

Climate Change and the Law: Issues and Challenges in the Philippines

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I. INTRODUCTION

Climate Change is defined in the United Nations Framework Convention on Climate Change (UNFCCC) as “a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is[,] in addition to natural climate[,] variability observed over comparable time periods.”¹ Although popularly referred to as

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global warming,² many scientists are said to prefer the use of the term *climate change* due to the fact that while the Earth, on average, warms up, a few regions may begin to slightly cool.³

The general warming of the climate system has been declared to be unequivocal, evidenced by increases in the temperature of the air and the ocean.⁴ The Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), released in 2007, states that the years 1995 to 2006 have been the “warmest years in the instrumental record of global surface temperatures[.]”⁵ The melting of snow and ice has sped up and become more widespread, causing the global average sea level to rise.⁶ Scientists project a warming of approximately 0.2 degrees Celsius per decade, although should concentrations of greenhouse gases (GHG/s) and aerosols be kept consistent with year 2000 emission levels, the rise in temperature could be reduced to 0.1 degrees Celsius instead.⁷ All in all, the global average temperature is likely to rise from around 1.1 to 6.4 degrees Celsius by 2080 to 2090, relative to 1980 to 1999 temperatures.⁸

In 2005, a conference was hosted by the United Kingdom Meteorological Office in Exeter,⁹ where preliminary findings stated that a rise in temperature amounting to three degrees Celsius relative to pre-industrial levels is very likely dangerous.¹⁰ Such a rise in temperature could

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1. UNFCCC art. 1, ¶ 2, *concluded* May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].
 2. Merriam-Webster, Definition of global warming, *available at* <http://www.merriam-webster.com/dictionary/global%20warming> (last accessed Dec. 2, 2013). Global warming is defined as “the recent increase in the world’s temperature that is believed to be caused by the increase of certain gases (such as carbon dioxide) in the atmosphere[.]” *Id.*
 3. ROBERT HENSON, THE ROUGH GUIDE TO CLIMATE CHANGE 6 (2008).
 4. U.N. Chronicle, “Warming of the Climate System is Unequivocal:” Highlights of the Fourth IPCC Assessment Report, *available at* <http://unchronicle.un.org/article/warming-climate-system-unequivocal-highlights-fourth-ipcc-assessment-report/> (last accessed Dec. 2, 2013).
 5. Intergovernmental Panel on Climate Change (IPCC) Plenary XXVII, Valencia, Spain, Nov. 12–17, 2007, *Climate Change 2007: Synthesis Report*, 30 [hereinafter *Synthesis Report*]. See also DAVID ARCHER & STEFAN RAHMSTORF, THE CLIMATE CRISIS: AN INTRODUCTORY GUIDE TO CLIMATE CHANGE 43 (2010).
 6. *Synthesis Report*, *supra* note 5, at 30.
 7. *Id.* at 45.
 8. *Id.*
 9. HENSON, *supra* note 3, at 280.
 10. *Id.*

render unstoppable the melting of the Greenland ice sheet, for instance, raising sea levels and further jeopardizing island states.¹¹ During the conference, a consensus was reached, declaring that limiting the rise in temperature to two degrees Celsius would be ideal in order to achieve climate stabilization.¹² This target, which had already been agreed to by the European Union (EU) in 1996, was therefore reconfirmed.¹³ The selection of a stabilization level was thus ideal, as this implied a balancing of “the risks of climate change (from gradual change and extreme events, and irreversible change of the climate, including those to food security, ecosystems[,] and sustainable development) against the risks of response measures that may threaten economic stability.”¹⁴

In order to accomplish such a feat, long-term cooperative action became necessary. It was particularly helpful that by the time the two-degree limit was agreed upon, the UNFCCC had already been in force for two years.¹⁵ Having entered into force in March 1994, the UNFCCC has been ratified by 189 of the 194 United Nations (U.N.) member states as of December 2006.¹⁶ The main objective of the UNFCCC is the stabilization of the climate “at a level that would prevent dangerous anthropogenic interference with the climate system”¹⁷ within a time frame “sufficient to allow ecosystems to adapt naturally to climate change[.]”¹⁸ Under the UNFCCC, industrialized or developed countries agreed to reduce their GHG emissions to 1990 levels by the year 2000.¹⁹ These countries became known as Annex I countries,²⁰ and included what had been termed economies in transition

11. *Id.*

12. *Id.*

13. *Id.*

14. TERRY BARKER, ET AL., CLIMATE CHANGE 2007: MITIGATION OF CLIMATE CHANGE 32 (B. Metz, et. al eds., 2007).

15. See UNFCCC, Background on the UNFCCC: The international response to climate change, available at http://unfccc.int/essential_background/items/6031.php (last accessed Dec. 2, 2013) [hereinafter Background on the UNFCCC].

16. See UNFCCC, Status of Ratification of the Convention, available at http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php (last accessed Dec. 2, 2013).

17. UNFCCC, *supra* note 1, art. 2.

18. *Id.*

19. *Id.* art. 4 (2) (b).

20. See UNFCCC, List of Annex I Parties to the Convention, available at http://unfccc.int/parties_and_observers/parties/annex_i/items/2774.php (last accessed Dec. 2, 2013). The countries that comprise the list are the following: Australia, Austria, Belarus, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, France, Germany, Greece,

(EITs), which are mostly central and eastern European countries.²¹ No such mitigation reduction obligations were placed upon developing countries (non-Annex I countries) in view of the principle of common but differentiated responsibilities.²²

However, while the UNFCCC is the “main vehicle for promoting international responses to climate change[.]”²³ the Kyoto Protocol²⁴ was adopted as an addition to the UNFCCC in 1997.²⁵ It entered into force in February 2005,²⁶ and in only two years, it had already been ratified by 168 states and the European Economic Community.²⁷ Under the Kyoto Protocol, Annex I Parties agreed to reduce their GHG emission levels to an average of 5.2 percent below 1990 levels within a specific timeframe, namely the years 2008 to 2012.²⁸ For the same reason as that of the UNFCCC, no mitigation reduction obligations were placed upon non-Annex I Parties.²⁹

Unfortunately, as of 2002, Annex I emissions were approximately six percent above 1990 levels, in contradiction to their commitment under the UNFCCC.³⁰ According to the National Communications submitted by the Parties to the UNFCCC, as of mid-decade 2000–2010, nearly half of the 40 Annex I countries had emission levels above their 1990 baselines, while 21 of the 39 Annex I countries party to the Kyoto Protocol have not yet met their

Hungary, Iceland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Island, and United States (U.S.). *Id.*

21. *Id.*

22. See UNFCCC, *supra* note 1, art. 4.

23. BARKER, *supra* note 14, at 31.

24. Kyoto Protocol to the UNFCCC, *concluded* Dec. 10, 1997, 37 I.L.M. 22 [hereinafter Kyoto Protocol].

25. See UNFCCC, Kyoto Protocol, *available at* http://unfccc.int/kyoto_protocol/items/2830.php (last accessed Dec. 2, 2013) [hereinafter Kyoto Protocol Description].

26. See United Nations Framework Convention on Climate Change, Status of Ratification of the Kyoto Protocol, *available at* http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php (last accessed Dec. 2, 2013).

27. *Id.*

28. Kyoto Protocol, *supra* note 24, art. 3 (1).

29. *Id.*

30. United Nations Environment Programme (UNEP), The Emissions Gap Report 2010, *available at* <http://www.unep.org/publications/ebooks/emissionsgapreport/chapter3.asp?c=3.2> (last accessed Dec. 2, 2013).

emission targets.³¹ While it is heartening to note that in a span of 16 years, from 1990 to 2006, the total GHG emissions from Annex I countries declined by approximately 4.7 percent, this decrease was primarily due to the collapse of many industrial activities of EITs.³² Excluding these EIT Parties, emissions from non-EIT Annex I Parties actually rose by 9.9 percent as compared to their aggregate 1990 levels.³³

However, according to the Fourth IPCC Report, even the full implementation of the Kyoto Protocol would be far from enough to reverse global GHG-emission trends in order to reach the agreed-upon stabilization level.³⁴ Add to that the fact that the Protocol covers only a period up to the year 2012 and significant GHG emitting countries have not ratified it, the two-degree-Celsius stabilization level seems to be quickly slipping out of reach.

A study in 2005 by Michel den Elzen and Malte Meinshausen, of the Planbureau voor de Leefomgeving (PBL) Netherlands Environmental Assessment Agency³⁵ and the Swiss Federal Institute of Technology,³⁶ respectively, estimated that global emissions would have to begin dropping by the year 2015 at the latest.³⁷ According to den Elzen and Meinshausen, assuming that developing countries remain on a slower reduction track, developed countries would need to lower their emissions to 15 to 30% below 1990 levels by 2020 in order to have a 60% chance of meeting the stabilization level being sought.³⁸ Delays would only result in adding to the sharpness of the emission cuts required.³⁹ Continued emissions after 2012

31. UNFCCC, Dec. 1–10, 2008, *National greenhouse data for the period 1990-2006*, at 5, FCCC/SBI/2008/12 (Nov. 17, 2008).

32. *Id.*

33. South Centre, *The Gap between Commitments and Implementation: Assessing the Compliance by Annex I Parties with their Commitments under the UNFCCC and its Kyoto Protocol 4*, available at <http://www.undpcc.org/undpcc/files/docs/publications/submitted/RP25%20gap%20assess%20of%20anne%20XI.pdf> (last accessed Dec. 2, 2013).

34. BARKER, *supra* note 14, at 32.

35. See Planbureau voor de Leefomgeving (PBL) Netherlands Environmental Assessment Agency, *About the PBL*, available at <http://www.pbl.nl/en/aboutpbl> (last accessed Dec. 2, 2013).

36. See ETH Zürich, *The ETH Zürich*, available at <https://www.ethz.ch/en/the-eth-zurich.html> (last accessed Dec. 2, 2013).

37. Michel den Elzen & Malte Meinshausen, *Emission implications of long-term climate targets 6*, available at http://www.pbl.nl/sites/default/files/cms/publicaties/emission_implications.pdf (last accessed Dec. 2, 2013).

38. *Id.* at 8.

39. *Id.*

without any decrease by the United States (U.S.) and developing countries, such as China and India, would cause the two-degree goal to slip away by the year 2030.⁴⁰

With this and many other factors in mind, many looked to the Conference of the Parties (COP) to the UNFCCC scheduled last December 2009 in Copenhagen as a chance to finally address the issue of emission target cuts beyond 2012.⁴¹ However, no binding legal instrument resulted from the COP to the UNFCCC in Copenhagen. Instead, a draft COP decision which came to be known as the Copenhagen Accord⁴² was taken note of.

Drafted by the U.S., China, Brazil, India, and South Africa, it set a “soft deadline”⁴³ for the submission of emission reduction targets. Pledges from countries party to the UNFCCC are still being accepted, but as of September 2010, 138 countries⁴⁴ are “likely to or have engaged with the accord, representing 86.76% of global emissions.”⁴⁵ It is claimed that while this draft decision is not legally binding, the Parties’ reaction to the Accord could lead to a “fair, ambitious[,] and binding agreement to solve the climate crisis.”⁴⁶

The Copenhagen Accord, much like the UNFCCC and Kyoto Protocol, calls for the state-parties to reduce their GHG emissions, invest in green technology and practices, and aid in adaptation measures necessary to combat the effects of climate change.⁴⁷ It acknowledges that “staying below [two] degrees Celsius may not be sufficient and [it also] include[d] a review in 2015 of the need to potentially aim for staying below 1.5 degrees

40. HENSON, *supra* note 3, at 280.

41. See UNFCCC, Copenhagen Climate Change Conference — December 2009, available at http://unfccc.int/meetings/copenhagen_dec_2009/meeting/6295.php (last accessed Dec. 2, 2013) [hereinafter Copenhagen Climate Change Conference].

42. See UNFCCC, Copenhagen Accord, available at http://unfccc.int/meetings/copenhagen_dec_2009/items/5262.php (last accessed Dec. 2, 2013).

43. See Richard Black, UN climate deadline turns out to be ‘flexible,’ available at <http://news.bbc.co.uk/2/hi/science/nature/8471593.stm> (last accessed Dec. 2, 2013).

44. See Climate Change Task Force, Countries Submit Emissions Cuts for Copenhagen Accord, available at <http://climate.uu-uno.org/view/article/143832/> (last accessed Dec. 2, 2013).

45. *Id.*

46. United States (U.S.) Climate Action Network, Who’s on Board with the Copenhagen Accord?, available at <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments> (last accessed Dec. 2, 2013).

47. Copenhagen Climate Change Conference, *supra* note 41.

Celsius[.]”⁴⁸ The Accord further stated that Annex I countries were to submit emission reduction targets for the year 2020 by the indicated deadline, and that “[n]on-Annex I Parties to the Convention will implement mitigation actions”⁴⁹ to be submitted to the Secretariat for compilation.⁵⁰

In 2007, the Bali Action Plan was crafted in order to help pave the way for the negotiation of post-Kyoto measures to address climate change.⁵¹ A somewhat controversial portion of its text contains a reference to nationally appropriate mitigation actions by developing countries who are Parties to the UNFCCC,⁵² which was later echoed in the Copenhagen Accord.⁵³

The COP in Copenhagen began amidst heated discussions as to the propriety of having non-Annex I Parties take on mitigation commitments. Such discussions did not end with the close of the conference, and will doubtlessly continue until the issue is settled with finality. The means of settling the issue, however, remains vague. Some wonder if it would end with the entry into force of another legally binding instrument such as the Kyoto Protocol, but others believe that since the issue was not settled by previous binding instruments, it is doubtful that another one would conclude the debate.⁵⁴ Still, others suggest that perhaps the way to resolve the issue would be to leave it to a state’s policies and agreements with other governments.

Given the outcome of the negotiations in Copenhagen, the 2010 COP held in Cancun, Mexico, faced significant pressure.⁵⁵ As stated by one negotiator from the EU, “if Cancun does not produce a strong outcome that takes the fight against climate change forward, there is the risk that it

48. U.S. Climate Action Network, Understanding the Copenhagen Accord, available at <http://www.usclimatenetwork.org/policy/understanding-the-copenhagen-accord> (last accessed Dec. 2, 2013).

49. UNFCCC, Dec. 7-19, 2009, *Copenhagen Accord*, Decision 2/CP.15, (5), FCCC/CP/2009/11/Add.1 (Mar. 30, 2010).

50. *Id.*

51. See UNFCCC, Dec. 3-15, 2007, *Bali Action Plan*, FCCC/CP/2007/6/Add.1 (Mar. 14, 2008).

52. *Id.* Decision 1/CP.13, (1) (b).

53. See *Copenhagen Accord*, *supra* note 49.

54. See Alister Doyle & Gerard Wynn, Copenhagen Accord climate pledges too weak: U.N., available at <http://www.reuters.com/article/2010/03/31/us-climate-accord-idUSTRE62U13M20100331> (last accessed Dec. 2, 2013).

55. See UNFCCC, Milestones on the road to 2012: The Cancun Agreements, available at http://unfccc.int/key_steps/cancun_agreements/items/6132.php (last accessed Dec. 2, 2013).

becomes irrelevant in the eyes of the world.”⁵⁶ Thus, it fell upon the Cancun COP to deliver on the mandate of the Bali Action Plan, in order to stay on track in addressing climate change and international negotiations.

It may be said that the resulting Cancun Agreements succeeded in fulfilling the mandate of the Bali Action Plan in a “modest manner, especially on the issues of adaptation, [Reducing Emissions from Deforestation and Forest Degradation-Plus (REDD-Plus),] and technology transfer and capacity building; and will go as far as to say that it exceed[ed] expectations on finance — on the condition that it actually deliver[ed] on critical provisions and requests for 2011.”⁵⁷ It was the “deep willingness of the Parties to achieve something substantial and useful for Cancun by way of a disaggregated or building blocks approach”⁵⁸ that led to this accomplishment, despite the rather troubling manner in which the full text of the agreement was not negotiated openly and publicly by the Parties and was instead “offered to everyone on a ‘take it or leave it’ manner.”⁵⁹

The Green Climate Fund (GCF),⁶⁰ which was the result of the Finance negotiations in Cancun, was hailed as a landmark achievement for the 16th COP.⁶¹ To be governed by 24 board members representing developed and developing countries equally, with the World Bank as an interim trustee subject to review three years after the GCF is made operational, the Fund

56. Antonio G.M. La Viña & Lawrence Ang, From Copenhagen to Cancun: Challenges and Prospects for the UNFCCC Negotiations 1, *available at* http://thereddesk.org/sites/default/files/resources/pdf/2010/From_Copenhagen_to_Cancun.pdf (last accessed Dec. 2, 2013) (citing The Guardian, Cancun failure would make climate talks ‘irrelevant,’ EU negotiator warns, *available at* <http://www.guardian.co.uk/environment/2010/oct/04/cancun-failure-china-climate-talks> (last accessed Dec. 2, 2013)).

57. Antonio G.M. La Viña, Lawrence Ang, & Joanna Dulce, The Cancun Agreements: Do They Advance Global Cooperation on Climate Change?, *available at* http://www.field.org.uk/files/the_cancun_agreements_lavina_ang_dulce_o.pdf (last accessed Dec. 2, 2013) [hereinafter The Cancun Agreements]. *See also* World Resources Institute, Reflections on the Cancun Agreements, *available at* <http://www.wri.org/blog/reflections-cancun-agreements> (last accessed Dec. 2, 2013).

58. The Cancun Agreements, *supra* note 55.

59. *Id.*

60. *See* UNFCCC, Green Climate Fund, *available at* http://unfccc.int/cooperation_and_support/financial_mechanism/green_climate_fund/items/5869.php (last accessed Dec. 2, 2013).

61. Conservation International, Outcome of Cancun Climate Negotiations, *available at* http://www.conservation.org/Documents/CI_analysis_UNFCCC_COP16_Nov-Dec_2010_Cancun_outcomes.pdf (last accessed Dec. 2, 2013).

will act as the operating entity of the UNFCCC's financial mechanism, and will be subject and accountable to guidance from the COP.⁶²

In 2011, at the 17th COP held in Durban, South Africa,⁶³

the significant gap between the aggregate effect of [the] Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below [two degrees Celsius] or 1.5 [degrees Celsius] above pre-industrial levels[.]⁶⁴

was noted "with grave concern[.]"⁶⁵

In view of this, the Ad Hoc Working Group on the Durban Platform for Enhanced Action (Ad Hoc Working Group)⁶⁶ was established and tasked with the launching of a process to develop "another legal instrument or agreed outcome with legal force under the Convention applicable to all Parties"⁶⁷ not later than the year 2015. It was declared that such process should "raise the level of ambition"⁶⁸ and draw upon Party submissions and expert information on technical, social, and economic aspects relevant to "mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building[.]"⁶⁹

Given that the mandate of the Ad Hoc Working Group concerns the development of a legally binding instrument, or at least an instrument "with legal force[.]"⁷⁰ many are hopeful that a truly effective climate change agreement is soon to be adopted. Most negotiators remain cautiously optimistic despite the prolonged climate negotiations through the years that have yielded less than satisfactory results because of the refusal of a number of parties to be bound by international agreements, among others.

62. *Id.* at 4.

63. See UNFCCC, Durban Climate Change Conference — November/December 2011, available at http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php (last accessed Dec. 2, 2013).

64. See UNFCCC, Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), available at <http://unfccc.int/bodies/body/6645.php> (last accessed Dec. 2, 2013).

65. UNFCCC, *supra* note 63.

66. UNFCCC, Nov. 28–Dec. 11, 2011, *Durban Climate Change Conference Report*, Decision 1/CP.17, FCCC/CP/2011/9/Add.1 (Mar. 15, 2012).

67. *Id.* Decision 1/CP.17, (2).

68. *Id.* Decision 1/CP.17, (6).

69. *Id.* Decision 1/CP.17, (5).

70. *Id.* Decision 1/CP.17, (2).

The most recent COP held in November 2013 in Warsaw, Poland, resulted in, among others, a decision pertaining to a more detailed workplan leading up to the adoption of this Post-2020 Agreement. Recalling in the chapeau that the Ad Hoc Working Group was to “consider elements for a draft negotiating text no later than at its session to be held in conjunction with the 20th session of the COP (December 2013) with a view to making available a negotiating text before May 2015,”⁷¹ the COP requested the acceleration of the development of the Agreement covering the post-2020 climate regime.⁷² In line with this, it asked that the Ad Hoc Working Group: (1) elaborate on the elements for a draft negotiating text beginning March 2013, which should take into consideration mitigation, adaptation, finance, technology development and transfer, capacity building, and transparency of action and support;⁷³ and (2) identify, by December 2013, the kind of information that must be provided by the Parties to the Convention when they communicate their intended nationally determined contributions.⁷⁴

For their part, all Parties to the Convention were invited to “initiate or intensify domestic preparations for their intended nationally determined contributions ... and to communicate them well in advance”⁷⁵ of the 21st COP to be held in Paris, France, when the Agreement is set to be adopted.⁷⁶ In order to facilitate the communication of intended contributions by avoiding prejudgment on the binding nature of these contributions, the decisions specifically declare such submissions to be “without prejudice to the legal nature of these contributions.”⁷⁷

The Warsaw negotiations also resulted in the adoption of a decision establishing the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts. This Mechanism, while “[a]cknowledging the contribution of adaptation and risk management strategies towards addressing loss and damage associated with climate change impacts,”⁷⁸ works under the premise that “loss and damage associated with

71. UNFCCC, Nov. 11-23, 2013, *Further advancing the Durban Platform (Advanced unedited version)*, Decision -/CP/19, pmb.

72. *Id.* ¶ 1.

73. *Id.* ¶ 2 (a).

74. *Id.* ¶ 2 (c).

75. *Id.* ¶ 2 (b).

76. *Id.*

77. *Further advancing the Durban Platform (Advanced unedited version)*, *supra* note 71, ¶ 2 (b).

78. UNFCCC, Nov. 11- 23, 2013, *Warsaw international mechanism for loss and damage associated with climate change impacts (Advanced unedited version)*, Decision -/CP/19, pmb.

the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation[.]”⁷⁹ In other words, the concept behind loss and damage in the climate change regime is that there are some things that are beyond the capability of adaptation to address. These adverse effects include, but are not limited to, extreme and/or slow onset event — such as typhoons and floods — in particularly vulnerable developing countries.⁸⁰

The Warsaw Mechanism has been hailed as a “landmark decision [that] will open the road to international coordination of efforts to assist countries affected by extreme weather events and slow onslaught events.”⁸¹ Its mandate includes:

- (1) the enhancement of knowledge and “understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts[;]”⁸²
- (2) “strengthening dialogue, coordination, coherence[,] and synergies among relevant stakeholders[;]”⁸³ and
- (3) the enhancement of “action and support, including finance, technology[,] and capacity-building, to address loss and damage associated with the adverse effects of climate change[.]”⁸⁴

A two-year workplan for the implementation of the aforementioned functions is set to be developed by the 20th COP in December 2013, which will be taking place in Lima, Peru.⁸⁵

II. CLIMATE CHANGE AND THE PHILIPPINES

Given the current trends in GHG emissions and climate change policies, Central, South, East, and Southeast Asia are expected to experience shortages in freshwater due to the effect on freshwater sources of the warming of the

79. *Id.*

80. *Id.* ¶ 1.

81. Martin Khor, Overview of the Warsaw Conference (COP19) Outcomes (An article published by the Third World Network) 1, available at http://www.twinside.org.sg/title2/climate/news/warsaw01/TWN_update23.pdf (last accessed Dec. 2, 2013).

82. *Warsaw international mechanism for loss and damage associated with climate change impacts (Advanced unedited version)*, *supra* note 78, ¶ 5 (a).

83. *Id.* ¶ 5 (b).

84. *Id.* ¶ 5 (c).

85. *Id.* ¶ 9.

climate by the year 2050.⁸⁶ Megadeltas and coastal areas are likely to experience increased flooding from the rivers and seas, while droughts are expected to occur in other areas.⁸⁷ The increased flooding and droughts combined are expected to lead to endemic morbidity and mortality due to diarrheal diseases.⁸⁸ Rapid urbanization, industrialization, and economic development are also expected to “compound the pressures on natural resources and the environment”⁸⁹ due to the changing climate.⁹⁰

A 2004 United Nations Development Fund (UNDP) Report on disasters had ranked the Philippines as the “highest in the world in terms of vulnerability to tropical cyclone occurrence, and third in terms of people exposed to such seasonal events.”⁹¹ More recently, the 2012 World Risk Report⁹² indicated that the Philippines is the third highest disaster risk hotspot in the world, thanks to the combination of its high exposure to natural hazards, climate change, and a highly vulnerable society.⁹³ The Philippines’ geographical location and geological composition make it exceedingly vulnerable to physical and economic devastation as a result of typhoons, which pass through the country 20 times yearly on average.⁹⁴ Typhoon Ondoy, which is internationally known as Typhoon Ketsana, for instance, which hit the Philippines in September 2009, caused approximately 10 billion pesos’ worth of damage.⁹⁵ Metro Manila and more than 25 provinces were declared to be in a state of calamity, and fatalities reached up

86. See National Aeronautics and Space Administration (NASA), Effects: The current and future consequences of global change, available at <http://climate.nasa.gov/effects/> (last accessed Dec. 2, 2013).

87. *Synthesis Report*, supra note 5, at 50.

88. *Id.*

89. *Id.*

90. *Id.*

91. See Office of the President, Climate Change Commission, NCCAP Executive Summary 3, available at <http://www.climate.gov.ph/index.php/nccap-executive-summary> (last accessed Dec. 2, 2013).

92. Alliance Development Works, World Risk Report 2012 9, available at <http://www.ehs.unu.edu/file/get/10487.pdf> (last accessed Dec. 2, 2013).

93. Alexis Romero, *Phl among world's top 10 most vulnerable to climate change*, PHIL. STAR, Oct. 30, 2013, available at <http://www.philstar.com/headlines/2013/10/30/1251165/phl-among-worlds-top-10-most-vulnerable-climate-change> (last accessed Dec. 2, 2013).

94. Office of the President, Climate Change Commission, National Framework Strategy on Climate Change 2010-2022 7 (2010) [hereinafter National Framework Strategy].

95. Joseph Holandes Ubalde, Ondoy: A look back on the unforgettable wake-up call, available at <http://interaksyon.com/article/13919/ondoy-a-look-back-on-an-unforgettable-wake-up-call> (last accessed Dec. 2, 2013).

to more than 200 people.⁹⁶ More than 600,000 people were displaced by rising waters and damage to property caused by what the Philippine Atmospheric, Geophysical, and Astronomical Services Administration (PAGASA) then referred to as the worst flood in Philippine history.⁹⁷

Even more chilling is the devastation that struck the Philippines in November 2013, as delegates from around the world gathered in Warsaw for the 19th COP. Typhoon Yolanda, internationally known as Typhoon Haiyan, ripped through the Philippines with sustained winds of up to 315 kilometers per hour,⁹⁸ affecting more than 16 million people across 44 provinces, 591 municipalities, and 57 cities, spanning nine of the country's 17 regions.⁹⁹ More than four million people have been displaced, while fatalities have reached up to 6,201 people as of January 2013, with more than 28,000 people injured and 1,785 people still deemed missing.¹⁰⁰ The damage to infrastructure is assessed to have reached 36.7 billion pesos, while damage to agriculture has amounted to 18.4 billion pesos.¹⁰¹

It is ironic, to say the least, that despite the Philippines contributing only approximately one percent of the total global GHG emissions, it is one of the countries that will suffer the greatest effects of climate change. The Climate Change Commission (the Commission) hit the nail on the head when it stated that “[w]ith coastal and marine ecosystems already suffering from anthropogenic problems like pollution, over-exploitation[,] and uncontrolled development, the [Philippines] can ill-afford to cope with the additional stress”¹⁰² that will be caused by geologic or seismic dangers faced

96. GMA News Online, Metro Manila, 25 Provinces Placed Under State of Calamity, *available at* <http://www.gmanews.tv/story/173229/metro-manila-25-provinces-placed-under-state-of-calamity> (last accessed Dec. 2, 2013).

97. Andreo Calonzo, Epic flood in Metro Manila caused by record rainfall, *available at* <http://www.gmanetwork.com/news/story/173232/news/nation/epic-flood-in-metro-manila-caused-by-record-rainfall> (last accessed Dec. 2, 2013).

98. Jethro Mullen, Super Typhoon Haiyan, one of the strongest storms ever, hits central Philippines, *available at* <http://edition.cnn.com/2013/11/07/world/asia/philippines-typhoon-haiyan/> (last accessed Dec. 2, 2013).

99. UNEP/Office for the Coordination of Humanitarian Affairs (OCHA) Environment Unit, Typhoon Haiyan (Yolanda) Philippines Environmental Situation Overview 1, *available at* <http://reliefweb.int/sites/reliefweb.int/files/resources/Philippines%20Haiyan%20Environmental%20Situational%20Overview%202013-1-14.pdf> (last accessed Dec. 3, 2013) & National Disaster Risk Reduction and Management Council (NDRRMC), NDRRMC Update, SitRep No. 92, II (Jan. 14, 2013).

100. *Id.*

101. *Id.*

102. National Framework Strategy, *supra* note 94, at 7.

by it, combined with the effects of the changing climate.¹⁰³ As a result of more intense tropical cyclones, drastic changes in rainfall patterns, rising sea levels, and increasing temperatures, the Philippines' food security, water resources, human health, public infrastructure, energy, and human settlements are seriously threatened.¹⁰⁴

The Philippines is a signatory to both the UNFCCC and Kyoto Protocol, and is known to be very active in international climate change negotiations. The former was signed back in June 1992, and was ratified two years later in 1994.¹⁰⁵ The latter was signed in April 1998 and ratified in 2003.¹⁰⁶ The Philippines' First National Communication, in fulfillment of its UNFCCC commitments, was submitted to the Secretariat in May 2000.¹⁰⁷ It contained a GHG inventory reflecting emissions in the year 1994, with the energy sector coming out as the highest emitter at 49%.¹⁰⁸

The most recent GHG inventory was conducted by the Philippines in the year 2000, and is to be submitted to the UNFCCC Secretariat as part of the country's Second National Communication.¹⁰⁹ According to the 2000 inventory, the Energy Sector, which includes the Transport Sector, is still the greatest source of emissions at 55% of the total amount for that year.¹¹⁰ After the Energy Sector is the Agriculture Sector at 29%, followed by Waste at nine percent, and Industrial Processes at seven percent.¹¹¹

The Commission was created under the Climate Change Act of 2009.¹¹² This Act abolished¹¹³ the Presidential Task Force on Climate Change and the Inter-Agency Committee on Climate Change, which were created

103. *Id.*

104. *Id.*

105. Background on the UNFCCC, *supra* note 15.

106. Kyoto Protocol Description, *supra* note 25.

107. Department of Environment and Natural Resources (DENR), Inter-Agency Committee on Climate Change, The Philippines' Initial National Communication on Climate Change (December 1999).

108. *Id.* at xiv.

109. National Framework Strategy, *supra* note 94, at 21.

110. *Id.* at 22.

111. *Id.*

112. An Act Mainstreaming Climate Change Into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes [Climate Change Act of 2009], Republic Act No. 9729, § 4 (2009).

113. *Id.* § 23.

under Administrative Order Nos. 171¹¹⁴ and 220,¹¹⁵ respectively. The Commission was designated by the said Law as the “sole policy-making body of the [G]overnment which shall be tasked to coordinate, monitor[,] and evaluate the programs and action plans of the [G]overnment relating to climate change[,]”¹¹⁶ and is an “independent and autonomous body”¹¹⁷ with the “same status as that of a national government agency.”¹¹⁸

Composed of the President of the Republic of the Philippines as Chairperson and three Commissioners, the Commission also has an advisory board made up of the heads of the various departments, leagues, and agencies of the Philippine Government.¹¹⁹ The creation of the Commission was in response to urgings from different sectors of society that pointed out the inefficiency of not having a single independent body in charge of climate change measures.

The creation of the Commission, with the Provision for the formation of an advisory board,¹²⁰ is supposed to allow for greater efficiency in ensuring the mainstreaming of climate change, which is one of the Commission’s powers and functions.¹²¹ Mainstreaming is defined in the Climate Change Act of 2009 as the “integration of policies and measures that address climate change into development planning and sectoral decision-making.”¹²² Therefore, “the mainstreaming of climate change, in synergy with disaster risk reduction, into the national, sectoral[,] and local development plans and programs,”¹²³ pertains to the integration of mitigation and adaptation policies and measures into development planning and decision-making nationwide.

There are two main types of policy responses to climate change, namely adaptation¹²⁴ and mitigation.¹²⁵ Mitigation, in the climate change context, pertains to “human intervention to address anthropogenic emissions by

114. Office of the President, Creating the Presidential Task Force on Climate Change, Administrative Order No. 171 [A.O. No. 171] (Feb. 20, 2007).

115. Office of the President, Creating an Inter-Agency Committee on Climate Change, Administrative Order No. 220 [A.O. No. 220] (May 8, 1991).

116. Climate Change Act of 2009, § 4.

117. *Id.*

118. *Id.*

119. *Id.* § 5.

120. *Id.*

121. *Id.* § 9 (a).

122. Climate Change Act of 2009, § 3 (m).

123. *Id.* § 9 (a).

124. *Id.* § 3 (a).

125. *Id.* § 3 (n).

sources and removals by sinks of all GHG, including ozone-depleting substances and their substitutes.”¹²⁶ Adaptation, on the other hand, “refers to the adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.”¹²⁷ As stated in the Fourth IPCC Report, mitigation and adaptation can be “complementary, substitutable, or independent of each other.”¹²⁸ It is an incontrovertible fact, however, that due to the inertia of the climate system, adaptation measures would be required irrespective of the scale of mitigation measures.¹²⁹ This is particularly true in the case of the Philippines, which, given both its socio-economic, geologic, and geographic circumstances, requires the formulation and implementation of an extensive amount of adaptation measures.

The National Framework Strategy on Climate Change 2010–2022 (Framework Strategy), developed by the Commission in fulfillment of the provisions of the Climate Change Act, refer to adaptation and mitigation as national priorities, “with an emphasis on adaptation as the anchor strategy. Whenever applicable, mitigation actions shall also be pursued as a function of adaptation.”¹³⁰ It identified the energy sector as a Key Result Area (KRA) for mitigation, which necessarily involves energy efficiency and conservation, renewable energy, and environmentally sustainable transportation.¹³¹ Other KRAs for mitigation named were sustainable infrastructure,¹³² national REDD+ strategies,¹³³ and waste management.¹³⁴

The Philippines’ particular needs requires that strategies pertaining to the aforementioned mitigation KRAs must be undertaken within an adaptation context, in order to ensure sustainability, success, and preparedness against the effects of climate variability and extremes.¹³⁵ With this in mind, the Commission identified several KRAs for adaptation as well, such as the need for enhanced vulnerability and adaptation assessments,¹³⁶ integrated ecosystem-based management,¹³⁷ biodiversity,¹³⁸ water governance and

126. *Id.*

127. *Id.* § 3 (a).

128. BARKER, *supra* note 14, at 33.

129. *Id.*

130. National Framework Strategy, *supra* note 94, at 5.

131. *Id.* at 22.

132. *Id.* at 24.

133. *Id.* at 25.

134. *Id.* at 26.

135. *Id.* at 27.

136. National Framework Strategy, *supra* note 94, at 27.

137. *Id.* at 28.

management,¹³⁹ climate-responsive agriculture,¹⁴⁰ a climate-responsive health sector,¹⁴¹ the need for “climate-proof” infrastructure,¹⁴² and of course, disaster risk reduction (DRR).¹⁴³

The Framework Strategy developed by the Commission, upon which “a program for climate change planning, research and development, extension, and monitoring of activities to protect vulnerable communities from the adverse effects of climate change”¹⁴⁴ is to be based serves as a guide or roadmap for the development of an adaptive and risk-resilient country.¹⁴⁵ It is complemented by the National Climate Change Action Plan (NCCAP),¹⁴⁶ which was developed in order to concretize what the Commission termed as a “realistically achievable country-driven program of action for integrated climate change adaptation and mitigation.”¹⁴⁷ The NCCAP identified seven strategic priorities to pursue, namely: food security, water sufficiency, ecosystems and environmental stability, human security, climate-smart industries and services, sustainable energy, and knowledge and capacity development.¹⁴⁸ It likewise recommended three priority projects for the five years following its issuance: vulnerability assessments, demonstration sites for eco-towns, and research and development on renewable energy and sustainable transport system support.¹⁴⁹

In 2010, a year after the enactment of the Climate Change Act, the Philippine Disaster Risk Reduction and Management (DRRM) Act of 2010¹⁵⁰ was signed into law. It further emphasized the alarming need for contingency planning and the mitigation, preparedness, prevention, and

138. *Id.* at 29.

139. *Id.*

140. *Id.* at 30.

141. *Id.* at 31.

142. National Framework Strategy, *supra* note 94, at 31.

143. *Id.* at 32.

144. Climate Change Act of 2009, § 11.

145. National Framework Strategy, *supra* note 94, at 3.

146. See NCCAP Executive Summary, *supra* note 91.

147. *Id.* at 2.

148. *Id.* at 4.

149. *Id.*

150. An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the National Disaster Risk Reduction and Management Plan, Appropriating Funds Therefor and for Other Purposes [Philippine Disaster Risk Reduction and Management Act of 2010], Republic Act No. 10121 (2010).

response to the hazards brought about by the Philippines' particular vulnerability to climate change. Similar to the Climate Change Act, this Law saw to the establishment of an inter-departmental and cross-sectoral body to ensure that the objectives and goals that have been set by the Legislature are achieved, and provided for the development of both a risk reduction and management framework and a risk reduction and management plan.¹⁵¹

The DRRM Act seeks to “[m]ainstream disaster risk reduction and climate change in development processes[,]”¹⁵² and “[r]ecognize the local risk patterns across the country and strengthen the capacity of [Local Government Units (LGUs)] for disaster risk reduction”¹⁵³ through, among others, the establishment of a national early warning and emergency alert system.¹⁵⁴ For this purpose, the National Disaster Coordinating Council (NDCC) was transformed into the National Disaster Risk Reduction and Management Council (NDRRMC), to be headed by the Secretary of National Defense.¹⁵⁵ The secretaries of the other departments of government, as well as the heads of the various leagues and agencies of the Philippine government, serve to complete the body as vice chairpersons and council members.¹⁵⁶

The Office of Civil Defense (OCD), meanwhile, is tasked with the administration of a comprehensive national program geared towards the continuous and progressive development of strategies and approaches for the management of hazards, vulnerabilities, and consequences necessarily related to DRR.¹⁵⁷ The DRRM Act institutionalizes a stronger, more localized disaster risk reduction and management structure by providing for the coordination of the regional and local DRRM councils at regional and local government levels.¹⁵⁸ It emphasizes, however, that local councils are generally to take the lead in preparing for, responding to, and recovering from the effects of a disaster, taking into consideration their greater awareness of the exigencies of the situation.¹⁵⁹

Unlike the Climate Change Act, the DRRM Act specifies particular sources of funding to ensure the proper implementation of its provisions,

151. *Id.* § 2.

152. *Id.* § 2 (g).

153. *Id.* § 2 (k).

154. *Id.*

155. *Id.* § 5.

156. Philippine Disaster Risk Reduction and Management Act of 2010, § 5.

157. *Id.* §§ 8–9.

158. *Id.* §§ 10–12.

159. *Id.* § 15.

such as the Local Calamity Fund (LCF),¹⁶⁰ the Quick Response Fund (QRF),¹⁶¹ and the National Disaster Risk Reduction and Management Fund (NDRRM Fund).¹⁶² In order to remedy this, the People's Survival Fund (PSF) was established through Republic Act No. 10174,¹⁶³ which effectively amended the Climate Change Act of 2009. It defines Climate Finance as “resources that have been allocated or may be utilized towards the climate change adaptation and mitigation requirements of the country and its vulnerable communities[.]”¹⁶⁴ and seeks to “provide long-term finance streams to enable the government to effectively address the problem of Climate Change.”¹⁶⁵ The amendment of the Climate Change Act of 2009 was done through the incorporation of a financial mechanism “suppletory to any annual appropriations allocated by relevant government agencies for climate change-related programs and projects and by [LGUs,]”¹⁶⁶ which will “be used to support adaptation activities of local governments and communities[.]”¹⁶⁷

The PSF sources its funds from domestic and international allotments. Its opening balance of one billion pesos was to be appropriated under the General Appropriations Act (GAA), and subsequent balances coming from all sources are not to go lower than its one billion peso opening balance, provided that:

- (1) “the balance of the PSF may be increased as the need arises, subject to review and evaluation by the Office of the President and the Department of Budget and Management (DBM) of the accomplishments of the Commission and other concerned LGUs[.]”¹⁶⁸
- (2) “the PSF shall not be used to fund personal services and other operational expenses of the Commission[.]”¹⁶⁹

160. *Id.* § 21.

161. *Id.*

162. Philippine Disaster Risk Reduction and Management Act of 2010, § 22.

163. An Act Establishing the People's Survival Fund to Provide Long-Term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change, Amending for the Purpose Republic Act No. 9729, Otherwise Known as the “Climate Change Act Of 2009,” and for Other Purposes, Republic Act No. 10174, § 13 (2011).

164. *Id.* § 2.

165. *Id.*

166. *Id.* § 13.

167. *Id.*

168. *Id.*

169. R.A. No. 10174, § 13.

- (3) “the balance of the PSF including the amount appropriated in the GAA which shall form part of the fund shall not revert to the general fund[;]”¹⁷⁰ and
- (4) “the Commission shall submit to Congress and the DBM a semi-annual physical/narrative and financial report on the utilization of the PSF.”¹⁷¹

Donations, endowments, grants, and contributions may be used to augment the PSF, and are deemed exempt from donor’s tax.¹⁷² They are likewise considered as allowable deductions from the donor’s gross income.¹⁷³

A. Issues and Points of Concern

It is apparent from the amount and substance of the aforementioned legislation that climate change and disaster risk reduction and management are, or at least should be, primary causes of concern. The speed and frequency of the development of relevant legislation,¹⁷⁴ framework strategies, and management or action plans¹⁷⁵ demonstrate a rather quickly evolving set of laws, evidencing a responsiveness that is nothing less than what our country needs. U.N. Secretary General Ban Ki-Moon’s Special Envoy and DRR Representative Margareta Wahlström, in fact, has praised our laws on climate change and DRRM, declaring them to be the “best in the world.”¹⁷⁶ According to Ms. Wahlström, the Philippines has “an excellent legal framework for disaster risk reduction and an excellent legal framework for climate adaptation[,]”¹⁷⁷ of which the empowerment of LGUs plays a huge part.¹⁷⁸

Apart from having well-designed, inclusive, and progressive climate change-responsive laws, framework strategies, and management or action plans, the Philippines is also perceived to be a leader in the international

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. See Climate Change Act of 2009; R.A. No. 10174; & Philippine Disaster Risk Reduction and Management Act of 2010.

175. See National Framework Strategy, *supra* note 94.

176. Michael Lim Ubac, *UN lauds Philippines’ climate change laws ‘world’s best’*, PHIL. DAILY. INQ., May 4, 2012, available at <http://globalnation.inquirer.net/35695/un-lauds-philippines%E2%80%99-climate-change-laws%E2%80%98world%E2%80%99s-best%E2%80%99> (last accessed Dec. 2, 2013).

177. *Id.*

178. *Id.*

efforts to address climate change.¹⁷⁹ Whether it is in the areas of adaptation, mitigation, forests and climate finance, the Philippines has been influential in the global climate change negotiations.

It must be borne in mind, however, that while the Philippines is a global leader in terms of its policies, implementation continues, as always, to be a challenge. Budgetary, institutional, and human resource gaps must be addressed in order for the Philippines to not only continue occupying the high moral ground of climate change leadership, but also to decrease the gap between policy and implementation.

One point of concern that ought to be considered is the fact that climate change is a global problem.¹⁸⁰ In the long run, what is done in the Philippines has very limited value because of what happens on a global scale. The Philippines' GHG emissions, as stated earlier, barely reach one percent of the total global emissions,¹⁸¹ and any adaptation plans that are set in motion will affect only the local sphere. Meanwhile, the world's largest emitters may continue to emit GHGs in such a manner as to render the two-degree rise in temperature irrevocable.¹⁸²

Also, as is always a point of concern when the gap between policy and implementation is an issue, financing is a challenge. The Philippines may have good plans and policies, but with no funds to use for their implementation, even the best climate change policies will fall flat. Climate change goes beyond rhetoric — it needs work on the ground. And as everyone knows, work on the ground requires funding. The financing needed in order to address the Philippines' needs, however, may be more than what its government can spare, so to speak. Allocating funds for climate change and disaster risk reduction in order to go beyond mere relief operations would necessarily take away funding from other sectors which, even with some being issues that are perhaps not as pressing as climate change, are still important to public health and welfare.

Another particularly relevant issue that arises, especially for developing countries such as the Philippines, is choosing which to prioritize — mitigation¹⁸³ or adaptation.¹⁸⁴ While the obvious choice for the benefit of people living in high climate-risk countries such as the Philippines is adaptation, mitigation becomes an issue when taking into consideration funding and the global character of climate change.

179. *Id.*

180. Background on the UNFCCC, *supra* note 15.

181. National Framework Strategy, *supra* note 94, at 20.

182. BARKER, *supra* note 14, at 31.

183. Climate Change Act of 2009, § 3 (n).

184. *Id.* § 3 (a).

It is true that the principles of common but differentiated responsibilities¹⁸⁵ and historical responsibility¹⁸⁶ support developing countries' position that they ought not to be required to commit to mitigation targets in order to achieve economic development. However, it must be admitted that this particular line of reasoning has only resulted in prolonged conflict and reluctance on the part of many developed nations to obligate themselves further and to commit to providing more financial support. It may be said, therefore, that it is mitigation commitments that bring in much of the funding to be used to address adaptation needs.

Finally, while it is undeniable that the Philippines is in an excellent place policy and priority-wise, it must be asked if the country's current institutional structure will be able to address the country's needs. Is the President of the Philippines the proper person to head the Climate Change Commission,¹⁸⁷ for instance? Does this structure make climate change considerations too dependent on the President, who must be admitted to be not an expert on the subject and likely has a great many other pressing matters to concern himself with? Does the pulling together of all the heads of departments spread them too thin and make decision-making more difficult? It seems that in order to address an issue as pressing as climate change¹⁸⁸ and disaster risk reduction and management,¹⁸⁹ more time and expertise from the team, particularly its leader, mandated to work on the problem should be required.

III. CHALLENGES, INSTEAD OF SOLUTIONS

While there is an indisputable need for constant international action, it is proving to be a large and rather unwieldy mechanism that may be moving too slowly to adequately address the exponential increase in issues and problems caused by the changing climate. Perhaps, then, it would be advisable to divide negotiations into the different aspects of climate change, such as mitigation,¹⁹⁰ adaptation,¹⁹¹ REDD+,¹⁹² financing,¹⁹³ and so forth.

185. See UNFCCC, *supra* note 1, at art. 4.

186. See Martin Khor, Executive Director, South Centre, Historical responsibility as a guide to future action in climate change, Presentation at Technical Briefing on Historical Responsibility, during the meeting of the Ad Hoc Working Group on Long Term Cooperative Action, under the UN Framework Convention on Climate Change (June 4, 2009), available at http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/2_khor_rev.pdf (last accessed Dec. 2, 2013).

187. Climate Change Act of 2009, § 5.

188. *Id.* § 3 (d).

189. *Id.* § 3 (h).

190. National Framework Strategy, *supra* note 94, at 20.

This way, instead of seeking to produce a single, massive instrument in a limited amount of time, a mere week or two during the annual COPs, separate, yet more in-depth and complete, instruments could be produced on specific subject matters. It may be that employing such means would allow policymakers to devise measures that would allow them to move one step ahead of the difficulties caused by climate change, instead of constantly trying to catch up to it.

Locally, instead of referring to the possible means of bridging the gap between policy and implementation as solutions, perhaps it is better to refer to them as challenges. With regard to the issue of climate change being a global problem, for instance — as stated earlier, anything done within Philippine territory could have very limited value given the scale by which this phenomenon affects the world. What, then, are the challenges the Philippines faces?

Knowing and being able to identify the country's needs, particularly with regard to adaptation, it is important for the Philippines to keep negotiating internationally. As a State-Party to the UNFCCC,¹⁹⁴ the Philippines has to push for an agenda that will allow for the alignment of local and global policies. Local laws and measures shall have limited impact and will not be fully utilized if they are not in line with international action.

One such aspect of “international action” pertains to funding, which is necessary for the implementation of plans and policies. As mentioned earlier, the financing needed in order to be able to see to the implementation of these plans is substantial enough to cause much concern, as it would likely lessen or deprive other sectors of similarly-needed monetary support. International funding by way of developed countries honoring their commitments to give financial support under international agreements, therefore, plays a very large role in bridging the policy and implementation gap. This would prevent or address the issuance of unfunded mandates to local governments, and lessen the impact of climate change allotments on those set aside for other sectors.

The PSF¹⁹⁵ is a particularly positive development, as it establishes a domestic financial mechanism of sorts. It acknowledges that climate funds

191. *Id.* at 27.

192. *Id.* at 25.

193. See R.A. No. 10174.

194. See generally UNFCCC, List of Non-Annex I Parties to the Convention, available at http://unfccc.int/parties_and_observers/parties/non_annex_i/items/2833.php (last accessed Dec. 2, 2013).

195. R.A. No. 10174, § 13.

may be obtained from both national and international sources,¹⁹⁶ and would hopefully lead to the more efficient and effective management of these funds. The challenge is to maintain a strong enough negotiating position internationally in order to ensure that developed countries live up to their commitments and acknowledge their greater capacity and responsibility in addressing climate change issues.

Choosing to prioritize adaptation over mitigation should not necessarily be detrimental to the Philippines as, given the country's situation, prioritizing the former is understandable and absolutely necessary. However, it is also important for the country to ensure that the integrated approach is used as much as possible, thereby strengthening its bargaining position internationally. Committing to a mitigation target may appear as a gesture of good faith, and at the same time place more pressure on developed countries to perform their obligations under the UNFCCC. Similarly, taking mitigation into consideration as the country works towards further development would ensure that it is done progressively, responsively, and sustainably.

The DRRM Act of 2010 lays down as national policy the reduction of the country's risk to disasters. It fails, however, to do one thing that many experts have stated is absolutely necessary — the creation of a full-time independent disaster agency. While it is just right for the military and defense agencies of the Philippines to lead disaster response, rescue, and relief, such agencies are not equipped to lead the work on reducing risks. It is submitted, therefore, that a civilian and expert-led body, headed by a cabinet-level official reporting directly to the President, should be established for this.

In line with this, institutionally, the establishment of a department dedicated to climate change, under which disaster risk reduction and management might fall, is also something to consider. As mentioned in the NCCAP, for instance, “[c]urrently, water management is lodged in over 30 government offices, which results [in] fragmented sector planning and monitoring in the absence of a national government agency responsible for translating policies and strategies into a comprehensive water-climate change program.”¹⁹⁷ The same concern may be directed to all climate change concerns in general, making the idea of a full-time group of experts mandated to prioritize climate change concerns and granted the full power and resources of an executive department seem particularly promising.

196. *Id.*

197. Office of the President, Climate Change Commission, NCCAP Strategic Priority — Water Sufficiency, available at <http://www.climate.gov.ph/index.php/adaptation/water-sufficiency> (last accessed Dec. 2, 2013).

In the end, it must be emphasized that there is no “one-size-fits-all”¹⁹⁸ approach to handling climate change. Since different regions vary in terms of economic development needs, resource endowments, and mitigative and adaptive capacities, corresponding measures to address the problem of climate change must necessarily differ per region. These measures must be tailor-fit as much as possible to the varying socio-economic conditions and geographical differences.¹⁹⁹ For the Philippines in particular, it is essential that we strive to be both predictive and responsive, not only with regard to domestic policy-formation and implementation, but to international negotiations as well.

198. BARKER, *supra* note 14, at 27.

199. *Id.*