable forest management of both natural and planted forests and for timber and non timber products is essential to achieving sustainable development as well as a critical means to eradicate poverty, significantly reduce deforestation, halt the loss of forest biodiversity and land and resource degradation and improve food security and access to safe drinking water and affordable energy; in addition, it highlights the multiple benefits of both natural and planted forests and trees and contributes to the well-being of the planet and humanity. The achievement of sustainable forest management, nationally and globally, including through partnerships among interested governments and stakeholders, including the private sector, indigenous and local communities and non-governmental organizations, is an essential goal of sustainable development. This would include actions at all levels to:

(a) Enhance political commitment to achieve sustainable forest management by endorsing it as a priority on the international political agenda, taking full account of the linkages between the forest sector and other sectors through integrated approaches;

(b) Support the United Nations Forum on Forests, with the assistance of the Collaborative Partnership on Forests, as key intergovernmental mechanisms to facilitate and coordinate the implementation of sustainable forest management at the national, regional and global levels, thus contributing, inter alia, to the conservation and sustainable use of forest biodiversity;

(c) Take immediate action on domestic forest law enforcement and illegal international trade in forest products, including in forest biological resources, with the support of the international community, and provide human and institutional capacity-building related to the enforcement of national legislation in those areas;

(d) Take immediate action at the national and international levels to promote and facilitate the means to achieve sustainable timber harvesting and to facilitate the provision of financial resources and the transfer and development of environmentally sound technologies, and thereby address unsustainable timber harvesting practices;

(e) Develop and implement initiatives to address the needs of those parts of the world that currently suffer from poverty and the highest rates of deforestation and where international cooperation would be welcomed by affected Governments;

(f) Create and strengthen partnerships and international cooperation to facilitate the provision of increased financial resources, the transfer of environmentally sound technologies, trade, capacity-building, forest law enforcement and governance at all levels and integrated land and resource management to implement sustainable forest management, including the proposals for action of the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests;

(g) Accelerate implementation of the proposals for action of the Intergovernmental Panel on Forests/ Intergovernmental Forum on Forests by countries and by the Collaborative Partnership on Forests and intensify efforts on reporting to the United Nations Forum on Forests to contribute to an assessment of progress in 2005;

(h) Recognize and support indigenous and community-based forest management systems to ensure their full and effective participation in sustainable forest management;

(i) Implement the expanded action-oriented work programme of the Convention on Biological Diversity on all types of forest biological diversity, in close cooperation with the Forum, Partnership members and other forest-related processes and conventions, with the involvement of all relevant stakeholders.

(x) United Nations Convention against Corruption (2003)

The World Summit on Sustainable Development in Johannesburg in 2002 declared that corruption is a threat to sustainable development of people. In 2003, the United Nations Convention against Corruption (UNCAC) was conceived, which recalled the Johannesburg Declaration. In the said Convention, the UN expressed concern on the seriousness of problems and threats posed by corruption to the stability and securities of societies, undermining the institutions and values of democracy, ethical values and justice, and jeopardizing sustainable development and the rule of law.

The Convention calls for international cooperation in preventing and combating corruption by rendering mutual support and assistance in investigation and prosecution of persons involved in corruption, embezzlement and money laundering either by public official or private person including freezing, seizure, confiscation and asset recovery of embezzled properties or proceeds of the offense with the involvement and support of individuals and groups outside the public sector such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective.

This Convention is an opportunity to safeguard REDD projects from possible corruption. Under the United Nations REDD program (UN-REDD), a series of conferences and workshops have been conducted to look into corruption risks in REDD. These activities likewise led to the development of indicators to help guide the monitoring and evaluation of REDD projects.

(xi) World Summit Outcome (2005)
This aimed to strengthen the conservation, sustainable management and development of all types of forests for the benefit of current and future generations, including through enhanced international co-operation, so that trees and forests may contribute fully to the achievement of the internationally agreed development goals, including those contained in the Millennium Declaration, taking full account of the linkages between the forest sector and other sectors.

(xii) United Nations Declaration on the Rights of Indigenous Peoples (2007)
The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a convention that recognizes the rights of Indigenous Peoples to the conservation and protection of the environment and the productive capacity of their lands or territories and resources through the application of their traditional knowledge and skills and customary laws.

(xiii) Non-Legally Binding Instrument On All Types Of Forests (2008); UN GA Res. 62/98
The REDD-Plus mechanism is also in consonance with the UN's Non-legally Binding Instrument on All Types of Forests, which aims to "reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation."

In 2008, the UN General Assembly adopted the resolution on the non-legally binding instrument (NLBI) on all types of forest to implement effectively sustainable management of all types of forest and to achieve shared global objectives on forest. The principles of this instrument provide that the instrument is voluntary and non-legally binding, that each State is responsible for the sustainable management of its forest and for the enforcement of its forest related-laws, that there must be a transparent and participatory way in decision-making from stakeholders, and that sustainable forest management must be implemented in accordance with national legislation.

Under this instrument, Member States have shared global objectives on forest and committed themselves to work globally, regionally and nationally to achieve progress toward their achievement by 2015. The global objectives on forest are:

1. Reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation;
2. Enhance forest-based economic, social and environmental benefits, including improving the livelihoods of forest-dependent people;
3. Increase significantly the area of protected forests worldwide and other areas of sustainably managed forests, as well as the proportion of forest products from sustainably managed forests; and
4. Reverse the decline in official development assistance for sustainable forest management and mobilize significantly increased, new and additional financial resources from all sources for the implementation of sustainable forest management.

(xiv) Sustainable Mountain Development (2008); UN GA Res. 62/169
Member States underline the importance of sustainable forest management, the avoidance of deforestation, as well as the restoration of lost and degraded forest ecosystems of mountains in order to enhance the role of mountains as natural carbon and water regulators.

References

REFERENCES

Bernadinus Steni, ed. 2010., Beyond Carbon: Rights-based Safeguard Principles in Law. HuMa, Jakarta, Indonesia.

Cadman, Sean. 2008. Defining Forests under the Kyoto Protocol: A Way Forward.

Contreras, Antonio. ed. 2003. Creating Space for Local Forest Management in the Philippines.

Environmental Science for Social Change, Figuring Philippine Forests, March 24, 2010. http://essc.org.ph/content/view/286/153/

Gollin, Karin, and Kho, James. ed. 2008. After the Romance.

Philippine Development Plan. 2011 to 2016. Chapter 10 on Conservation, Protection and Rehabilitation of the Environment and Natural Resources.

Oposa, Antonio Jr. and Bagong Pag-asa Foundation. 2008. Policy Study on the Conflict between Community-Based Forest Management (CBFM) and Mining.

Sasaki, Nophea and Putz, Francis E. 2009. Critical Need for New Definitions of "Forest" and "Forest Degradation" in Global Climate Change Agreements.

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