

DEVELOPING COUNTRY IMPLEMENTATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS: THE PHILIPPINE EXPERIENCE*

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ABSTRACT

The establishment of multilateral environmental agreements (MEAs) is absolutely necessary because environmental concerns cross boundaries. But despite their transnational reach, MEAs still rely on national governments to implement their provisions. This should not be a problem as under the customary norm of *pacta sunt servanda*, all states must comply with their international obligations in good faith. But the principle of *common but differentiated responsibilities* allow developing states to have a standard of compliance different from developed countries. Thus, the question is: To what extent can the international community reasonably expect developing countries to implement MEAs? To answer this question this paper examines the experience of the Philippines, a typical Asian developing state. By investigating the Philippine experience, this paper hopes to paint a picture of what could possibly be expected of developing countries when it comes to MEA implementation.

I. The Question

As the environment is shared by all, the threats facing it will inevitably cross national boundaries. Even while some problems may seem to be contained in the territory of one state, due to the interconnected nature of the environment, their

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effects would still have repercussions elsewhere. Environmental problems will invariably concern many states. As the culprits causing and the victims suffering from these environmental problems consist of many states, the establishment of multilateral environmental agreements (MEAs) is inevitable and necessary.

But MEAs, like all laws, are only as good as they are enforced. Like most enforcement of international law, MEAs rely on individual governments to implement their provisions. In most cases, countries need to have implementing legislation to comply with their obligations under MEAs. But to what extent can the international community reasonably expect developing countries to implement MEAs?

On the one hand, under the principle of *pacta sunt servanda*, parties to international agreements are bound to comply with their obligations in good faith regardless of their economic status. But under the principle of *common but differentiated responsibilities*, developing states, while also responsible for protecting the environment, are not held to the same standards as developed countries.

By definition, developing countries are understandably concerned about their economic growth, which may at times require sacrificing environmental concerns. It must also be noted that developing countries are characterized not merely for their lack of resources and limited technology (both of which make law enforcement more difficult). Most developing countries are also typically plagued with political instability. Given these challenges, how much should the international community expect from developing countries?

To answer this question, this paper examines the experience of the Philippines in implementing MEAs. As an Asian state with a history of being colonized, a tendency for political unrest and being saddled with insurgencies and secessionist movements, the Philippines is a typical developing nation state. It is also party to many MEAs. Thus, by investigating the Philippine experience, this paper hopes to paint a picture of what could possibly be expected of developing countries when it comes to MEA implementation.

The Philippine government primarily implements MEAs through two agencies, the Biodiversity Management Bureau (BMB) and the Environmental Management Bureau (EMB). Both are bureaus under the Department of Environment and Natural Resources (DENR). The MEAs were allocated depending on their subject matter and the scope of the functions of the respective Bureaus.

Part II discusses how the BMB implements the MEAs assigned to it, while Part III explains how the EMB implements the MEAs assigned to it. Part IV identifies some observations regarding how the Philippines implements its MEAs' obligations.

The paper ends in Part V with brief concluding remarks.

II. The Biodiversity Management Bureau

The BMB is a bureau under the DENR formerly known as the Protected Areas and Wildlife Bureau (PAWB) until 2013, when its name was changed and jurisdiction expanded.

The BMB implements several MEAs including:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- Convention of Wetlands of International Importance Especially as Waterfowl Habitat;
- Convention on the Conservation of Migratory Species of Wild Animals;
- Convention for the Protection of the World Cultural and Natural Heritage; and
- Convention on Biological Diversity.

A. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

I. CITES Background

The text of CITES was agreed on at a meeting of representatives of 80 countries in Washington, D.C., on 3 March 1973, and on 1 July 1975, CITES entered into force.¹

The parties to the CITES recognize that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come, and that

¹ *What is CITES*, CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, <https://www.cites.org/eng/disc/what.php>.

people and States are and should be their best protectors.² Thus, CITES aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.³

Under the CITES, Parties should not allow trade in specimens of species included in its Appendices I, II, and III, except in accordance with its provisions.⁴ Article II states:

1. Appendix I shall include **all species threatened with extinction which are or may be affected by trade**. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.
2. Appendix II shall include:
 - (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
 - (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.
3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade. (emphasis supplied)

CITES provides rules for the trade of specimens listed in each of the Appendices.⁵

² Convention on International Trade in Endangered Species of Wild Fauna and Flora preamble, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

³ *Id.*

⁴ *Id.* art. II(4).

⁵ *Id.* art. III to V.

It also requires parties to take appropriate measures to enforce its provisions and to prohibit trade in specimens in violation thereof, including measures:⁶

- to penalize trade in, or possession of, such specimens, or both; and
- to provide for the confiscation or return to the State of export of such specimens.

2. *Philippine Implementation of CITES*

CITES was ratified by the Philippines on August 18, 1981.⁷

(a) *Philippine Laws*

Republic Act No. 9147 (R.A. No. 9147), or “Wildlife Resources Conservation and Protection Act” has as one of its objectives, the regulation of the collection and trade of wildlife which is defined by the law as “wild forms and varieties of flora and fauna, in all developmental stages, including those which are in captivity or are being bred or propagated.”⁸

The law requires wildlife species to be exported to or imported from another country only as may be authorized by the Secretary of the Environment or Agriculture, as the case may be, or by the designated representative, subject to strict compliance with the provisions of this law and rules and regulations promulgated pursuant thereto.⁹ In addition, the law requires that the recipient of the wildlife is technically and financially capable to maintain it.¹⁰

For the implementation of CITES, the law designates the management authorities for terrestrial and aquatic resources.¹¹ The Implementing Rules of R.A. No. 9147 further outlines the functions of the CITES management and scientific authorities.¹²

⁶ *Id.* art. VIII.

⁷ *List of Contracting Parties*, CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, <https://cites.org/eng/disc/parties/chronolo.php>.

⁸ Wildlife Resources Conservation and Protection Act, Rep. Act No. 9147, sec. 5(x) (2001).

⁹ *Id.* sec. 11.

¹⁰ *Id.*

¹¹ *Id.* sec. 19.

¹² Joint DENR-DA-PCSD Administrative Order No. 01 rules 19.1-3 (2004).

Finally, the law makes the trading and transporting of wildlife illegal, unless otherwise allowed in accordance with it.

(b) *Department Issuances*

Since the Philippines' ratification of the CITES, there have been several issuances at the agency level which served as guidelines to implement it. Some of these issuances are listed in Table 1 below.

Table 1
Department Administrative Orders (DAOs) Relevant to CITES

DAO No.	Relevant Provision
DAO 88-90, as amended by DAO 90-30 and further amended by DAO 92-47	Provides for the allowable quota for certain wildlife species that may be collected from the wild under a wildlife permit for commercial purposes
DAO 99-96	Provides for the policies on the allocation of quota on wildlife
DAO 89-142	Provides for the guidelines on the disposition of confiscated wildlife species
DAO 90-46	Provides for the format and criteria for proposals to register the first commercial captive-breeding operation for CITES Appendix/Animal Species
DAO 91-36	Provides for the guidelines governing the confiscation, seizure, and disposition of wild flora and fauna illegally collected, gathered, acquired, transported, and imported including paraphernalia
DAO 91-55	Declaring <i>Dugong</i> as protected marine mammal of the Philippines
DAO 97-17	Establishing the disposition program for confiscated and donated wildlife in the custody of DENR Wildlife Rescue Centers and similar DENR facilities and providing guidelines therefor

DAO No.	Relevant Provision
DAO 97-33	Guidelines on the issuance of permit for the collection and transport of biological specimens from Protected Areas for use by DENR Biodiversity Conservation Programs/Projects
DAO 01-09	Guidelines in Establishing the Wild Fauna Marking and Identification System
DAO 08-08	Guidelines on Self-regulation of the Floriculture Industry for the Sustainable Management of Philippine Wild Flora
DAO 55-04	DENR Streamlining/Procedural Guidelines Pursuant to the Joint DENR-DA-PCSD Implementing Rules and Regulations of R.A. 9147

One of the issuances listed in Table 1 is DAO 91-55, which indicates that it was issued pursuant to Article VIII, Section 1 of CITES requiring parties to penalize trade in, or possession of specimens. The order declares the *Dugong* or Sea Cow a protected marine mammal and thus prohibits the killing or taking of the same for whatever purpose.¹³ It also provides for a criminal penalty for any person who shall hunt, kill, wound or take away, possess, transport and/or dispose it, dead or alive, its meat or any of its by-products.¹⁴

On the other hand, DAO 90-46 states that it was issued in furtherance of CITES Article VII (4) which provides that: “[s]pecimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.”

DAO 01-09 titled “Guidelines in Establishing the Wild Fauna Marking and Identification System” explicitly states that it was issued in compliance with Article VI of CITES. Under Article VI (7), the CITES provides:

Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes, “mark” means any indelible imprint, lead seal or other

¹³ Department Administrative Order No. 55, sec. 1 (1991).

¹⁴ *Id.* sec. 2.

suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

Thus, DAO 01-09 provides for six types of marking and identification systems used to properly identify and monitor individuals of birds, mammals and reptiles, including their progenies.

In addition, DAO 08-08, which was issued pursuant to the CITES, aims to empower the floriculture industry through self-monitoring and compliance with sustainable practices on the production and utilization of endemic/indigenous wild flora and CITES-listed species.¹⁵ The order does this by mandating the establishment of the Philippine Wild Flora Council.¹⁶

Furthermore, DAO 55-04, which covers species listed in the CITES appendices, provides for the rules for the issuance of a CITES Export/Import/Re-export Permit.¹⁷

Many of the orders cite Act No. 2590 as their basis apart from CITES. This Act was issued in 1916 and provides that it is unlawful for any person to hunt, wound, take, or kill, or have in his or her possession, living or dead, or to purchase, offer, or expose for sale, transport, ship, or export, alive or dead, any protected bird, fish, shellfish, or mammal, or to sell or have in possession for sale any part of either.¹⁸ It further provides that it is unlawful for any person to take or willfully destroy the nest or eggs of any protected bird or to have such nest or eggs in his or her possession.¹⁹

B. Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)

1. *Ramsar Convention Background*

The Ramsar Convention provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their

¹⁵ Department Administrative Order No. 08, sec. 2 (2008).

¹⁶ *Id.* sec. 5.

¹⁷ Department Administrative Order No. 55, sec. 8 (2004).

¹⁸ Act No. 2590, sec. 1 (1916).

¹⁹ *Id.*

resources.²⁰ It was adopted in the Iranian city of Ramsar in 1971, came into force in 1975²¹ and was ratified by the Philippines on November 8, 1994.

The Convention requires parties to:

- designate suitable wetlands within its territory for inclusion in a “List of Wetlands of International Importance (List);”²²
- formulate and implement their planning so as to promote the conservation of wetlands included in the List; and
- promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands.²³

2. *Philippine Implementation of Ramsar Convention*

Six wetland sites in the Philippines have been declared as Ramsar sites as of May 2016 and were thus included in the said List:²⁴

- Onlango Island Wildlife Sanctuary in Cebu;
- Naujan Lake National Park in Oriental Mindoro;
- Agusan Marsh Wildlife Sanctuary in Agusan Del Sur;
- Tubbataha Reefs National Marine Park in Sulu;
- Puerto Princesa Subterranean River National Park in Palawan; and
- Las Pinas-Paranaque Critical Habitat and Ecotourism Area.

The BMB oversees formulation and implementation of the National Wetlands Action Plan. The most recent is the Action Plan 2011-2016. Some conservation projects to implement the said plan include:²⁵

- DENR-PAWB *Pawikan* Conservation Project;

²⁰ *About Ramsar*, RAMSAR, <http://www.ramsar.org>.

²¹ *History of the Ramsar Convention*, RAMSAR, <http://www.ramsar.org/about/history-of-the-ramsar-convention>.

²² Convention on Wetlands of International Importance Especially as Waterfowl Habitat art. 1, Feb. 2, 1971, 996 U.N.T.S. 245 [hereinafter Ramsar Convention].

²³ *Id.* art. 4.

²⁴ *List of Wetlands of International Importance*, RAMSAR (May 3, 2016), <http://www.ramsar.org/sites/default/files/documents/library/sitelist.pdf>.

²⁵ *The National Wetlands Action Plan for the Philippines 2011-2016*, PROTECTED AREAS AND WILDLIFE BUREAU-DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (2013), http://www.bmb.gov.ph/index.php/mainmenu-publications/statistics/doc_download/883-the-national-wetlands-action-plan-for-the-philippines-2011-2016.

- Laguna de Bay Community Watershed Rehabilitation Project;
- Community-Based Forest and Mangrove Management Project;
- National Greening Program;
- Pasig River Rehabilitation Program; and
- Manila Bay Project to Implement the Operational Plan for the Manila Bay Coastal Strategy

C. Convention on the Conservation of Migratory Species of Wild Animals (CMS)

1. *CMS Background*

CMS brings together the States through which migratory animals pass, the Range States, and lays the legal foundation for internationally coordinated conservation measures throughout a migratory range.²⁶

CMS provides that parties:²⁷

- should promote, co-operate in and support research relating to migratory species;
- shall endeavor to provide immediate protection for migratory species included in Appendix I;²⁸ and
- shall endeavor to conclude Agreements covering the conservation and management of migratory species included in Appendix II.²⁹

2. *Philippine Implementation of CMS*

The Philippines signed CMS on June 2, 1980 and ratified it on March 30, 1993.

²⁶ *About CMS*, CMS, <http://www.cms.int/en/legalinstrument/cms>.

²⁷ Convention on the Conservation of Migratory Species of Wild Animals, art. II(3), Jun. 23, 1979, 1651 U.N.T.S. 333 [hereinafter Bonn Convention].

²⁸ Appendix I lists migratory species which are endangered.

²⁹ Appendix II lists migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement.

Pursuant to the CMS, the Governments of Malaysia and Philippines entered into a Memorandum of Agreement where both governments, established a Joint Management Committee (JMC) tasked to manage and protect the Turtle Island Heritage Protected Area (TIHPA) as a green turtle sanctuary through an integrated management program that shall highlight, at the minimum, the following:

- Implementation of an integrated and uniform approach to conservation and research that is oriented towards wise management of the TIHPA;
- Establishment of a centralized database and information network on marine turtles;
- Development of appropriate information awareness programs primarily targeted towards the inhabitants of the Turtle Islands on the conservation of marine turtles and the protection of their habitats;
- Implementation of a joint marine turtle resource management program;
- Development and implementation of a training and development program for the staff of the TIHPA; and
- Development and undertaking of eco-tourism programs.³⁰

The JMC, as the policy-making body of the TIHPA, is composed of 5 members from each country from the different government agencies in the respective countries, in partnership with National Government Organizations (NGOs) involved in marine turtle conservation.³¹ An annual JMC meeting is alternately held in each country.³²

The Philippines is also a signatory to the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and Southeast Asia (IOSEA Marine Turtle MoU) that provides a framework for the conservation and replenishment of the depleted marine turtle

³⁰ *Memorandum of Agreement Between the Government of the Republic of the Philippines and the Government of Malaysia on the Establishment of the Turtle Island Heritage Protected Area*, (31 May 1996), <http://www.gov.ph/1996/05/31/the-philippine-claim-to-a-portion-of-north-borneo-memorandum-of-agreement-between-the-government-of-the-republic-of-the-philippines-and-the-government-of-malaysia-on-the-establishment-of-the-turtle-i/>.

³¹ *Two Nations, One Mission*, ONEOCEAN, http://oneocean.org/ambassadors/track_a_turtle/tihpa/.

³² *Id.*

populations.³³ Pursuant to this MoU, the *Pawikan* Conservation Project (PCP) formulates and implements conservation and protection policies, management and propagation schemes, as well as massive information and education program to ensure the survival and growth of the country's marine turtle resources. It maintains the hatcheries in Turtle Islands Wildlife Sanctuary (TIWS) in Tawi-Tawi and in Nagbalayong, Morong, Bataan.³⁴

The BMB, as the National Coordinator, also conducts Annual Asian Waterbird Census (AWC) together with the DENR Regional Offices, NGOs, LGUs, volunteer groups and private individuals in all regions within the Philippines and implements the National Wetlands Action Plan³⁵ as regards conservation of migratory species. The AWC is a joint initiative with the different member countries in Asia and runs parallel to other regional programs of the International Waterbird Census. In the Philippines, it takes place during the second and third week of January every year.

D. Convention for the Protection of the World Cultural and Natural Heritage (Heritage Convention)

1. *Heritage Convention Background*

The Heritage Convention was adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO).³⁶ The Philippines ratified the Heritage Convention on September 19, 1985.

The Convention provides that it is for each State Party to this Convention to identify and delineate the different properties situated on its territory which are considered as *cultural heritage* and *natural heritage*.³⁷

³³ *Introduction: IOSEA Marine Turtle MoU*, INDIAN OCEAN AND SOUTH-EAST ASIA, <http://www.ioseaturtles.org/introduction.php>.

³⁴ *The National Wetlands Action Plan for the Philippines 2011-2016*, *supra* note 25.

³⁵ *Id.*

³⁶ *Brief History*, THE WORLD HERITAGE CONVENTION, <http://whc.unesco.org/en/convention/>.

³⁷ Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 3, Nov. 16, 1972, 1037 U.N.T.S. 151 [hereinafter Heritage Convention].

Article 1 of the Heritage Convention provides that the following are considered as cultural heritage:

- monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2 of the Convention provides that the following are considered as natural heritage:

- natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

A party to this treaty must recognize its duty of ensuring the identification, protection, conservation, presentation and transmission of cultural and natural heritage situated on its territory for future generations.³⁸ But it adds:

³⁸ *Id.* art. 4.

It will do all it can to this end, *to the utmost of its own resources* and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.³⁹ (emphasis supplied)

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, the Heritage Convention states⁴⁰ that each State Party:

Shall endeavor, in so far as possible, and as appropriate for each country:

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. (emphasis supplied)

The Heritage Convention also provides that every State Party shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the “World Heritage List.”

³⁹ *Id.*

⁴⁰ *Id.* art. 5.

2. *Philippine Implementation of Heritage Convention*

Republic Act No. 7586, or the National Integrated Protected Areas System (NIPAS) Act of 1992 provides the legal framework for the establishment and management of protected areas in the Philippines.⁴¹ It provides that as a matter of policy, the Philippines recognizes that areas with biologically unique features, although distinct, possess common ecological values that may be incorporated into a holistic plan representative of its heritage.⁴² To this end, the NIPAS Act establishes a system that encompasses outstanding remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine. These areas are designated as “protected areas.”

The categories of protected areas include:

- Strict nature reserve;
- Natural park;
- Natural monument;
- Wildlife sanctuary;
- Protected landscapes and seascapes;
- Resource reserve;
- Natural biotic areas; and
- Other categories established by law, conventions or international agreements which the Philippine Government is a signatory.

The BMB undertook to inscribe to the UNESCO World Heritage List (Natural Sites) the Mount Hamiguitan Range Wildlife Sanctuary (2014), the Tubbataha Reef National Marine Park (1993) and the Puerto Princesa Subterranean Natural Park (1999).⁴³

Another law which is relevant to heritage protection is Republic Act No. 9072 or the “National Caves and Cave Resources Management and Protection

⁴¹ *Overview of NIPAS*, PHILIPPINE CLEARING HOUSE MECHANISM FOR BIODIVERSITY, http://www.chm.ph/index.php?option=com_content&view=article&id=104&Itemid=180.

⁴² National Integrated Protected Areas System Act, Rep. Act No. 7586, sec. 2 (1992).

⁴³ *Properties inscribed on the World Heritage List: Philippines*, UNESCO, <http://whc.unesco.org/en/statesparties/ph>.

Act” which mandates the conservation, protection and management of cave and cave resources. Among other things, this law criminalizes the act of knowingly destroying, disturbing, defacing, marring, altering, removing or harming the speleogem or speleothem of any cave and the gathering, collecting, possessing, consuming, selling, bartering or exchanging or offering for sale without authority any cave resource.⁴⁴

E. Convention on Biological Diversity (CBD)

1. *CBD Background*

The CBD was ratified by the Philippines on October 8, 1993.

The objectives⁴⁵ of the CBD are:

- the conservation of biological diversity;⁴⁶
- the sustainable use⁴⁷ of its components; and
- the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

The CBD requires parties, as far as possible and as appropriate, cooperate with other parties, directly or where appropriate, through competent international organizations in respect of areas beyond national jurisdiction and on other matters of mutual interest for the conservation and sustainable use of biological diversity.⁴⁸

⁴⁴ National Caves and Cave Resources Management and Protection Act, Rep. Act No. 9072 sec. 7 (2001).

⁴⁵ Convention on Biological Diversity art. 1., June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD],

⁴⁶ “Biological Diversity” is defined by the Convention as the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part. [Article 2]

⁴⁷ “Sustainable use” is defined under the CBD as the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations. [Article 2]

⁴⁸ CBD, *supra* note 45, art. 5.

The CBD also requires parties, in accordance with their particular conditions and capabilities to:

- develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programs; and
- integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs and policies.

In addition to the general measures, the CBD also provides that as far as possible and appropriate, parties should:

- identify and monitor biological diversity as well as processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity;⁴⁹ and
- engage in *in situ* conservation⁵⁰ measure which includes the establishment of a system of protected areas or areas where special measures need to be taken to conserve biological diversity.⁵¹

The Philippines also ratified the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization on May 25, 2015. The Nagoya Protocol is a supplementary agreement to the CBD and provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilization of genetic resources.⁵² It entered into force on October 12, 2014.⁵³ The objective of this Nagoya Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic

⁴⁹ *Id.* art. 7.

⁵⁰ “*In situ* conservation” is defined under the CBD as the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties. [Article 2]

⁵¹ CBD, *supra* note 45, art. 8.

⁵² *About the Nagoya Protocol*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/abs/about/default.shtml>.

⁵³ *Id.*

resources, including appropriate access to genetic resources and appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.⁵⁴ The Protocol requires:

Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.⁵⁵

2. *Philippine Implementation of CBD*

(a) *Republic Act No. 7586*

Republic Act No. 7586 (RA No. 7586) or the NIPAS Act establishes a comprehensive system of integrated protected areas. It was passed to ensure, among other things, “that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development.”⁵⁶ The Act defines “protected area” as identified portions of land and water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation.⁵⁷ Thus, the establishment of each protected area is intended to protect biodiversity.

(b) *Republic Act No. 9147*

Republic Act No. 9147 (RA No. 9147) or the “Wildlife Resources Conservation and Protection Act” mandates conservation of “the country’s

⁵⁴ Nagoya Protocol to the Convention on Biological Diversity, art. 1, Oct. 29, 2010 [Nagoya Protocol].

⁵⁵ *Id.* art. 5(2).

⁵⁶ NIPAS Act, Rep. Act No. 7586, sec. 2 (1992).

⁵⁷ *Id.* sec. 4.

wildlife resources and their habitats for sustainability.”⁵⁸ It provides that it is the policy of the State to conserve the country’s wildlife resources and their habitats for sustainability. In pursuit of this policy it lists the following objectives, *inter alia*:

- to conserve and protect wildlife species and their habitats to promote ecological balance and enhance biological diversity;
- to pursue, with due regard to the national interest, the Philippine commitment to international conventions, protection of wildlife and their habitats; and
- to initiate or support scientific studies on the conservation of biological diversity.

This law provides that bioprospecting is only allowed upon execution of an undertaking by any proponent, stipulating therein its compliance with and commitment(s) to reasonable terms and conditions that may be imposed by the DENR Secretary which are necessary to protect biological diversity.⁵⁹ This law also has rules on the collection and utilization of biological resources for scientific research,⁶⁰ biosafety,⁶¹ protection of threatened species,⁶² and establishment of critical habitats.⁶³

(c) *Republic Act No. 8371*

Republic Act No. 8371 (R.A. No. 8371) or the Indigenous Peoples’ Rights Act was enacted to promote the rights of indigenous cultural communities (ICCs) and indigenous people (IPs). It provides that access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.⁶⁴

⁵⁸ Wildlife Resources Conservation and Protection Act, Rep. Act No. 9147, sec. 2 (2001).

⁵⁹ *Id.* sec. 14.

⁶⁰ *Id.* sec. 15.

⁶¹ *Id.* sec. 16.

⁶² *Id.* sec. 22.

⁶³ *Id.* sec. 25.

⁶⁴ Indigenous Peoples’ Rights Act, Rep. Act No. 8731, sec. 35 (1997).

(d) Administrative Issuances

Some administrative issuances relevant to CBD are summarized in Table 2 below.

Table 2
Administrative Issuances Relevant to the CBD

DMC 90-20	Provides guidelines on the restoration of open and denuded areas within national parks and other protected areas for the enhancement of biological diversity
DAO 96-20	Provides for the implementing rules and regulations on the Prospecting of Biological and Genetic Resources
DAO 99-45	Provides for the rules and regulations on the sale and farming of saltwater crocodile
DAO 00-51	Provides for the guidelines and principles in determining fees for access to and sustainable use of resources in protected areas
DAO 00-13	Provides for guidelines on the implementation of the Biodiversity Monitoring System (BMS) in protected areas
M.O. 95-289	Provides for the Integration of Philippines' Strategy for Biological Diversity Conservation in Sectoral Plans of National Government Agencies
E.O. 95-247	Provides for Guidelines and Framework for Prospecting of Biological and Genetic Resources.

In Memorandum Order No. 95-289, the President of the Philippines directed all national agencies and instrumentalities of the government to integrate the national framework and strategy on biological diversity conservation in the updating of their respective sectoral plans, programs and projects and that this effort should result in the operationalization of strategy in the implementation of their plans, programs and projects.⁶⁵

⁶⁵ Memorandum Order No. 289, sec. 1 (1995).

Executive Order No. 95-247 makes reference to Article 16 of the CBD which mandates each party to take legislative, administrative or policy measures, as appropriate, with the aim that contracting parties, in particular, those that are developing countries which provide genetic resources, are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights. This order requires a Research Agreement with the Philippine government before a person, entity or corporation can engage in the prospecting of biological and genetic resources.⁶⁶

In addition to the above department issuances, there have also been several biodiversity conservation projects undertaken by the BMB and its partner organizations. According to the Philippine Clearing House Mechanism, which is a website that provides relevant information in the country as part of the Philippine commitment to the CBD, the following are some of the biodiversity conservation programs:

- Philippine Raptors Conservation Program;
- *Parwikan* Conservation Program;
- Tamaraw Conservation Program;
- Palawan Wildlife Rescue and Conservation Center (formerly Crocodile Farming Institute);
- Philippine Cockatoo Conservation Program;
- Philippine Hornbill Conservation Program;
- Visayan Warty Pigs Conservation Program;
- Philippine Spotted Deer Conservation Program;
- Philippine Cloud Rats Conservation Program;
- Philippine Tarsier Conservation Program;
- Calamian Deer Conservation Program; and
- *Dugong* Conservation Program.

The implementation of these conservation plans and programs are embodied in the Philippine Biodiversity Strategy Action Plan (PBSAP), the latest report of which is the 5th Report in 2014, and Philippine Plant Conservation Strategy and Action Plan, which was developed pursuant to DENR Secretary Special Order 2003-32. In addition to these conservation plans, the 5th Report to

⁶⁶ Executive Order No. 247, sec. 3 (1995).

CBD lists down other initiatives from the other government agencies like economic and fiscal incentives by Department of Finance and Department of Budget and Management (DBM), sector policies and programs in other industries by Department of Science and Technology (DOST), Department of Agriculture (DA) and Department of Trade and Industry (DTI) and policies on governance by the President, Department Secretaries, Judiciary, Legislative and LGUs.⁶⁷

III. The Environmental Management Bureau

The EMB, a staff sectoral bureau⁶⁸ under DENR, implements several MEAs including:

- United Nations Framework Convention on Climate Change;
- Basel Convention on the Control of Transboundary Movements of Hazardous Waste;
- The Montreal Protocol on Substances that Deplete the Ozone Layer;
- Stockholm Convention on Persistent Organic Pollutants; and
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

A. United Nations Framework Convention on Climate Change (UNFCCC)

1. *UNFCCC Background*

The UNFCCC was adopted on May 9, 1992 and entered into force on March 21, 1994. The Philippines ratified it on August 2, 1994. The ultimate objective of the Convention is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.⁶⁹

⁶⁷ *The Fifth National Report to the CBD*, BIODIVERSITY MANAGEMENT BUREAU-DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (2014), <https://www.cbd.int/doc/world/ph/ph-nr-05-en.pdf>.

⁶⁸ Executive Order No. 192, sec. 6 (1987).

⁶⁹ *Database UN Conventions – UNFCCC*, DENR INTERNATIONAL AGREEMENTS ON ENVIRONMENT AND NATURAL RESOURCES, <http://intl.denr.gov.ph/index.php/database-un-conventions/article/17-united-nations-framework-convention-on-climate-change-kyoto-protocol>.

The UNFCCC requires all parties *inter alia*:

- to develop, periodically update, publish and make available to the Conference of the Parties, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;⁷⁰
- to formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change.⁷¹

2. *Philippine Implementation of the UNFCCC*

Even prior to the signing of the UNFCCC in 1992, then Philippine President Corazon Aquino created the Inter-Agency Committee on Climate Change (IACCC) in 1991 through Presidential Order No. 220. The IACCC, composed of government agencies and an umbrella non-government organization (NGO), coordinates, develops and monitors activities related to climate change in the country. It also formulates policy actions and recommendations, which shaped the Philippines' positions in international negotiations on climate change.⁷²

(a) *The Climate Change Act*

In 2009, Republic Act No. 9729 (R.A. No. 9729) or the Climate Change Act, which has been amended by R.A. No. 10174 in 2011, was enacted as one of the State's initiatives as a party to the UNFCCC. For the realization of the ultimate objective of the UNFCCC, as has been embodied by the said Act, the State created for this purpose the Climate Change Commission (CCC) which is an

⁷⁰ United Nations Framework Convention on Climate Change, art. 4(i)(a), May 9, 1992, 1771 U.N.T.S. 107 [hereinafter *UNFCCC*].

⁷¹ *Id.* art. 4(i)(b).

⁷² *Second National Communication to UNFCCC – Philippines, UNFCCC*, <http://unfccc.int/resource/docs/natc/phlnc2.pdf>.

independent and autonomous national government agency. The Commission is the “sole policy-making body of the government which shall be tasked to coordinate, monitor and evaluate the programs and action plans of the government relating to climate change.”⁷³

(b) National Framework Strategy on Climate Change

In 2010, the CCC completed and released the National Framework Strategy on Climate Change (NFSCC) which provides for the general framework, Vision and Goal from 2010 to 2022.

(c) National Climate Change Action Plan

In April 2011, the National Climate Change Action Plan (NCCAP) was approved by the President. It outlined the “programs and strategies for adaptation and mitigation for 2011 to 2028”⁷⁴ for every priority area – Food Security, Water Sufficiency, Ecological and Environmental Stability, Human Security, Climate-Smart Industries and Services, Sustainable Energy, and Knowledge and Capacity Development.

The programs of the CCC are divided into two broad areas, as provided for the National Climate Change Action Plan – Adaptation and Mitigation.

i. Adaptation

The projects under Adaptation are primarily geared towards “[a]djustment[s] in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.” Two of its major projects are the Project Twin Climate Phoenix and the Project ReBuild.

Project Twin Climate Phoenix

The Project Twin Climate Phoenix, as implemented by the CCC with technical assistance from the UN Development Programme (UNDP) and the

⁷³ Climate Change Act, Rep. Act No. 9729, sec. 4 (2009).

⁷⁴ *National Climate Change Action Plan 2011-2028*, CLIMATE CHANGE COMMISSION (2011), http://climate.gov.ph/images/docs/NCCAP_TechDoc.pdf.

Australian Agency for International Development (AusAID), focuses on the long-term recovery of the flood-affected areas and the strengthening of the capacities and competencies of these areas against future disasters brought about by climate change. The focused project areas are the catchment areas⁷⁵ of Cagayan de Oro, Iponan, Mandulog and Iligan river systems, particularly Cagayan De Oro City and Iligan City, municipalities of Compostela Valley Province and Davao Oriental Province that were hit the hardest by Typhoon Pablo.⁷⁶

Project ReBuild

Project ReBuild or the “Resilience Capacity Building for Cities and Municipalities to Reduce Disaster Risks from Climate Change and Natural Hazards, Phase 1” is a project in partnership with UNDP and with funding assistance from the Government of New Zealand/New Zealand Aid Programme (NZAP). The objective of this Project is similar to that of the Project Twin Climate Phoenix in that it aims to increase the capacities of local communities to manage disaster risks and to adapt to overall impacts of climate change. The project areas involved are the city of Tuguegarao and municipalities of Enrile and Iguig in the Cagayan River Basin (CRB) in Region 2 and the pilot city of Passi and municipalities of Zarraga and Dumangas in the Jalaur River Basin (JRB) in Region 6.⁷⁷

ii. Mitigation

On the other hand, the projects under Mitigation are programs which include “[h]uman intervention to address anthropogenic emissions by sources and removals by sinks of all greenhouse gas (GHG), including ozone-depleting substances and their substitutes.”⁷⁸

⁷⁵ These are areas from which rainfall flows into a river, lake, or reservoir.

⁷⁶ *Project Brief: Project Climate Twin Phoenix*, CLIMATE CHANGE COMMISSION, <http://www.climate.gov.ph/index.php/projects/adaptation/project-climate-twin-phoenix#project-brief>.

⁷⁷ *Project Brief: Project ReBuild*, CLIMATE CHANGE COMMISSION, <http://climate.gov.ph/index.php/projects/adaptation/project-rebuild>.

⁷⁸ *Adaptation & Mitigation Projects*, CLIMATE CHANGE COMMISSION, <http://climate.gov.ph/index.php/adaptation-mitigation#phl-initiatives-on-mitigation>.

Low Emission Capacity Building Programme

One of the projects is the Low Emission Capacity Building (LECB) Programme wherein the Philippines is one of the participating countries focused in the implementation of projects to mitigate climate change. To realize this goal, firstly, the Philippines has established the Philippine GHG Inventory Management and Reporting System (PGHGIMRS) to institutionalize GHG inventory reporting process in the different government agencies. Secondly, the CCC developed Nationally-Appropriate Mitigation Actions (NAMAs) and Low Emission Development Strategy (LEDS) Sectoral Roadmaps as guide and institutional mechanisms were established for the monitoring and implementation of mitigation measures. Finally, Measurement, Reporting and Verification (MRV) Systems have been designed to support the implementation and evaluation of NAMAs and LEDS Sectoral Roadmaps.

B. Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)

1. *Basel Convention Background*

The Basel Convention is an international treaty designed to reduce the movements of hazardous waste between nations, specifically to prevent transfer of hazardous waste from developed to less developed countries (L.D.C.s).⁷⁹ It was adopted on March 22, 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery of deposits of toxic wastes imported to Africa and other parts of the developing world.⁸⁰ The Convention was ratified by the Philippines on October 21, 1993 and came into force on January 19, 1994.

Under Article 15, parties are required to submit a report on the previous calendar year which includes information on transboundary movement of hazardous wastes in their area, measures adopted by parties in the implementation

⁷⁹ *Database UN Conventions – Basel Convention*, DENR INTERNATIONAL AGREEMENTS ON ENVIRONMENT AND NATURAL RESOURCES, <http://intl.denr.gov.ph/index.php/multilateral/un-conventions/article/1-basel-convention>.

⁸⁰ *Id.*

of the convention, activities related to bilateral/multilateral agreements and arrangements and other pertinent information.⁸¹

Subsequently, in 1995, an amendment has been made to the Convention, called the Ban Amendment, which provides for the prohibition by each party included in the proposed new Annex VII (Parties and other States which are members of the OECD, EC, Liechtenstein) of all transboundary movements to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal, and of all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that are destined for reuse, recycling or recovery operations.⁸² However, this amendment has not been adopted by the Philippines.

2. *Philippine Implementation of the Basel Convention*

(a) *Laws*

Even prior to the ratification of the Convention in 1993, the Philippines had already enacted Republic Act No. 6969 (R.A. No. 6969) or the Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990 wherein the government is obliged to “regulate, restrict or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment.”⁸³ It also provided for the prohibited acts which will be penalized accordingly, both criminally and administratively. The following are considered prohibited acts:

- knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of the Act or implementing rules and regulations or orders;

⁸¹ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal art. 15, Mar. 22, 1989, 1673 U.N.T.S. 126 [hereinafter *Basel Convention*].

⁸² *The Basel Convention Ban Amendment*, BASEL CONVENTION, <http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>.

⁸³ Toxic Substances and Hazardous and Nuclear Waste Control Act, Rep. Act No. 6969, sec. 2 (1990).

- failure or refusal to submit reports, notices or other information, access to records, as required by the Act, or permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;
- failure or refusal to comply with the pre-manufacture and pre-importation requirements; and
- cause, aid or facilitate, directly or indirectly, in the storage, importation, or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.⁸⁴

The importation of materials containing hazardous substances may be allowed only upon obtaining prior written approval from the Secretary of the DENR or his duly authorized representative.⁸⁵

Republic Act No. 8479 or the Downstream Oil Industry Deregulation Act of 1998 provides that all oil importations shall be in accordance with the Basel Convention.⁸⁶

(b) Administrative Issuances

The Implementing Rules and Regulations (IRR) of the Downstream Oil Industry Deregulation Act of 1998 or DOE Department Circular No. 98-03-004 provides that for effective monitoring, and for ensuring conformity to the Basel Convention, any person who shall import crude oil and/or petroleum products from foreign countries, freeports and economic zones, whether for trade or for his own use or requirement, shall file a notice with the Bureau prior to actual loading of every importation, indicating details and/or accompanying documents related to the importation.⁸⁷ It further provides that in the case of importations of slop/used/waste oils, sludges and similar petroleum products/by-products, such notice shall be accompanied by a clearance from the EMB/DENR pursuant to R.A. No. 6969, in accordance with the Basel Convention.⁸⁸

⁸⁴ *Id.* sec. 13.

⁸⁵ Department Administrative Order No. 28, General Policy (1994).

⁸⁶ Downstream Oil Industry Deregulation Act, Rep. Act No. 8479, sec. 5 (1998).

⁸⁷ Department Circular No. 98-03-004, sec. 6.

⁸⁸ *Id.*

C. Montreal Protocol on Substances that Deplete the Ozone Layer

1. *Montreal Protocol Background*

The Vienna Convention for the Protection of the Ozone Layer serves as a framework for the protection of the ozone layer. It was adopted in 1985 and entered into force in 1988. This Convention, however, did not recommend concrete actions which the signatories must undertake. Instead, to advance the goal specified by it, the Montreal Protocol was agreed upon. It is an international treaty that is “designed to reduce the production and consumption of ozone depleting substances (ODS) in order to reduce their abundance in the atmosphere, and thereby protect the Earth's fragile ozone layer.”⁸⁹

The protocol includes a unique adjustment provision that enables the Parties to the Protocol to respond quickly to new scientific information and agree to accelerate the reductions required on chemicals already covered by the Protocol. These adjustments are then automatically applicable to all countries that ratified the Protocol.⁹⁰

2. *Philippine Implementation of the Montreal Protocol*

The Philippines ratified it on March 21, 1993. As a State Party, the commitment to the Montreal Protocol is to phase out the consumption of all ODS. The formula for the consumption of ODS is the total number of imports plus production in the country less any export. However, the Philippines does not produce ODS, and as a result, no exportation could be undertaken. Thus, consumption in the Philippines is equal to the importation.

As an initiative for the achievement of the objectives laid down in the Montreal Protocol, the First Philippine Country Program for the Phase-out of ODS was prepared. For its execution, the Philippine Ozone Desk (POD) was created under EMB and was tasked to oversee and facilitate the phase-out projects of the different ODS.⁹¹ All ODS are regulated by the POD, except for Methyl Bromide which is controlled by the Fertilizer Pesticide Authority (FPA) of the

⁸⁹ *The Montreal Protocol on Substances that Deplete the Ozone Layer*, UNEP OZONE SECRETARIAT, <http://ozone.unep.org/en/treaties-and-decisions/montreal-protocol-substances-deplete-ozone-layer>.

⁹⁰ *Id.*

⁹¹ *About Philippine Ozone Desk*, PHILIPPINE OZONE DESK, <http://119.92.161.2/philozone/about.html>.

Department of Agriculture (DA).⁹² Because of the gradual process of phasing out the ODS, POD is the agency tasked to issue permits of the ODS to the importers up to their quota importation.⁹³ Phase-out projects for ODS like Halon, Methyl Bromide, Methyl Chloroform and Carbon Tetrachloride have been accelerated and have been phased out years before the target, as per the schedule agreed in the Protocol.⁹⁴ As of March 31, 2016, almost all the ODS listed under the Convention have already been phased out except for hydrochlorofluorocarbons (HCFCs), particularly HCFC 123, 22 and 141B, used as cooling agents, fire suppressant, cleaning agent or blowing agent. The phasing out of the HCFCs started in 2013 and is expected to be totally phased out by 2040. The phase-out schedule and control of importation of the HCFCs has been provided for in DENR Administrative Order No. 2013-25.⁹⁵

D. Stockholm Convention on Persistent Organic Pollutants

1. *Stockholm Convention Background*

The Stockholm Convention is a global treaty to protect human health and the environment from the adverse effects of persistent organic pollutants (POPs). Adopted in 2001 and entered into force in 2004, it requires its parties to take measures to eliminate or reduce the release of POPs into the environment.⁹⁶

Specifically, each party *inter alia* must:

- prohibit and/or take the legal and administrative measures necessary to eliminate its production and use of the chemicals listed in Annex A subject to the provisions of that Annex.⁹⁷
- only import a chemical listed in Annex A or Annex B:⁹⁸

⁹² Philippine Ozone Desk, 20 Frequently Asked Questions on the Protection of the Ozone Layer (2010).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ DENR Administrative Order No. 25, appendix III (2014).

⁹⁶ *Database UN Convention – Stockholm Convention*, DENR INTERNATIONAL AGREEMENTS ON ENVIRONMENT AND NATURAL RESOURCES, <http://intl.denr.gov.ph/index.php/database-un-conventions/article/12-stockholm-convention#updates>.

⁹⁷ Stockholm Convention on Persistent Organic Pollutants, art. 3(1)(a), May 22, 2001, 2256 U.N.T.S. 119 [hereinafter Stockholm Convention].

⁹⁸ *Id.* art. 2(a)(i)-(ii).

- For the purpose of environmentally sound disposal; or
 - For a use or purpose which is permitted for that Party under Annex A or Annex B;
- restrict its production and use of the chemicals listed in Annex B in accordance with the provisions of that Annex;⁹⁹ and
 - develop and endeavour to implement a plan for the implementation of its obligations under this Convention.¹⁰⁰

2. *Philippine Implementation of the Stockholm Convention*

The Philippines ratified the Stockholm Convention on February 27, 2004.

The Food and Pesticide Authority, by issuing FPA Board Resolution No. 001-15, banned Endosulfan Technical Grade and its related alpha and beta isomers and formulations. This was issued pursuant to the amendment made by Conference of the Parties of the Stockholm Convention to Annex A to the Treaty to list technical endosulfan and its related isomers.

Pursuant to the obligation to provide an implementation plan, which outlines the programs of the government to meet the obligations under the Convention, a POPs Project Management Office under the EMB was established and oversees the overall coordination of the POPs National Implementation Plans (NIP).¹⁰¹ The First NIP of the Philippines was submitted to the Stockholm Convention secretariat in 2006, the Second NIP was submitted in 2011, while the most recent NIP was submitted in 2014.¹⁰² The Government requested assistance from the World Bank and Global Environment Facility (GEF) for financial assistance in order to meet its obligations under the Convention.¹⁰³ The project, named PHI: Integrated Persistent Organic Pollutants Management Project (PH-GEF IPOPs Project), was approved by GEF and was implemented from 2011 to

⁹⁹ *Id.*, art. 3(i)(b).

¹⁰⁰ *Id.*, art. 7(a).

¹⁰¹ *National Implementation Plan for the Stockholm Convention on POPs*, STOCKHOLM CONVENTION (2014), <http://chm.pops.int/Implementation/NIPs/NIPTransmission/tabid/253/Default.aspx>.

¹⁰² *Id.*

¹⁰³ *PHI: Integrated Persistent Organic Pollutant (POPs) Management Project*, THE WORLD BANK, <http://www.worldbank.org/projects/procurement/noticeoverview?id=OP00018962&lang=en&print=Y>.

2016.¹⁰⁴ The objective of the IPOP's Project is to assist the Philippines in meeting its obligations under the Stockholm Convention and to contribute to the development of capacity for the sound management of chemicals in the Philippines, in general.¹⁰⁵

A related law to the Stockholm Convention is Republic Act No. 8749 or the "Philippine Clean Air Act of 1999" which mandates the establishment of an inventory list of all sources of POPs in the country.¹⁰⁶ The DENR is also required to develop short-term and long-term national government programs on the reduction and elimination of POPs such as dioxins and furans which shall be formulated within a year after the establishment of the inventory list.¹⁰⁷

E. Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

1. *Rotterdam Convention background*

The objective of the Rotterdam Convention is:

to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.¹⁰⁸

¹⁰⁴*Id.*

¹⁰⁵*Project Implementation Plan for the Philippines: Integrated POPS Management Project*, ENVIRONMENTAL MANAGEMENT BUREAU – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (Dec. 2010), http://faspelib.denr.gov.ph/sites/default/files//DOCUMENTS/Vol%206%20.E SAF.final_.dec2010.pdf.

¹⁰⁶Philippine Clean Air Act, Rep. Act No. 8749, sec. 32 (1998).

¹⁰⁷*Id.*

¹⁰⁸Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade art. 1, Sept. 10, 1998, 2244 U.N.T.S. 337 [hereinafter Rotterdam Convention].

The Convention applies to banned¹⁰⁹ or severely restricted chemicals¹¹⁰ and severely hazardous pesticide formulations.¹¹¹

2. *Philippine Implementation of the Rotterdam Convention*

The Philippines has ratified the Convention on July 7, 2006. Since then, the Philippines has submitted 27¹¹² Import Responses, pursuant to Article 10, par. 2 of the Convention which obligates the party to submit a “response concerning the future import of the chemical concerned.” The response would either be a final decision (1) To consent to import; (2) Not to consent to import; or (3) To consent to import only subject to specified conditions¹¹³ or an interim response.¹¹⁴ Of the 27 issued Import Responses, there were eighteen responses which provided that no consent is given to the import of the specific chemical, while the rest of the responses stated that a consent to import will be given only subject to specific conditions.¹¹⁵ The Chemical Management Division of the EMB is tasked to oversee the regulation and implementation of the procedure on PIC.

¹⁰⁹“Banned chemical” means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment [Article 2(b)].

¹¹⁰“Severely restricted chemical” means a chemical virtually all use of which within one or more categories has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a chemical that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment [Article 2(c)].

¹¹¹“Severely hazardous pesticide formulation” means a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use [Article 2(d)].

¹¹²*Database of Import Responses*, ROTTERDAM CONVENTION, [http://www.pic.int/Procedures/ Import Responses/Database/tabid/1370/language/en-US/Default.aspx](http://www.pic.int/Procedures/Import%20Responses/Database/tabid/1370/language/en-US/Default.aspx).

¹¹³ Rotterdam Convention, *supra* note 108, art. 10, para. 4(a).

¹¹⁴*Id.* art. 10, para. 4(b).

¹¹⁵*Database of Import Responses*, *supra* note 112.

IV. Observations

A number of observations may be made regarding the manner by which the Philippines implements MEAs.

A. No Treaty-Specific Implementing Statute

The laws the Philippine government uses to implement conventions were not enacted specifically for that purpose. For the most part, many of these laws were enacted even prior to the conventions which means they were not enacted with the MEAs in mind, let alone written specifically for their enforcement. The same is true even for the administrative issuances.

For example, in the case of the Ramsar Convention:

A review of legislations and policies on Philippine wetlands commissioned in 2005 is indicative of the “invisibility” of the country’s wetlands among its policy-making bodies, despite the ecosystem’s valuable services. Many of the regulations with direct impact on wetlands do not make direct reference to them but instead regulate access to natural resources, jurisdictions over territory and management, or prohibit certain acts relating to the areas themselves. On the other hand, those with indirect application are an assortment of environmental regulations that affect wetlands allowing or restricting actions that eventually impact many ecosystems, as well.¹¹⁶

This practice may be a problem for “non-self-executing” treaties which specifically require implementing legislation in order to be effective domestically. But so far, this problem has not been encountered by the Philippines.

B. Substantial Reliance on Administrative Issuance

The MEAs are referred to in a number of administrative issuances promulgated by the Philippine government and some in fact cite the MEAs as the reason for the issuance.

¹¹⁶*The National Wetlands Action Plan for the Philippines 2011-2016, supra* note 25.

But the term “administrative” is misleading as many of these issuances do not merely provide for administrative rules. Some of these administrative issuances impose criminal penalties for violations.¹¹⁷

The proliferation of administrative issuances pertaining to MEAs display a strong reliance on such issuances for purposes of enforcement. Some may question this procedure due to the possibility that some of these rules will not have statutory basis.

However, there are obvious advantages to relying on administrative issuances for MEA enforcement. First, administrative issuances do not undergo the same political obstacles as statutes and therefore may take less time and effort to complete. This consideration is important when the environmental problem sought to be remedied requires urgent attention. Second, the rules required to enforce MEAs may require technical knowledge more accessible to experts in the executive branch than the politicians in Congress. While congressmen may get their own experts to help them draft technical legislation, why go through this process when the experts themselves can directly write the rules? Third, the issuance of these regulations may not require the political horse trading that may be necessary for the passage of legislation. When political considerations are suppressed, the benefit is that the provisions are not “watered-down.” This consideration is particularly relevant when what is needed is strict regulation and the regulated may include members of Congress or persons whose interests congressmen are known to protect.

C. Multiple Use of Legislation

Because the Philippine Congress has not enacted laws specifically for the enforcement of MEAs, the government has had to rely on existing or subsequent legislation on related subject matters. The result of this process is that the same piece of legislation can implement the several MEAs. Examples of this are the NIPAS Act and the Wildlife Act which include provisions that serve as basis for the implementation of the CITES, CBD and CMS.

¹¹⁷See for example DAO 91-55.

D. Implementation via Action Plans and Projects

Apart from laws and administrative issuances, government agencies draft “action plans” to outline their strategy to comply with MEAs. An example would be the National Wetlands Action Plan.

Also, many of the obligations under the MEAs are implemented via projects undertaken by the Bureaus and not by specific legislation.

These projects are often made possible by financial support from foreign governments or aid sources and by enlisting the participation of the private sector.

V. Conclusion

The Philippine experience shows that developing countries can, in good faith, comply with their obligations under the MEAs despite their limitations. Often, enforcement is accomplished via “recycling” of current legislation to justify the enforcement and the “re-furbishing” of existing bureaucracies for new challenges. Hardly anything new is ever created simply for the enforcement of MEAs.

One consequence of this process is that the same regulators take part in enforcement of various MEAs. The advantage of this is that the risk of conflicting efforts is diminished as the same group of people does the work. This allows the regulators to have a holistic view of environmental concerns.

On the other hand, this also means that these regulators are over-worked and perhaps spread too thinly. This may affect effectiveness in getting the job done.

Nevertheless, this is the best the Philippine government is able to do at this time. Only time will tell if this will change in the years ahead.