

# Do the LOCALmotion: Local Government Powers and Climate Change in the Philippines

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I. INTRODUCTION

Climate change is — quite literally — one of the hottest issues the world is facing today. It is a phenomenon which humankind has never experienced. It is not some abrupt, sudden, and drastic one-off event — but rather it has been slowly simmering since the industrial revolution began.<sup>1</sup> Today, we are starting to feel its worsening impact. Many environmentalists have recognized this as an unprecedented challenge, which involves virtually every aspect of humans as both contributors to and receivers of its impact.<sup>2</sup> António Guterres, the ninth Secretary-General of the United Nations, in his Remarks at Austrian World Summit stated that “[c]limate change is, quite simply, an existential

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1. John F.B. Mitchell, *The “Greenhouse” Effect and Climate Change*, 27 REV. GEOPHYS. 115, 120 (1989).  
 2. Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, 28 J. ENVTL. L. 19, 22-23 (2016).

threat for most life on the planet — including, and especially, the life of humankind.”<sup>3</sup>

Climate change, as an environmental phenomenon, is global in nature<sup>4</sup> and central in international relations. No country is spared as its impact cuts across borders and nationalities. The climate crisis that the world faces is a global problem which requires a global response.<sup>5</sup> It becomes, therefore, the obligation of global leaders to create an “effective and appropriate international response,”<sup>6</sup> which could address the causes of the problem and at least mitigate its effects.<sup>7</sup>

Over the last 30 years, the global community has taken stock of climate change as an issue of global concern which needs to be tackled at the international stage.<sup>8</sup> As a result, several treaties have been entered into to reflect this global response.<sup>9</sup> However, what became clear was that action cannot remain at the international level and must be translated to the local,

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3. António Guterres, Secretary-General, United Nations, Remarks at Austrian World Summit (May 15, 2018) (transcript available at <https://www.un.org/sg/en/content/sg/speeches/2018-05-15/remarks-austrian-world-summit> (last accessed May 11, 2021) [<https://perma.cc/2AG3-V9SW>]).
  4. See Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 349 (2009).
  5. Press Release, Security Council, Climate Change ‘Biggest Threat Modern Humans Have Ever Faced’, World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation, U.N. Press Release SC/14445 (Feb. 23, 2021).
  6. Phillip Dane Warren, *Forced Migration After Paris COP21: Evaluating the “Climate Change Displacement Coordination Facility”*, 116 COLUM. L. REV. 2103, 2104 (2016) (citing United Nations Framework Convention on Climate Change, signed May 9, 1992, 1771 U.N.T.S. 107, 166).
  7. *Id.*
  8. See Andrew Revkin, *Climate Change First Became News 30 Years Ago. Why Haven’t We Fixed It?*, NATL. GEOGR. MAG., June 2018, available at <https://www.nationalgeographic.com/magazine/article/embark-essay-climate-change-pollution-revkin> (last accessed May 11, 2021) [<https://perma.cc/T2BL-BCRV>].
  9. Lindsay Maizland, *Global Climate Agreements: Successes and Failures*, available at <https://www.cfr.org/background/paris-global-climate-change-agreements> (last accessed May 11, 2021) [<https://perma.cc/R3CX-W6V9>].

on-the-ground stage where climate impacts are both real and imminent. Thus, there is an equal push for a localized response to the impacts of climate change.

#### A. *Climate Change in the Philippines*

The efforts to resolve the issues of climate change becomes a life-or-death situation for countries on the frontlines of climate change impact. This is especially true for a country like the Philippines, ranked “[a]s the third most vulnerable country in the world to weather-related extreme events, earthquakes, and sea level rise[.]”<sup>10</sup> A recent report even ranked the Philippines as the most vulnerable to climate change due to extreme weather, rising sea levels, and death of sea life.<sup>11</sup> A Climate Risk Profile for the Philippines prepared by USAID (Climate Risk Profile) exhibited that “[t]he Philippines is highly vulnerable to the impacts of climate change, including sea level rise, increased frequency of extreme weather events, rising temperatures[,] and extreme rainfall.”<sup>12</sup> The Climate Risk Profile also provided the following projections: a “1.8° to 2.2°C increase in temperatures by 2050; a wetter] wet season and drier dry season; an increased] incidence of extreme weather and hazard events; and a] 0.48–0.65 meter rise in sea levels by 2100[.]”<sup>13</sup>

As these projected series of impact and disasters — both natural and man-made — may cause potential loss of life, livelihood, and property, it becomes incumbent upon the State and its citizens to act upon it with utmost competence and manifest sense of urgency.

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10. World Bank Group [WBG], *Getting a Grip ... on Climate Change in the Philippines*, at 1, 78794, available at <http://documents1.worldbank.org/curated/en/288101468294989960/pdf/787940BR10P130ochureoReferenceoONLY.pdf> (last accessed May 11, 2021) [<https://perma.cc/7SWQ-BPYF>].

11. Amnesty International UK, *Philippines Country Most at Risk from Climate Crisis*, available at <https://www.amnesty.org.uk/philippines-country-most-risk-climate-crisis> (last accessed May 11, 2021) [<https://perma.cc/FAR3-GC3D>].

12. USAID, *Climate Risk Profile: Philippines*, at 1, available at [https://www.climatelinks.org/sites/default/files/asset/document/2017\\_Climate%20Change%20Risk%20Profile\\_Philippines.pdf](https://www.climatelinks.org/sites/default/files/asset/document/2017_Climate%20Change%20Risk%20Profile_Philippines.pdf) (last accessed May 11, 2021) [<https://perma.cc/9Q78-PBZN>].

13. *Id.*

*B. Cities on the Frontlines of Climate Change*

The United Nations Educational, Scientific, and Cultural Organization recounts that

[c]limate change is a global phenomenon that largely impacts urban life. Rising global temperatures causes sea levels to rise, increases the number of extreme weather events such as floods, droughts and storms, and increases the spread of tropical diseases. All these have costly impacts on cities' basic services, infrastructure, housing, human livelihoods[,] and health.<sup>14</sup>

A World Bank publication entitled *Cities and Climate Change: An Urgent Agenda* states that “[c]limate change is affecting cities and their residents, especially the poor, and more severe impacts are expected as climate extremes and variability increase.”<sup>15</sup> “At the same time, cities are a key contributor to climate change, as urban activities are major sources of greenhouse gas emissions[, with estimates suggesting] that cities are responsible for 75[%] of global CO<sub>2</sub> emissions, with transport and buildings being among the largest contributors.”<sup>16</sup>

Cities, as one of the units of the local government, are recognized fittingly to be the key in ending climate change.<sup>17</sup> With the concomitant responsibilities concerning the risks of rapid urbanization and population growth, extreme weather, e.g., drought and water scarcity, inland flooding, hydrological and geo-hydrological hazards, coastal flooding, sea level rise, and storm surge, and emerging human health, disease, and epidemiology issues, cities have the unenviable obligation of addressing directly these problems whilst having to face climate change.<sup>18</sup>

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14. United Nations Environment Programme, *Cities and Climate Change*, available at <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/cities/cities-and-climate-change> (last accessed May 11, 2021) [<https://perma.cc/7X3P-XLKV>].

15. World Bank Group [WBG], *Cities and Climate Change: An Urgent Agenda*, at v, 63704, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/17381/637040WPoCitieooBoxo361524BoPUBLICo.pdf?sequence=1&isAllowed=yv> (last accessed May 11, 2021) [<https://perma.cc/2DGU-J3SS>] [hereinafter *Cities and Climate Change*].

16. United Nations Environment Programme, *supra* note 14.

17. *Id.*

18. See William Solecki & Peter J. Marcotullio, *Climate Change and Urban Biodiversity Vulnerability*, in *URBANIZATION, BIODIVERSITY AND ECOSYSTEM SERVICES*:

It must be recognized, however, that even if cities are the most vulnerable to the effects of climate change, they are also the most powerful to curb its consequences. “Cities are often seen as contributing to environmental degradation and represent immense ecological burdens [ — h]owever, cities can also be models of environmental efficiency, because increased density and better management reduce the cost of service delivery, promote innovation, and enable prosperity through economic development.”<sup>19</sup> In fact, many cities all over the world have already initiated projects which could limit emissions and reduce pollutions — converting to renewable energy sources, establishing cleaner production systems and regulations, or providing incentives to limit industrial emissions of their respective jurisdictions.<sup>20</sup> It is no longer novel for the “smaller” units to take on the “bigger” problems.

Local Government Units (LGUs) must be recognized as key players in addressing environmental issues. The C40 Cities Climate Leadership Group, a network of the world’s megacities committed to addressing climate change expounds that “[c]ities can help nations achieve their Paris Agreement commitment by supporting the implementation of transformational actions to increase the supply of renewable energy, improve building energy efficiency, increase access to affordable, low carbon transport options, and change consumption patterns.”<sup>21</sup>

The UN-Habitat Philippines further explains that “[i]n the dynamic setting of cities and urban areas, the ability of local government units to address

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CHALLENGES AND OPPORTUNITIES 485-504 (Thomas Elmqvist, et al., eds., 2013).

19. Cities and Climate Change, *supra* note 15, at 1.
20. See C40 Cities Climate Leadership Group, Cities Leading the Way: Seven Climate Action Plans to Deliver on the Paris Agreement, *available at* [https://cdn.locomotive.works/sites/5ab410c8a2f42204838f797e/content\\_entry5ab410fb74c4833febe6c81a/5b97do5514ad66062f99bd66/files/C40\\_Report\\_Cities\\_leading\\_the\\_way.pdf?1614106287](https://cdn.locomotive.works/sites/5ab410c8a2f42204838f797e/content_entry5ab410fb74c4833febe6c81a/5b97do5514ad66062f99bd66/files/C40_Report_Cities_leading_the_way.pdf?1614106287) (last accessed May 11, 2021) [<https://perma.cc/36T9-JN72>].
21. C40 Cities Climate Leadership Group, Cities Leading the Way, *available at* <https://resourcecentre.c40.org/resources#cities-leading-the-way> (last accessed May 11, 2021) [<https://perma.cc/6FND-NQTH>].

climate change issues and implement sustainable adaptation strategies and measures is so crucial.”<sup>22</sup>

In a study conducted by Human Settlements Group and the Climate Change Group at the International Institute for Environment and Development,<sup>23</sup> the following are suggested responsibilities and action steps considered as risk-reducers for climate change:

- (1) providing infrastructure and services (perhaps with some contracted to private enterprises or nongovernment organizations);
- (2) guiding where development takes place [—] for instance influencing where urban settlements and develop and where they do not and what provision they have to avoid floods, fires, etc[.];
- (3) regulating building design and construction (including support and training for builders, especially those who are active in building within low-income settlements);
- (4) regulating hazardous activities that can produce disasters (including industries and transport);
- (5) influencing land availability (through land-use regulations, zoning and bureaucratic procedures for buying or obtaining land and what can be built on it) [—] the quality of land-use management influences the proportion of poorer groups having to live on hazardous or disaster-prone sites;
- (6) encouraging and supporting household/community action that reduces risk (for instance better quality housing, safer sites, good infrastructure and good disaster preparedness);
- (7) providing [‘]law and order[’] which should also act to protect low-income groups from risk; [and]
- (8) coordinating and supporting links between disaster avoidance and disaster preparedness [—] for instance ensuring that all tasks above integrate with agencies responsible for disaster response.<sup>24</sup>

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22. UN-Habitat Philippines, *Climate Change*, available at <http://unhabitat.org.ph/mainstreaming-climate-change-in-urban-development> (last accessed May 11, 2021) [<https://perma.cc/9NUC-AV6S>].

23. DAVID SATTERTHWAITE, ET AL., *ADAPTING TO CLIMATE CHANGE IN URBAN AREAS: THE POSSIBILITIES AND CONSTRAINTS IN LOW- AND MIDDLE-INCOME NATIONS* 35 (2007).

24. *Id.*

While local governments cannot promise to remove or lessen the effects of climate change, it must still take part in adapting and reducing the climate risk and vulnerabilities of its constituents.<sup>25</sup> This is furthermore encouraged as LGUs are regarded as “most important for shaping the operating environment that influences the capacity for households and businesses to build adaptive capacity and undertake adaptive action.”<sup>26</sup> Local leaders, therefore, are both duty-bound and most fit to take on environmental issues on the national level. As one organization puts it, cities can be a solution to climate change because “[c]ity mayors [(or the local chief executives)] are directly accountable to their constituents for their decisions, and are more nimble than state and national elected officials to take decisive action — often with immediate and impactful results.”<sup>27</sup>

This Article discusses the role of LGUs in addressing environmental issues and taking bold, imaginative, and creative climate action in the Philippines. In particular, it identifies the powers of LGUs which may be used to play a more proactive role in mitigating and adapting to the effects of climate change. The Authors dissect the powers of the LGUs under the Constitution,<sup>28</sup> Local Government Code,<sup>29</sup> and other laws, and identify how these can be channeled towards urgently needed climate action. LGUs must realize that the current state of law and jurisprudence gives it ample capacity to combat climate change. What is needed is to take the bold step towards creatively reimagining LGU powers to take the “LOCALmotion” for climate action.

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25. *Id.* at 50.

26. *Id.* at 51.

27. C40 Cities Climate Leadership Group, *Why Cities?: Ending Climate Change Begins in the City*, available at <https://www.c40.org/ending-climate-change-begins-in-the-city> (last accessed May 11, 2021) [<https://perma.cc/SQ49-22WX>].

28. PHIL. CONST. art. X.

29. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160 (1991).



## II. LEGAL FRAMEWORKS RELATED TO LOCAL GOVERNMENTS AND CLIMATE CHANGE

### A. *International Legal Framework on Climate Change*

As an issue of global concern and significance, an analysis of the legal framework on climate change must begin with international law.<sup>30</sup> Foremost on the list is the United Nations Framework Convention on Climate Change (UNFCCC).<sup>31</sup> This “was adopted in New York on 9 May 1992[, and] entered into force on 21 March 1994.”<sup>32</sup> It is the first treaty, which had the objective to stabilize greenhouse gas concentrations “at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.”<sup>33</sup> According to Article 2 of the Convention, the UNFCCC’s main objective is to stabilize greenhouse gas concentrations in the atmosphere at a level that allows ecosystems to adapt naturally to climate change so that food production is not threatened, while enabling economic development to proceed in a sustainable manner.<sup>34</sup> State parties have undertaken the general commitments enshrined in the treaty to establish national inventories of greenhouse gas emissions, formulate policies to mitigate climate change in their respective nations, to ensure sustainable management of the natural resources of every State party, and to integrate climate change considerations in their own national, social, economic, and environmental policies.<sup>35</sup>

An important feature of the UNFCCC is that parties are required to submit periodic reports, relating to the inventory of emissions of greenhouse

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30. See ASIAN DEVELOPMENT BANK, CLIMATE CHANGE COMING SOON TO A COURT NEAR YOU: INTERNATIONAL CLIMATE CHANGE LEGAL FRAMEWORKS (2020).

31. United Nations Framework Convention on Climate Change, *adopted* May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

32. United Nations Environment Programme & United Nations Institute for Training and Research, Climate Change International Legal Regime, at 8, *available* [at https://globalpact.informea.org/sites/default/files/documents/PDF%20lessons%20-%20Climate%20Change\\_o.pdf](https://globalpact.informea.org/sites/default/files/documents/PDF%20lessons%20-%20Climate%20Change_o.pdf) (last accessed May 11, 2021) [https://perma.cc/JPX9-G9MS].

33. UNFCCC, *supra* note 31, art. 2.

34. *Id.*

35. *Id.* art. 4, ¶ 1, (a), (b), (d), & (f).

gases.<sup>36</sup> Parties are likewise mandated by Article 12 (1) to appraise the other State parties as to any updates with regard to the policies which they have enacted, pursuant to the goal of combatting climate change.<sup>37</sup>

The regime established by the UNFCCC was, however, revised principally by the Kyoto Protocol in 1997.<sup>38</sup> The Kyoto Protocol<sup>39</sup> introduced an international “cap-and-trade system,” which limited the greenhouse gas emissions per country.<sup>40</sup> This was said to be an “ambitious attempt to construct an international architecture to harmonize the policies of different countries.”<sup>41</sup>

The [Kyoto Protocol] was adopted in response to the lack of legally binding emission reduction targets and timelines in the UNFCCC. The heart of the Kyoto Protocol lies in Article 3, whereby UNFCCC Annex I Parties committed to specific, quantified, and binding emissions limitation and reduction commitments (contained in the Protocol’s Annex B).<sup>42</sup>

As the world continued to heat up and as climate impacts increased, there was global consensus that a stronger commitment to tackling climate change is needed. Enter the Paris Agreement,<sup>43</sup> adopted by consensus by almost all nations on Earth on 12 December 2015 and came into force on 4 November 2016.<sup>44</sup> It has been regarded as a step forward to international politics, which

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36. *Id.* art. 4, ¶ 1, (a).

37. *Id.* art. 12, ¶ 1.

38. Environmental and Energy Study Institute, Timeline of Major UN Climate Negotiations, available at <https://www.eesi.org/policy/international> (last accessed May 11, 2021) [<https://perma.cc/R7QP-5Zaq>].

39. Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted Dec. 11, 1997, 2303 U.N.T.S. 162 [hereinafter Kyoto Protocol].

40. Patrick Bayera & Michael Aklin, *The European Union Emissions Trading System Reduced CO<sub>2</sub> Emissions Despite Low Prices*, 117 PROCEEDINGS OF THE NAT’L ACAD. OF SCIENCES OF THE U.S. 8804, 8804 (2020).

41. William Nordhaus, *The Climate Club: How to Fix a Failing Global Effort*, FOREIGN AFFAIRS, May/June 2020, available at <https://www.foreignaffairs.com/articles/united-states/2020-04-10/climate-club> (last accessed May 11, 2021) [<https://perma.cc/Z4VV-8ARC>].

42. ASIAN DEVELOPMENT BANK, *supra* note 30, at 19.

43. Paris Agreement under the United Nations Framework Convention on Climate Change, opened for signature Apr. 22, 2016 [hereinafter Paris Agreement].

44. Charlotte Streck, et al., *The Paris Agreement: A New Beginning*, 13 J. EUR. ENVTL. PLAN. L. 3, 4 (2016).

ends the many negotiations and conflicts left behind by previous treaties.<sup>45</sup> As a “breakthrough which exceeded expectations[,]”<sup>46</sup> the Paris Agreement has given proof to the relevance of global efforts and public participation in combatting the ever-present challenges of climate change.

The Paris Agreement seeks to enhance the implementation of the UNFCCC. Article 2 of the Agreement declares that efforts “to strengthen the global response to the threat of climate change [come] in the context of sustainable development and efforts to eradicate poverty”<sup>47</sup> — a clear reference to the needs of developing countries and the fundamental principles of equity and of common but differentiated responsibilities and respective capabilities. The agreement aims to hold the increase in global average temperature to “well below 2°C above preindustrial levels[,]” and to pursue efforts toward a 1.5°C temperature cap.<sup>48</sup> “The agreement does not contain quantitative emission reduction targets in pursuance of the temperature goal. Instead, Article 4 (1) states a qualitative objective: to reach global peaking of greenhouse gas emissions as soon as possible, and to undertake rapid reductions thereafter in accordance with best available science.”<sup>49</sup> Article 4 also provides a core obligation of the Agreement wherein countries “prepare, communicate, and maintain successive nationally determined contributions that it intends to achieve.”<sup>50</sup>

The Philippines is a party to, and has ratified the UNFCCC, the Kyoto Protocol, and the Paris Agreement.<sup>51</sup> It is within this framework that the country develops and implements its national legal framework on climate change.

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45. *Id.*

46. *Id.*

47. Paris Agreement, *supra* note 43, art. 2, ¶ 1.

48. *Id.*

49. ASIAN DEVELOPMENT BANK, *supra* note 30, at 28.

50. Paris Agreement, *supra* note 43, art. 4, ¶ 2.

51. United Nations Climate Change, Philippines, *available at* <https://unfccc.int/node/61143> (last accessed May 11, 2021) [<https://perma.cc/F4P9-6M8N>].

*B. Philippine Legal Framework on Climate Change*

The Philippines' primary law on climate change is the Climate Change Act of 2009.<sup>52</sup> The Declaration of Policy<sup>53</sup> provides that as a party to the UNFCCC, the Philippines has adopted the ultimate objectives of the convention.<sup>54</sup> The law further recognizes that the Philippines is highly vulnerable to climate change, given that we are prone to many natural disasters such as “droughts, fire, floods[,] and storms[.]”<sup>55</sup> The law further recognizes that it is not only the duty of the National Government to undertake this responsibility — but the State must also enjoin “national and local governments, businesses, non[–]government organizations [(NGOs)], [and] local communities” to address climate change.<sup>56</sup>

Section 3 of the law defines climate change as “a change in climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period typically decades or longer, whether due to natural variability or as a result of human activity.”<sup>57</sup> Section 4 created the Climate Change Commission, which acts as the “sole policy-making body of the government” in order to propose recommendations and monitor measures enacted to combat climate change.<sup>58</sup> The Commission is chaired by

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52. 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 (2009).

53. *Id.* § 2.

54. The ultimate objectives of the UNFCCC are

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

UNFCCC, *supra* note 31, art. 2.

55. Climate Change Act of 2009, § 2.

56. *Id.*

57. *Id.* § 3.

58. *Id.* § 4.

the President, a signal of the immense importance of the issue to a country like the Philippines.<sup>59</sup>

The law provides for the development of the National Framework Strategy on Climate Change (the Framework Strategy), and the National Climate Change Action Plan (NCCAP).<sup>60</sup> “The Framework Strategy ... emphasizes the Philippine approach on climate change where climate change adaptation serves as an anchor strategy and climate change mitigation as function of adaptation.”<sup>61</sup> The NCCAP “outlines a long-term program and strategies for climate change adaptation with the national development plan for 2011 to 2028 and focused on seven thematic priority areas: food security; water sufficiency; ecosystem and environmental stability; human security; climate-smart industries and services; sustainable energy; and knowledge and capacity development.”<sup>62</sup> According to the NCCAP, “[c]onsistent with the Framework, the ultimate goal is to build the adaptive capacities of women and men in their communities, increase the resilience of vulnerable sectors and natural ecosystems to climate change, and optimize mitigation opportunities towards gender-responsive and rights-based sustainable development.”<sup>63</sup>

To complement the Framework Strategy and the NCCAP, Section 14 of the law mandates that the LGU shall be the frontline agency in the formulation, planning, and implementation of climate change action within their respective territory, particularly through the adoption of Local Climate Change Action Plans (LCCAP).<sup>64</sup> It is provided that all units of local

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59. *Id.* § 5.

60. *Id.* §§ 11 & 13.

61. Climate Change Commission, Executive Brief: The Philippine National Climate Change Action Plan, Monitoring and Evaluation Report 2011-2016, at 1, *available at* [https://climate.gov.ph/files/The%20Philippine%20NCCAP%20M&E%20Executive%20Brief%20\[v2\].pdf](https://climate.gov.ph/files/The%20Philippine%20NCCAP%20M&E%20Executive%20Brief%20[v2].pdf) (last accessed May 11, 2021) [<https://perma.cc/HME9-5ARD>].

62. *Id.*

63. Climate Change Commission, National Climate Change Action Plan 2011-2028, at 5, *available at* <http://climate.emb.gov.ph/wp-content/uploads/2016/06/NCCAP-1.pdf> (last accessed May 11, 2021) [<https://perma.cc/37HL-BYVS>].

64. Climate Change Act of 2009, § 14. The provision is reproduced below as follows

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government must become directly involved with one another, in order to identify and implement the best practices in combatting climate change. LGUs are also expected to regularly update their action plans, in order to reflect any social, economic, and environmental changes.<sup>65</sup> Furthermore, the National Government is also mandated to extend any technical and financial assistance to the LGUs in order to accomplish their LCCAP.<sup>66</sup> Furthermore, Section 18 of the Climate Change Act also provides that each LGU must “allocate from

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SECTION 14. Local Climate Change Action Plan. — The LGUs shall be the frontline agencies in the formulation, planning and implementation of climate change action plans in their respective areas, consistent with the provisions of the Local Government Code, the Framework, and the National Climate Change Action Plan.

Barangays shall be directly involved with municipal and city governments in prioritizing climate change issues and in identifying and implementing best practices and other solutions. Municipal and city governments shall consider climate change adaptation, as one of their regular functions. Provincial governments shall provide technical assistance, enforcement and information management in support of municipal and city climate change action plans. Inter-local government unit collaboration shall be maximized in the conduct of climate-related activities.

LGUs shall regularly update their respective action plans to reflect changing social, economic, and environmental conditions and emerging issues. The LGUs shall furnish the Commission with copies of their action plans and all subsequent amendments, modifications and revisions thereof, within one (1) month from their adoption. The LGUs shall mobilize and allocate necessary personnel, resources and logistics to effectively implement their respective action plans.

The local chief executive shall appoint the person responsible for the formulation and implementation of the local action plan.

It shall be the responsibility of the national government to extend technical and financial assistance to LGUs for the accomplishment of their Local Climate Change Action Plans.

The LGU is hereby expressly authorized to appropriate and use the amount from its Internal Revenue Allotment necessary to implement said local plan effectively, any provision in the Local Government Code to the contrary notwithstanding.

*Id.*

65. *Id.*

66. *Id.*

their annual appropriations adequate funds for the ... development” of programs related to combatting climate change.<sup>67</sup> The law states that it shall also include public awareness campaigns on the effects of climate change and how it can be mitigated.<sup>68</sup>

The provisions above provide the foundation as to the role of LGUs in combatting climate change. While there are no specified duties imposed on them, what Section 14<sup>69</sup> does is to empower LGUs and to ensure that there is support by the National Government in the formulation of any plans towards climate action.

The Climate Change Act of 2009 has been complimented by the People’s Survival Fund Act.<sup>70</sup> The law, which made amendments and added provisions to the Climate Change Act, established a special fund in the National Treasury for the financing of adaptation programs and projects based on the National Strategic Framework.<sup>71</sup> It allocates a portion of the national budget for the needs of LGUs and other non-government organizations in order to adapt to climate change.<sup>72</sup>

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67. *Id.* § 18.

68. *Id.*

69. Climate Change Act of 2009, § 14.

70. 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 (2012) [hereinafter People’s Survival Fund Act].

71. *Id.* § 13.

72. As amended, Section 20 of the Climate Change Act of 2009, provides for the uses of the People’s Survival Fund (PSF).

SEC. 20. *Uses of the Fund.* – The fund shall [be] used to support adaptation activities of local governments and communities such as, but not limited to, the following:

(a) Adaptation activities, where sufficient information is available to warrant such activities, in the areas of water resources management, land management, agriculture and fisheries, health, infrastructure development, natural ecosystems including mountainous and coastal ecosystems;

(b) Improvement of the monitoring of vector-borne diseases triggered by climate change, and in this context improving disease control and prevention;

The Philippine Disaster Risk Reduction and Management Act of 2010<sup>73</sup> provides for the overall framework for responding to natural (which includes climate-induced or related) and man-made disasters in the country. Under the law, Disaster Risk Reduction and Management (DRRM) councils are established at the regional, provincial, city/municipal, and barangay level, replicating the structure of the National DRRM Council.<sup>74</sup> These local councils highlight the important role that LGUs and communities play in ensuring resilience and implementing climate action programs.

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(c) Forecasting and early warning systems as part of preparedness for climate-related hazards;

(d) Supporting institutional development, for local governments, in partnership with local communities and civil society groups, for preventive measures, planning, preparedness and management of impacts relating to climate change, including contingency planning, in particular, for droughts and floods in areas prone to extreme climate events;

(e) Strengthening existing; and where needed, establish regional centers and information networks to support climate change adaptation initiatives and projects;

(f) Serving as a guarantee for risk insurance needs for farmers, agricultural workers and other stakeholders; and

(g) Community adaptation support programs by local organizations accredited by the Commission.

The fund shall be suppletory to any annual appropriations allocated by relevant government agencies for climate change-related programs and projects and by LQUs. The fund shall encourage counterpart funding arrangements among local governments, community organizations, the private sector, and other entities.

People's Survival Fund Act, § 13.

73. 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).

74. *Id.* §§ 10 & 11.



### *C. Powers of LGUs in General*

Central to understanding how local governments can respond to climate change is a discussion of the three powers of local governments: police power, the power of eminent domain, and the power of taxation. These powers, though not inherent,<sup>75</sup> have been granted through legislation to allow for local autonomy and to ensure that local governments can chart their own destiny. This can impliedly include the capacity to respond to threats and challenges to its existence, which can come in the form of the climate crisis facing many LGUs today.

#### 1. Police Power

While LGUs possess a wide range of powers, granted by both the Constitution and delegated by other bodies, police power is said to be the least limitable.<sup>76</sup> The legal basis for the police power of local governments is embodied in Section 16 of the Local Government Code.<sup>77</sup> This is also known as the general welfare clause. What can be highlighted from the general welfare clause is that LGUs exercise not only powers expressly granted to them, but also those

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75. See *Enriquez v. Secretary of Finance*, G.R. No. L-24402, 27 SCRA 1261, 1268 (1969) & *Batangas City v. Pilipinas Shell Petroleum Corporation*, G.R. No. 187631, 762 SCRA 153, 164 (2015).

76. *Southern Luzon Drug Corporation v. Department of Social Welfare & Development*, G.R. No. 199669, 824 SCRA 164, 200 (2017) (citing *Gerochi v. Department of Energy*, G.R. No. 159796, 527 SCRA 696, 714 (2007)).

77. LOCAL GOV'T CODE, § 16. The provision states that —

Section 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

*Id.*

implied.<sup>78</sup> Section 16 also allows for some flexibility on the part of LGUs, as they are granted powers necessary, appropriate, or incidental in order to achieve their goal of efficient and effective governance.<sup>79</sup> However, this is limited by the statement “those which are essential to the promotion of the general welfare.”<sup>80</sup> Therefore, for as long as the LGU can prove that their actions are reasonably necessary in order to promote the general welfare of their constituents, such acts may be justified under police power.<sup>81</sup>

What can be gleaned from the general welfare clause is that these powers are not limited.<sup>82</sup> LGUs actually have the power to enact ordinances which they deem can best suit their constituents.<sup>83</sup> Given that the LGUs are, in most cases, in the best position to know their constituents and the specific needs within their territory, the law grants them this discretion and leeway.

Jurisprudence has long expounded on the nature of the police power which the Local Government Code grants to LGUs. In the case of *Fernando v. St. Scholastica's College*,<sup>84</sup> it is provided that

‘[p]olice power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people.’ The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State. This delegation of police power is embodied in Section 16 of the Local Government Code of 1991 (R.A. No. 7160), known as the General Welfare Clause[.]<sup>85</sup>

Furthermore, the *Fernando* case also provides the doctrine to be followed by LGUs when reviewing whether or not they have properly exercised police power. The Supreme Court stated that it is considered proper only when: “(1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary

78. *Id.*

79. *Id.*

80. *Id.*

81. *Southern Luzon Drug Corporation*, 824 SCRA at 198.

82. See LOCAL GOV'T CODE, § 16.

83. *Id.*

84. *Fernando v. St. Scholastica's College*, G.R. No. 161107, 693 SCRA 141 (2013).

85. *Id.* at 156 (citing *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, 545 SCRA 92, 138 (2008) & *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 969 (2000)).

for the accomplishment of the purpose and not unduly oppressive upon individuals.”<sup>86</sup> Therefore, any ordinance issued by an LGU must have a lawful subject as well as a lawful method or means of carrying this out.<sup>87</sup> If this is not present, then the ordinance may be struck down as arbitrary.

## 2. Taxation

Section 5 of Article X of the 1987 Constitution also provides for the power of taxation granted to LGUs.<sup>88</sup> Thus, while police power is limited by the Local Government Code,<sup>89</sup> and thus can be overturned by subsequent legislation passed by the Congress, the power to tax shall remain based on the Constitutional provision.<sup>90</sup>

Nonetheless, the case of *Ferrer, Jr. v. Bautista*<sup>91</sup> provides for the limitations on the taxing power of LGUs. Taxing ordinances passed by LGUs may still be reviewed, and they must meet the following requirements:

- (1) that the taxpayer will not be overburdened or saddled with multiple and reasonable impositions;
- (2) each local government unit will have its fair share of available resources;
- (3) the resources of the national government will not be unduly disturbed; [and lastly, that]
- (4) local taxation will be fair, uniform, and just.<sup>92</sup>

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86. *Fernando*, 693 SCRA at 158 (citing *Social Justice Society*, 545 SCRA at 138).

87. *Id.*

88. PHIL. CONST. art. X, § 5.

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

PHIL. CONST. art. X, § 5.

89. LOCAL GOV'T CODE, § 16.

90. PHIL. CONST. art. X, § 5.

91. *Ferrer, Jr. v. Bautista*, G.R. No. 210551, 760 SCRA 652 (2015).

92. *Id.* at 698 (citing *Manila Electric Company v. Province of Laguna*, 366 Phil. 428, 433 (1999)).

### 3. Eminent Domain

The power of eminent domain that is granted to LGUs is also called “inferior domain” — local governments have no inherent power of eminent domain and can exercise such power only when expressly authorized by the legislature.<sup>93</sup> Like the LGU’s police power, this is also granted by statute, by virtue of Section 19 of the Local Government Code.<sup>94</sup> The general requirements for the valid exercise of this power are:

- (1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property;
- (2) it is exercised for public use, purpose, or welfare, or for the benefit of the poor and the landless;
- (3) there is payment of just compensation; and
- (4) a valid and definite offer has been previously made to the owner of the property but was not accepted.<sup>95</sup>

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93. *Masikip v. City of Pasig*, G.R. No. 136349, 479 SCRA 391, 400 (2006) (citing *City of Cincinnati v. Vester*, 281 U.S. 439 (1930)) & *Lagcao v. Labra*, G.R. No. 155746, 440 SCRA 279, 284 (2004) (citing *City of Cincinnati*, 281 U.S. at 439).

94. LOCAL GOV’T CODE, § 19.

Section 19. *Eminent Domain*. — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

*Id.*

95. *Antonio v. Geronimo*, G.R. No. 124779, 476 SCRA 340, 351 (2005) (citing *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676 (2000)).

### 3. Powers of Local Governments Related to the Environment and Climate

Local governments do not only exercise the three essential powers discussed above. They also wield powers and functions related to the environment and climate. Section 26 of the Local Government Code highlights the duty of the LGU to maintain ecological balance.<sup>96</sup> This provision in the LGC actually highlights the role of the LGU in enacting policies within their jurisdiction that are related to the environment.<sup>97</sup> In addition, it is the task of the National Government to properly consult with LGUs should there be any projects that are undertaken that may cause harm to the environment that is within their territory.<sup>98</sup>

However, the question that arises is: to what extent can the LGUs enact ordinances in order to protect the environment, and ultimately, combat climate change? Must there be any directive from the National Government, or can the LGU deem it incumbent upon itself to take such initiative? The Authors seek to address this question by citing pertinent legislation and jurisprudence that further show that the LGU is actually empowered to take on a more active role when it comes to the creation of policies towards climate action.

#### *D. Existing Environmental Legislation in Relation to LGUs*

The Authors will now proceed to give an overview of the various laws which empower and task LGUs to be responsible for the upholding of national

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96. LOCAL GOV'T CODE, § 26.

Section 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* — It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

*Id.*

97. *Id.*

98. *Id.* § 27.

policies in relation to the maintenance of the environment. It will be good to note at this point that the discussion here is by no means an exhaustive list of national environmental laws and policies in relation to LGUs. One can argue that being the frontliners of government — the “face of government” especially in far flung municipalities — they are the primary duty-bearers when it comes to implementation of environmental laws whether or not provided for specifically by law.

The devolution of environment and natural resource functions is a consequence of local autonomy. Congress may delegate other powers and functions to LGUs other than those in the Local Government Code. These may pertain to special laws, such as those discussed below that pertain to the management of natural resources and the protection of the environment.<sup>99</sup> Local legislative councils may enact ordinances and resolutions consistent with the powers and functions delegated by Congress in the relevant national laws.<sup>100</sup>

#### I. 1987 Constitution

Central to this proposal offered by the Authors is the right of Filipinos to a balanced and healthful ecology. This is clearly enshrined under Section 16, Article II of the Philippine Constitution.<sup>101</sup> While the Declaration of Principles and State Policies is generally not considered as self-executing, jurisprudence has affirmed that this is one of the provisions that does not need any subsequent legislation in order to make this an actionable right.<sup>102</sup> The landmark decision of *Oposa v. Factoran*<sup>103</sup> further stresses that this provision does not only entail a right, but a further duty incumbent on Filipinos, to preserve and protect the environment for future generations yet unborn.<sup>104</sup> This provision is complimented by Section 15, Article II of the Constitution which provides for the right of the people to health.<sup>105</sup> Other constitutional

99. I ANTONIO G. M. LA VIÑA, PHILIPPINE LAW AND ECOLOGY 125 (2012).

100. *Id.*

101. PHIL. CONST. art. II, § 16. (“The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”).

102. *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792, 805 (1993).

103. *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792 (1993).

104. *Id.*

105. PHIL. CONST. art. II, § 15. (“The State shall protect and promote the right to health of the people and instill health consciousness among them.”).

provisions related to the environment include Article I on the National Territory<sup>106</sup> and Sections 1-5 of Article XII.<sup>107</sup>

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106. PHIL. CONST. art. I.

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

PHIL. CONST. art. I.

107. PHIL. CONST. art. XII, §§ 1-5.

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under

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such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

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



Article X of the Constitution<sup>108</sup> is what lays the basis for the provisions of the Local Government Code. Particularly, Section 4 of the same mandates the President's power of general supervision over the local governments.<sup>109</sup> While the Code provides for a specific set of duties and powers granted to the LGU, nonetheless, the President is still empowered to exercise some form of influence over such units.<sup>110</sup> The kinds of LGUs are also provided for in Section 1, particularly, "provinces, cities, municipalities, and barangays."<sup>111</sup>

The three major powers granted to the local government unit are similar to those inherent in the national government. Section 5 expressly lays down the power of taxation granted to LGUs, as it is provided that each unit has the power to create its own sources of revenue, as well as the levying of taxes, fees, and charges.<sup>112</sup> It is essential to highlight that these shall accrue exclusively for the use of local governments. Section 7 also states that LGUs are to receive "an equitable share in the proceeds of the utilization and development of the national wealth that is found within their respective areas[.]"<sup>113</sup>

## 2. Local Government Code

Pursuant to the Local Government Code, LGUs are mandated to integrate environmental frameworks in their own local development planning.<sup>114</sup> LGUs are thus tasked to enforce all laws and regulations, promulgated by the

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determine, measures to prohibit logging in endangered forests and watershed areas.

Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

PHIL. CONST. art. XII, §§ 1-5.

108. PHIL. CONST. art. X.

109. PHIL. CONST. art. X, § 4.

110. PHIL. CONST. art. X, § 4.

111. PHIL. CONST. art. X, § 1.

112. PHIL. CONST. art. X, § 5.

113. PHIL. CONST. art. X, § 7.

114. LOCAL GOV'T CODE, § 26.

National Government, which have for their purposes the upholding of the right to a healthful and balanced ecology. LGUs have the duty to share responsibility with various government agencies in order to enforce pertinent environmental legislation within their respective territories.<sup>115</sup> This is a necessary consequence of the devolution of powers to local governments, pursuant to the concept and constitutional mandate of local autonomy.

Section 17 (2) (ii) gives municipalities the authority to implement community-based forestry projects.<sup>116</sup> Provinces are given the authority to enforce various environmental laws,<sup>117</sup> while Section 484 provides for the powers and functions of the Local Environment and Natural Resource Office.<sup>118</sup>

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115. *Id.*

116. *Id.* § 17 (2) (ii).

(ii) Pursuant to national policies and subject to supervision, control and review of the DENR, implementation of community-based forestry projects which include integrated social forestry programs and similar projects; management and control of communal forests with an area not exceeding fifty (50) square kilometers; establishment of tree parks, greenbelts, and similar forest development projects[.]

*Id.*

117. *Id.* § 17 (3) (iii). “(iii) Pursuant to national policies and subject to supervision, control and review of the DENR, enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment; and mini-hydroelectric projects for local purposes[.]” *Id.*

118. LOCAL GOV'T CODE, § 484.

Section 484. *Qualifications, Powers[.] and Duties.*

(a) No person shall be appointed environment and natural resources officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in environment, forestry, agriculture or any related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in environmental and natural resources management, conservation, and utilization, of at least five (5) years in the case of the provincial or city environment and natural resources officer, and three (3) years in the case of the municipal environment and natural resources officer.

The appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments.

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- (b) The environment and natural resources management officer shall take charge of the office on environment and natural resources and shall:
- (1) Formulate measures for the consideration of the sanggunian and provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and provision of adequate facilities relative to environment and natural resources services as provided for under Section 17 of this Code;
  - (2) Develop plans and strategies and upon approval thereof, by the governor or mayor, as the case may be, implement the same, particularly those which have to do with environment and natural resources programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;
  - (3) In addition to the foregoing duties and functions, the environment and natural resources officer shall:
    - (i) Establish, maintain, protect and preserve communal forests, watersheds, tree parks, mangroves, greenbelts and similar forest projects and commercial forest, like industrial tree farms and agro-forestry projects;
    - (ii) Provide extension services to beneficiaries of forest development projects and technical, financial and infrastructure assistance;
    - (iii) Manage and maintain seed banks and produce seedlings for forest and tree parks;
    - (iv) Provide extension services to beneficiaries of forest development projects and render assistance for natural resources-related conservation and utilization activities consistent with ecological balance;
    - (v) Promote the small-scale mining and utilization of mineral resources, particularly mining of gold;
    - (vi) Coordinate with government agencies and non-governmental organizations in the implementation of measures to prevent and control land, air and water pollution with the assistance of the Department of Environment and Natural Resources;
  - (4) Be in the frontline of the delivery of services concerning the environment and natural resources, particularly in the renewal and rehabilitation of the environment during and in the aftermath of man-made and natural calamities and disasters;
  - (5) Recommend to the sanggunian and advise the governor or mayor, as the case may be, on all matters relative to the protection, conservation maximum utilization, application of appropriate technology and other matters related to the environment and natural resources; and

### 3. Ecological Solid Waste Management Act of 2000

The Ecological Solid Waste Management Act of 2000<sup>119</sup> provides that the LGU is mandated to be responsible primarily for the enforcement of solid waste management within their jurisdiction.<sup>120</sup> Section 10 of the Act provides for the role of the LGUs in solid waste management.<sup>121</sup> Furthermore, Section 11 provides that a Provincial Solid Waste Management Board shall be established in every province.<sup>122</sup> Representatives from NGOs and other pertinent industries must also take part in this Board, in order to get the full cooperation of the various stakeholders that will be affected by the proposed solid waste management scheme. Section 12 provides for the same Board to be established in the case of cities and municipalities as well.<sup>123</sup> The Board shall be likewise tasked to oversee the implementation of the Provincial Solid Waste Management Plan.<sup>124</sup> Finally, Section 16 requires every province, city or municipality to prepare a 10-year solid waste management plan consistent with the national solid waste management framework.<sup>125</sup> This plan shall be reviewed and updated every year by the Solid Waste Management Board, and shall be subject to the approval of the National Solid Waste Management Commission.<sup>126</sup>

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(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

*Id.* § 484.

119. An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003 (2000).

120. *Id.* § 10. (“Segregation and collection of solid waste shall be conducted at the barangay level specifically for biodegradable, compostable[,] and reusable wastes: Provided, That the collection of non-recyclable materials and special wastes shall be the responsibility of the municipality or city.”).

121. *Id.*

122. *Id.* § 11.

123. *Id.* § 12.

124. Ecological Solid Waste Management Act of 2000, § 11.

125. *Id.* § 16.

126. *Id.*

#### 4. Philippine Clean Water Act of 2004

Another law which makes LGUs responsible for water quality management and its improvement is the Philippine Clean Water Act of 2004.<sup>127</sup> The LGU is mandated to monitor the water quality within its jurisdiction, develop a system of emergency response, and to participate in all efforts to protect and rehabilitate water quality.<sup>128</sup> Under Section 5 specifically, it is provided that the water quality management area shall be governed by a board of representatives composed of mayors and governors of the LGUs concerned.<sup>129</sup> Under Section 6, LGUs are also required to prepare contingency plans “including relocation, whenever necessary for the protection of health and welfare of the residents within potentially affected areas.”<sup>130</sup> LGUs are also expected to prepare a national program on sewerage and septage management in their concerned areas.<sup>131</sup>

#### 5. Philippine Clean Air Act of 1999

The Philippine Clean Air Act of 1999 states that LGUs are tasked with the management and maintenance of air quality.<sup>132</sup> Section 20 of the Act provides for a complete ban on incineration,<sup>133</sup> with a specific call on LGUs to promote

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127. An Act Providing for Comprehensive Water Quality Management and for Other Purposes [Philippine Clean Water Act of 2004], Republic Act No. 9275 (2004).

128. *Id.* § 20 (a)-(b) & (d).

129. *Id.* § 5.

130. *Id.* § 6.

131. *Id.* § 7.

132. An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749, § 8 (1999).

133. *Id.* § 20.

Section 20. *Ban on Incineration.* — Incineration, hereby defined as the burning of municipal, bio-medical and hazardous wastes, which process emits poisonous and toxic fumes, is hereby prohibited: Provided, however, That the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation ‘siga’, traditional, agricultural, cultural, health, and food preparation and crematoria: Provided, further, That existing incinerators dealing with bio-medical wastes shall be phased out within three (3) years after the effectivity of this Act: Provided, finally, That in the interim, such units shall be limited

ecological solid waste management to meet these goals. Furthermore, the law also highlights the role of the LGUs in establishing an Integrated Air Quality Framework with the DENR.<sup>134</sup> Section 7 specifically points out that the framework must be established with the participation of key stakeholders, such as LGUs, NGOs, public offices, and the academe.<sup>135</sup> This framework must also “prescribe the emission reduction goals using permissible standards, control strategies[,] and control measures to be undertaken within a specified time period, including cost-effective use of economic incentives, management strategies, collective action, and environmental education and information.”<sup>136</sup> The provision ends with highlighting that the Integrated Air

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to the burning of pathological and infectious wastes, and subject to close monitoring by the Department.

Local government units are hereby mandated to promote, encourage and implement in their respective jurisdiction a comprehensive ecological waste management that includes waste segregation, recycling and composting.

With due concern on the effects of climate change, the Department shall promote the use of state-of-the-art, environmentally-sound and safe non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, unrecycled, uncomposted municipal, bio-medical and hazardous wastes.

*Id.*

134. *Id.* § 7.

135. *Id.*

136. *Id.* The provision is reproduced as follows —

Section 7. Integrated Air Quality Improvement Framework. — The Department shall, within six (6) months after the effectivity of this Act, establish, *with the participation of LGUs*, NGOs, POs, the academe and other concerned entities from the private sector, formulate and implement the Integrated Air Quality Improvement Framework for a comprehensive air pollution management and control program. The framework shall, among others, prescribe the emission reduction goals using permissible standards, control strategies and control measures to be undertaken within a specified time period, including cost-effective use of economic incentives, management strategies, collective action, and environmental education and information.

The Integrated Air Quality Improvement Framework shall be adopted as the official blueprint with which all government agencies must comply with to attain and maintain ambient air quality standards.

Philippine Clean Air Act of 1999, § 7 (emphasis supplied).

Quality Improvement Framework shall be adopted as a blueprint for all stakeholders to then follow.

#### 6. Forestry Code of the Philippines

While the Forestry Code of the Philippines<sup>137</sup> does not directly impose any liability or duty upon the LGUs, it is incumbent to take a look at its provisions in order to assess what can and cannot be done by the LGU. The Forestry Code establishes the creation of the Bureau of Forest Development (now the Forest Management Bureau under the DENR),<sup>138</sup> and Section 5 of the Code states that the Bureau has jurisdiction and authority over “all forest land, grazing lands, and all forest reservations including watershed reservations presently administered by other government agencies or instrumentalities.”<sup>139</sup>

Section 20 provides for how one would go about gaining permission to utilize any forest land.<sup>140</sup> It is stated that one needs to obtain the necessary license agreement or permit, before any activity is undertaken.<sup>141</sup> Thus, although LGUs may have forest lands within their territory, this does not mean that the entirety of the land can be freely used by them in any way that they wish. LGUs are still mandated by law to acquire the requisite permissions and undergo the processes promulgated by the DENR. Section 27 further provides that even after a license agreement is granted, this does not mean that it is absolute.<sup>142</sup> The 25-year renewable period puts a cap on any issued agreement, and likewise affirms that should any corporation break the terms of such license agreement, the privilege shall be automatically terminated.<sup>143</sup>

Finally, Section 49 of the Code provides that in the construction of “[r]oads and other infrastructure[, and] forest lands [must] be constructed with the least impairment [of] the resource values thereof.”<sup>144</sup> This implies that when LGUs undertake construction projects for development within their

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137. Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines [REV. FORESTRY CODE], Presidential Decree No. 705 (1975).

138. *Id.* § 4.

139. *Id.* § 5.

140. *Id.* § 20.

141. *Id.*

142. *Id.* § 27.

143. REV. FORESTRY CODE, § 27.

144. *Id.* § 49.

own territory, they must coordinate with the Bureau if the construction projects will significantly affect any forest lands.<sup>145</sup> It is provided that the Bureau will likewise extend assistance and the planning and establishment of such infrastructures, in order to ensure that no natural resources will be carelessly harmed.<sup>146</sup>

The DENR has been implementing a Community Based Forest Management Program, wherein participating people's organizations can enter into an agreement with the DENR for a period of 25 years renewable for another 25 years and shall provide tenurial security and incentives to develop, utilize, and manage specific portions of forest lands.<sup>147</sup>

#### 7. Philippine Fisheries Code of 1998 (As Amended)

The Philippine Fisheries Code of 1988<sup>148</sup> imposes a duty on local governments in terms of the establishment of license fees for the use of fisheries resources. Section 6, in particular, spells out that the license fees of fishery activity in any municipal body of water must be determined by the LGU.<sup>149</sup> This is not to say that the fees and charges will be based solely upon the discretion of the LGU, but it must also consult with the Fisheries and Aquatic Resources Management Council (FARMC).<sup>150</sup> The respective FARMC within the territory of the LGU is tasked to likewise recommend the establishment of closed seasons in municipal waters as well as the proper means of fisheries

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145. *Id.*

146. *Id.*

147. Department of Environment and Natural Resources, Rules and Regulations Implementing the Adopting Community-Based Forest Management as the National Strategy to Ensure the Sustainable Development of the Country's Forestlands Resources and Providing Mechanisms for its Implementation, Executive Order No. 263, § 14 (1995) & Department of Environment and Natural Resources, Revised Rules and Regulations Governing the Administration and Management of Foreshore Lands, § 11 (2004).

148. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [FISHERIES CODE], Republic Act No. 8550 (1998).

149. *Id.* § 4 (19) & 6.

150. *Id.*



management.<sup>151</sup> In general, Section 16 gives LGUs the authority to enforce all fisheries laws, rules, and regulations, as well as valid fisheries ordinances.<sup>152</sup>

#### 8. Environmental Impact Statement System

An important feature of Philippine environmental law is the Environmental Impact Statement System (EISS), as enshrined in Presidential Decree No. 1586.<sup>153</sup> As per Section 2, the EISS was established in order for all agencies and instrumentalities of the national government, as well as government-owned and controlled corporations and private corporations, to comply with certain principles when it comes to undertaking projects which may damage Philippine natural resources.<sup>154</sup> Section 4 instructs that the President must make his or her own assessment, or upon the recommendation of the National Environmental Protection Council, to declare whether certain projects or areas in the Philippines can be deemed as environmentally critical — and thus, disallowing any project to be undertaken in that specified area.<sup>155</sup> This section also establishes that one must secure an Environmental Compliance Certificate (ECC) before pursuing such a project.<sup>156</sup>

All other projects that are not classified under Section 4 are deemed to be environmentally non-critical projects.<sup>157</sup> However, Section 5 provides that while such projects are not required to submit an Environmental Impact Statement, these must still be monitored and may still be subject to certain undertakings and safeguards, in order to alleviate risk.<sup>158</sup>

The EISS plays an important role in empowering the DENR and other administrative agencies to closely watch if any project undertaken by an LGU or a private corporation may potentially damage natural resources to a point

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151. *Id.* § 9.

152. *Id.* § 16.

153. Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

154. *Id.* § 2.

155. *Id.* § 4.

156. *Id.*

157. *Id.* § 5.

158. *Id.*

of no return.<sup>159</sup> This system of checks is also used in order to deter any corporation which intends to use environmentally harmful practices in construction, while assuring that any entity granted an ECC will be closely monitored.

*E. Jurisprudence on LGU Powers in Relation to Environmental Law*

The Supreme Court has also provided for many examples demonstrating the metes and bounds of the general welfare clause. While the Local Government Code has provided that LGUs are permitted to undertake such measures as they deem fit,<sup>160</sup> this does not mean that it is still without limits. The following examples in jurisprudence illustrate how the Supreme Court comes in with their own set of checks and balances, to ensure that the police power of LGUs is being exercised in a confiscatory manner. The Court has also been unafraid in ruling in favor of the rights of persons to a balanced and healthful ecology, and thus overriding the discretion of LGUs in favor of that of the general public. Nonetheless, the Court has also upheld issuances of LGUs that seem to favor the environment, over that of the property rights of big businesses — when they deemed that there is a greater public interest in the matter at hand.

In the case of *Tano v. Socrates*,<sup>161</sup> the Sangguniang Panlungsod ng Puerto Princesa enacted an ordinance with the objective of banning the shipment of live fish and lobster outside the province for five years.<sup>162</sup> A year later, a similar resolution was passed by the Sangguniang Panlalawigan of Palawan, which prohibited the catching, buying, and selling of certain species of aquatic organisms dwelling in their marine territory for five years as well.<sup>163</sup> Fisherfolk challenged the ordinance and resolution before the court, arguing that such pieces of legislation were actually confiscatory — as it affected their livelihood and unduly restricted them from the practice of their trade.<sup>164</sup>

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159. See Department of Environment and Natural Resources, Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS), Administrative Order No. 30, Series of 2003 [DENR A.O. No. 2003-30], § 1 (2003).

160. LOCAL GOV'T CODE, § 16.

161. *Tano v. Socrates*, G.R. No. 110249, 278 SCRA 154 (1997).

162. *Id.* at 162.

163. *Id.* at 164.

164. *Id.* at 168.

The Supreme Court upheld the ordinances as a valid exercise of police power.<sup>165</sup> This was further justified under the police power of the LGU, done in order to protect public interests and the right to a balanced and healthful ecology of its constituents.<sup>166</sup> The general welfare clause was likewise invoked, in order to give LGUs greater power to accelerate economic development within their respective communities.<sup>167</sup> The Authors would also like to highlight an important takeaway from the dissenting opinion of Justice Josue N. Bellosillo. He argued that while it is expressly provided that LGUs share with the national government the responsibility in the management and maintenance of the ecological balance, this still must be done subject to the provisions of the Local Government Code as well as other promulgated national policies.<sup>168</sup>

Another decision which intertwines the powers of the LGU and its role in upholding one's right to a balanced and healthful ecology is the case *Province of Rizal v. Executive Secretary*.<sup>169</sup> In that case, the Secretary of the Department of Public Works and Highways (DPWH), the Secretary of the Department of Environment and Natural Resources (DENR), and the Governor of the Metropolitan Manila Commission (now the Metro Manila Development Authority) entered into a Memorandum of Agreement (MOA) to allow the Metropolitan Manila Commission to utilize a certain property in San Mateo, Rizal as a landfill site.<sup>170</sup> Because of this, the Sangguniang Bayan of San Mateo argued that it had passed a Resolution banning the creation of dumpsites for Metro Manila's garbage within its own jurisdiction.<sup>171</sup>

The Supreme Court ruled in favor of San Mateo, and resolved that the landfill must be closed.<sup>172</sup> It was ratiocinated that the Local Government Code grants LGUs "all the necessary powers to promote the general welfare of their inhabitants."<sup>173</sup> It was stated —

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165. *Id.* at 180.

166. *Id.* at 179 & 182.

167. *Tano*, 278 SCRA at 180.

168. *Id.* at 205 (J. Bellosillo, dissenting opinion).

169. *Province of Rizal v. Executive Secretary*, G.R. No. 129546, 477 SCRA 436 (2005).

170. *Id.* at 439-40.

171. *Id.* at 440.

172. *Id.* at 469.

173. *Id.* at 463.

Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local communities, and prior approval of the project by the appropriate sanggunian. Absent either of these mandatory requirements, the project's implementation is illegal.<sup>174</sup>

Given that there was no prior consultation with the affected communities, the creation of the San Mateo dumpsite was considered to be an illegal project.<sup>175</sup>

The next set of cases show limitations on the powers of LGUs, and in the alternative, call on local governments to be more circumspect when it comes to the environment. In the case of *Osmeña v. Garganera*,<sup>176</sup> the Supreme Court decided on a conflict between the need of the City to dispose of its garbage in a landfill site versus the need to uphold the right of the general public to a balanced and healthful ecology.<sup>177</sup> The DENR had issued an Environmental Compliance Certificate to the Solid Waste Sanitary Landfill Project at Inayawan Landfill, which then served as the garbage disposal site of Cebu City.<sup>178</sup> However, respondents argued “that the continued operation of the Inayawan landfill ... threaten[ed] ... [the] right [of the people] to a balanced and healthful ecology.”<sup>179</sup>

This led to the high court ruling against Cebu City.<sup>180</sup> The Court stated that while it sympathized with the dilemma of the mayor, it still cannot succumb to the serious and injurious consequences of the landfill to the health of residents.<sup>181</sup> The Supreme Court also laid down the doctrine that the rules set by the DENR cannot define the exact nature of environmental damage for something to be considered as “sufficiently grave.”<sup>182</sup> It was provided that

the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of

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174. *Id.* at 467 (emphases omitted).

175. *Province of Rizal*, 477 SCRA at 469.

176. *Osmeña v. Garganera*, G.R. No. 231164, 859 SCRA 513 (2018).

177. *See id.* at 529.

178. *Id.* at 516.

179. *Id.* at 518–19.

180. *Id.* at 522.

181. *Id.* at 529.

182. *Osmeña*, 859 SCRA at 524.

such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ [of Kalikasan] is, thus, to be decided on a case-to-case basis.<sup>183</sup>

Thus, the *Osmehña* decision proves that the powers of LGUs to enact ordinances are not absolute. The Court will step in and strike down any enacted piece of legislation which it deems as a circumvention of a fundamental right of the people to a balanced and healthful ecology, enshrined by the Constitution.<sup>184</sup>

Another case which demonstrates how the Court has ruled in favor of the right to a balanced and healthful ecology over the police power granted to LGUs is the case of *Laguna Lake Development Authority v. Court of Appeals*.<sup>185</sup> The Task Force of Our Lady of Lourdes Parish filed a letter-complaint before the Laguna Lake Development Authority (LLDA), concerning the opening of an 8.6-hectare dumpsite located in Barangay Camaric, Caloocan City.<sup>186</sup> The Task Force argued that the opening of the dumpsite would lead to the residents of Barangay Camaric greatly suffering due to the toxic and hazardous fumes that would emanate from the disposal.<sup>187</sup> Although the LLDA issued a Cease and Desist Order against the City Government of Caloocan to stop them from operating the dump site, after one year, operations continued.<sup>188</sup>

The Court ruled in favor of the LLDA, stating outright that it had the authority to entertain the complaint against the opening of the dumpsite and that it had the power to issue the cease and desist order to prevent operations.<sup>189</sup> The case of *Pollution Adjudication Board v. Court of Appeals*<sup>190</sup> was cited, stating —

The relevant pollution control statute and implementing regulations were enacted and promulgated in the exercise of that pervasive, sovereign power to protect the safety, health, and general welfare and comfort of the public,

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183. *Id.* (citing *Paje v. Casiño*, 752 Phil. 498, 538 (2015)).

184. PHIL. CONST. art. II, § 16.

185. *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, 231 SCRA 292 (1994).

186. *Id.* at 296.

187. *Id.* at 296.

188. *Id.* at 297.

189. *Id.* at 305.

190. *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, 195 SCRA 112 (1991).

as well as the protection of plant and animal life, commonly designated as the police power. It is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those here involved, through the exercise of police power.<sup>191</sup>

Lastly, the case of *League of Provinces of the Philippines v. Department of Environmental and Natural Resources*<sup>192</sup> shows that LGU powers are not only subject to the Executive's supervision, but rather control as well when it comes to environment and natural resources matters. In this case, the Supreme Court discussed how the Local Government Code did not fully devolve the enforcement of the small-scale mining law to LGUs, and that the DENR Secretary still has the power of supervision, control, and review in order to carry out its mandate to control and supervise the exploration, development, and utilization of the country's natural resources.<sup>193</sup>

The case is concerned with the constitutionality of the Local Government Code<sup>194</sup> vis-à-vis Republic Act No. 7076 (People's Small-Scale Mining Act of 1991).<sup>195</sup> It arose when a certain Golden Falcon applied for a Financial or Technical Assistance Agreement (FTAA), which was denied by the DENR.<sup>196</sup> Because of this, the League of Provinces of the Philippines decided to join the appeal of such decision — as they argued that a favorable ruling would not only benefit one province, but all local governments.<sup>197</sup> The League claimed that the act of the Secretary of the DENR in nullifying small-scale mining permits amounted to executive control.<sup>198</sup>

In resolving the issue, the Supreme Court ruled upon whether or not Section 17 (b) (3) (iii) of the Local Government Code<sup>199</sup> and Section 24 of

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191. *Laguna Lake Development Authority*, 231 SCRA at 307 (citing *Pollution Adjudication Board*, 195 SCRA at 123).

192. *League of Provinces of the Philippines v. Department of Environmental and Natural Resources*, G.R. No. 175368, 696 SCRA 190 (2013).

193. *Id.* at 211.

194. LOCAL GOV'T CODE.

195. An Act Creating a People's Small-Scale Mining Program and for Other Purposes [People's Small-Scale Mining Act of 1991], Republic Act No. 7076 (1991).

196. *League of Provinces of the Philippines*, 696 SCRA at 199.

197. *Id.* at 203.

198. *Id.* at 208.

199. LOCAL GOV'T CODE, § 17 (b) (3) (iii).

the Small-Scale Mining Act<sup>200</sup> are unconstitutional, as these grant the power of control over the LGUs to the DENR.<sup>201</sup> The Court upheld the provisions, stating that it is the DENR that is in-charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, and utilization of the country's natural resources.<sup>202</sup> It was held that "the enforcement of the small-scale mining law by the provincial government is [indeed] subject to the supervision, control[,] and review of the DENR,"<sup>203</sup> as "[t]he DENR Secretary exercises quasi-judicial function[s] under [Republic Act] No. 7076 and its [IRR]."<sup>204</sup> This quasi-judicial power furthermore cannot be "equated with the [ ]substitution of judgment[ ] by the Provincial Governor[, when it comes to] issuing [s]mall-[s]cale [m]ining [p]ermits[.]"<sup>205</sup> Neither does the Provincial Governor have control over such decision.<sup>206</sup> The Court ultimately held that the decision of the DENR Secretary was rendered in accordance of its granted power to review such permits, as provided for by law.<sup>207</sup>

#### *F. Cities Fighting Climate Change: Examples of Best Practices*

Around the globe, many cities have also undertaken their own individual efforts to combat climate change. While some of the following examples were done with the support of their respective national governments, many of these best practices were done through the efforts of strong local government units who felt it incumbent upon them to take on this role, in their own way.<sup>208</sup> While it is acknowledged that the Philippines employs a different government system and that some areas may not have the same infrastructure or resources, the Authors propose that taking a look at such examples would still be essential to encourage local governments to take climate action and address the climate crisis.

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200. People's Small-Scale Mining Act of 1991, § 24.

201. *League of Provinces of the Philippines*, 696 SCRA at 207.

202. *Id.* at 211.

203. *Id.* at 213.

204. *Id.* at 223.

205. *Id.*

206. *See id.*

207. *See League of Provinces of the Philippines*, 696 SCRA at 223.

208. *See* C40 Cities Climate Leadership Group, *supra* note 21.

One example that many might be familiar with was the response of many U.S. cities to then President Trump's withdrawal from the Paris Agreement.<sup>209</sup> After President Trump announced this, many cities and citizen rights groups still stood their ground and opposed such action on the part of the former President.<sup>210</sup> Many cities still carried on in their efforts to combat climate change, although they were no longer obligated under the Paris Agreement.<sup>211</sup>

In Bogota, Colombia, the city developed the "Ciclovía Programme," which translates to "bike path."<sup>212</sup> This community-based program was promulgated with the aim of creating safer spaces in the middle of the town for walking, bicycling, and other social activities.<sup>213</sup> The LGU took to temporarily close streets to automobiles for active recreation.<sup>214</sup> Ciclovía was first pioneered in the 1970s, with the goal of closing down two of the main arteries of the city for one day.<sup>215</sup> Since then, the program has continued to develop, with currently "a circuit of 121 kilometers ... of the main avenues [in Bogota being] closed every Sunday and on holidays[,] ... [with] 600[,]000 to 1[,]400[,]000 participants [every] Sunday."<sup>216</sup>

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209. See We Are Still In, "We Are Still In" Declaration, available at <https://www.wearestillin.com/we-are-still-declaration> (last accessed May 11, 2021) [<https://perma.cc/3Q7K-6E37>].

210. *Id.*

211. *Id.*

212. Rapid Transition Alliance, Reclaiming the Streets: The Increasing Trend of Pedestrianisation Around the World, available at <https://www.rapidtransition.org/stories/reclaiming-the-streets-the-increasing-trend-of-pedestrianisation-around-the-world> (last accessed May 11, 2021) [<https://perma.cc/JL9A-M9PE>] & Andrea Torres, et al., *The Ciclovía and Cícloruta Programs: Promising Interventions to Promote Physical Activity and Social Capital in Bogotá, Colombia*, 103 AM. J. PUB. HEALTH e23, e23 (2013).

213. See Torres, et al., *supra* note 212, at e23 (citing Olga Sarmiento, et al., *The Ciclovía-Recreativa: A Mass-Recreational Program With Public Health Potential*, 7 (Suppl 2) J. PHYSICAL ACTIVITY & HEALTH S163 (2010)).

214. *Id.* & Rapid Transition Alliance, *supra* note 212.

215. Rapid Transition Alliance, *supra* note 212.

216. Torres, et al., *supra* note 212, at e23 (citing Sarmiento, et al., *supra* note 213 & Adriana Díaz del Castillo, et al., *Translating Evidence to Policy: Urban Interventions and Physical Activity Promotion in Bogotá, Colombia and Curitiba, Brazil*, 1 TRANSL. BEHAV. MED. 350 (2011)).



Rio de Janeiro in Brazil has likewise developed the Morar Carioca Program.<sup>217</sup> This program is a comprehensive urban revitalization strategy, which invests in projects throughout the city in order to formalize the city's favelas.<sup>218</sup> Since its conception in 2013, 55 projects have already been completed, by providing a better means of livelihood and welfare for an estimated 200,000 of the population of Rio.<sup>219</sup>

Halfway across the globe, the government of Oslo has pledged to be a zero-emissions city by 2030.<sup>220</sup> Oslo has stated that one of its goals is to cut greenhouse gas emissions by 95%.<sup>221</sup> Some measures that the city has undertaken is the transformation of parking spaces to bike lanes, the establishment of more parks and gardens, the use of electric buses and ferries, and working on a shift from diesel equipment to electric equipment for its constructions.<sup>222</sup> While this may seem like a dream for more developing nations, the local government of Oslo proves that investing in the right equipment from the get-go is one way to erase your carbon footprint.

Meanwhile, in other measures undertaken in order to lessen the carbon emissions coming from construction, the city of Melbourne has undertaken a Sustainable Buildings Program.<sup>223</sup> The program brings together support for

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217. C40 Cities Climate Leadership Group, Rio de Janeiro: Morar Carioca, *available at* <https://www.c40.org/profiles/2013-riodejaneiro> (last accessed May 11, 2021) [<https://perma.cc/GH72-L8FH>] & Meg Healy & Sabrina Norris, After Years of Waiting, Morar Carioca Finally Launched in Pica-Pau, *available at* <https://www.rioonwatch.org/?p=28808> (last accessed May 11, 2021) [<https://perma.cc/SVK9-SYBD>].

218. *Id.*

219. C40 Cities Climate Leadership Group, City Climate Leadership Awards Rio de Janeiro Climate Close-Up, at 2, *available at* <https://www.c40.org/2013-close-up/riodejaneiro-closeup.pdf> (last accessed May 11, 2021) [<https://perma.cc/3SZV-HYKM>].

220. Adele Peters, This Is What a Zero-Emissions City Looks Like, *available at* <https://www.fastcompany.com/90552168/this-is-what-a-zero-emissions-city-looks-like> (last accessed May 11, 2021) [<https://perma.cc/8JZV-6TV3>] & Hilde Solli & Nils Gelting Andresen, Oslo's New Climate Strategy, *available at* <https://www.klimaoslo.no/2020/06/10/oslos-new-climate-strategy> (last accessed May 11, 2021) [<https://perma.cc/B6EC-23GL>].

221. *Id.*

222. Peters, *supra* note 220.

223. C40 Cities Climate Leadership Group, Melbourne — Sustainable Building Program, *available at* <https://www.c40.org/awards/2013-awards/profiles/4> (last

building owners to “complete energy and water retrofits” in order to improve the overall water efficiency of privately-owned commercial buildings within the city.<sup>224</sup> The program also entails equipping building owners with knowledge of innovative city design, in order to best suit their needs while taking into consideration sustainable development.<sup>225</sup>

The city of Seoul continues to reaffirm their commitment to combatting climate change, together with its citizens. The “Promise of Seoul”<sup>226</sup> program is an effort undertaken to change the lifestyle of the city’s millions of citizens, with the creation of a comprehensive climate strategy adopted by the Seoul Metropolitan Government at the ICLEI — Local Governments for Sustainability 2015 Conference.<sup>227</sup> The program involves the Seoul Metropolitan Government working closely with its citizens and big businesses in order to improve energy efficiency and conservation across the city, with efforts including the training of residents to act as energy consultants.<sup>228</sup> Its committee is composed not just of public officials, but involves a number of citizen groups ranging from housewives and senior citizens to researchers and journalists.<sup>229</sup> This effort highlights the fact that the government cannot

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accessed May 11, 2021) [<https://perma.cc/PT95-AH3B>] & Sustainable Australia Fund, Global Recognition for Melbourne’s Buildings, *available at* <https://sustainableaustraliafund.com.au/global-recognition-melbournes-buildings> (last accessed May 11, 2021) [<https://perma.cc/GG78-VHRQ>].

224. *Id.*

225. *Id.*

226. Seoul Metropolitan Government, Promise of Seoul: Taking Action Against Climate Change, *available at* <https://ccacoalition.org/en/resources/promise-seoul-taking-action-against-climate-change> (last accessed May 11, 2021) [<https://perma.cc/YW5B-KCHC>] & Dana Vigran & Happy Tiara Asvita, An Interfaith Coalition for Climate Action, *available at* <https://thesolutionsjournal.com/2020/03/09/interfaith-coalition-climate-action> (last accessed May 11, 2021) [<https://perma.cc/N4Y7-K7PV>].

227. Seoul Metropolitan Government, Taking Actions Against Climate Change Promise of Seoul, at 8, *available at* [https://www.ccacoalition.org/en/file/4073/download?token=z\\_eAKOeR](https://www.ccacoalition.org/en/file/4073/download?token=z_eAKOeR) (last accessed May 11, 2021) [<https://perma.cc/HG5F-3FE7>].

228. *See id.* at 8 & 10.

229. CityTalk, The Seoul Connection: One City’s Mission to Spread Climate Action, *available at* <https://talkofthecities.iclei.org/the-seoul-connection-one-citys-mission-to-spread-climate-action> (last accessed May 11, 2021) [<https://perma.cc/U3ZG-WZPV>].

undertake such a feat on its own, and it involves the cooperation of every sector of the city in order to take greater strides.

### III. ANALYSIS: CLIMATE CHANGE MATTERS TO LGUS

The discussions above point to one clear fact — climate change matters to local governments. Given the real and imminent threat of this phenomenon, there is an urgent need for government leaders and decision makers to take this issue more seriously and with the same urgency as its response to the Covid-19 pandemic. Local governments are at the forefront of any response to climate change,<sup>230</sup> especially for a high climate-risk country like the Philippines. More importantly, what is increasingly apparent is that cities and other LGUs have the power to address the risks, impacts, and hazards of climate-related events. This Section will analyze and elaborate on these points and make the case for putting climate change and climate action at the top of the LGU agenda.

#### *A. LGUs Are at the Forefront of Addressing Climate Change in the Philippines*

The role of local governments in meeting the challenges of climate change cannot be understated. Not only are they on the frontlines of climate risks and impacts — such as super typhoons, rising sea levels, coastal flooding, and landslides — they are equally poised to take much needed measures on climate adaptation and mitigation.<sup>231</sup> When disaster happens, whether natural or man-made, it is the local government which is duty-bound to respond first. In many far-flung rural communities, the only face of government known by citizens is that of the local government. Thus, in those communities, when people look to the government, they look towards local leaders and the LGU structure.

This position and role of LGUs as first responders and frontliners finds basis in both the 1987 Constitution and in national laws, regulations, and policies. Article II, Section 25 of the Constitution calls on the State to recognize local autonomy.<sup>232</sup> Article X of the Constitution provides for

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230. Philippine EnviroNews, In the Philippines, Effective Local Climate Action Plans Are Crucial in Ensuring Resilience, *available at* <https://www.eco-business.com/news/in-the-philippines-effective-local-climate-action-plans-are-crucial-in-ensuring-resilience> (last accessed May 11, 2021) [<https://perma.cc/5L8V-CRPA>].

231. Cities and Climate Change, *supra* note 15, at 1.

232. PHIL. CONST. art. II, § 25.

specific provisions which ensure and actualize local autonomy.<sup>233</sup> These constitutional provisions are echoed in the Local Government Code, which provide for the General Welfare Clause where LGUs are tasked to protect and preserve the environment.<sup>234</sup> It can thus be equally argued that this necessarily includes taking climate action. In addition, the laws analyzed in this Article show the importance and relevance of LGUs when implementing core environmental legislation.

*B. Existing Powers Sufficient for LGUs to Act*

Given the immense responsibility which LGUs have on climate change, the next level of analysis is whether local governments have sufficient powers to respond to this challenge. The analysis and discussions above show that LGUs indeed have a wide range of powers at their disposal to address the impacts of climate change. These powers come from the Constitution and various laws, and have been reinforced by Supreme Court decisions.

First, the three powers of local governments — police power, eminent domain, and the power of taxation — can be utilized by LGUs in creative and imaginative ways to implement climate adaptation and mitigation measures.<sup>235</sup> Local autonomy gives sufficient flexibility for local governments to find the right actions, taking into account the local conditions and the specific needs of their jurisdiction. After all, they are in the best position to know the needs of their constituents. For example, in addressing potential flood hazards brought about by climate change, a highly-urbanized LGU may consider flood control projects such as improved drainage, pumping stations, and elevated roads. On the other hand, a rural municipality can look at more nature-based solutions, such as protecting and preserving forested areas and watersheds as natural sinks, or designating high elevation areas as no-build safe zones.

Second, local governments have also been mandated by different environmental laws to perform essential functions which impact climate action. These tasks may be directly or indirectly stipulated, and empower LGUs to protect and preserve various aspects of the environment, or enforce specific provisions of the law. As will be discussed below, enforcement of environmental laws is crucial towards meeting climate goals.

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233. PHIL. CONST. art. X.

234. LOCAL GOV'T CODE, § 16.

235. Recommended actions that LGUs can undertake are discussed in the Conclusion of this Article.

One important point to make which local governments must realize is that the nexus between environment and climate change is now clearer than ever.<sup>236</sup> Whereas before, climate change was merely seen as one of the many distinct issues of environmental law, there is now growing acceptance that the climate crisis cannot be addressed without finding solutions to long-standing environmental problems.<sup>237</sup> Climate change is a cross-cutting issue that requires multi-pronged and simultaneous solutions to threats to nature and ecosystems, and the planet's health.<sup>238</sup> It can be referred to as a lens by which decisions affecting the environment are viewed through and analyzed. Thus, it makes the task of LGUs not only more challenging but also more critical in the fight against climate change.

The Local Government Code and other laws devolved important environment and natural resources functions to LGUs.<sup>239</sup> These powers range from forest protection and conservation, fish and marine resources conservation, waste management, air and water pollution management in their respective areas, and the issuance environmental impact assessments, just to name a few.<sup>240</sup> The proper, effective, and oftentimes creative and imaginative implementation of these laws will greatly benefit local climate action. Protecting nature, effectively enforcing environmental laws, and sustainably and equitably using natural resources all inure to efforts of addressing climate change.

Third, the use of these local government powers have consistently been upheld by jurisprudence; and equally important is that the Supreme Court will call out LGUs when these powers are not exercised for the environment. There is no doubt that LGUs can exercise the powers granted by the Constitution and laws to protect and preserve the environment and to effectively enforce environmental laws and policies. Thus, since it has been established that this important role of LGUs is critical for climate action, it can be surmised that local governments can also act to address climate impacts, pursuant to their constitutional and legal mandate. This is true even in the

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236. See Aline Chiabai, et al., *The Nexus Between Climate Change, Ecosystem Services and Human Health: Towards a Conceptual Framework*, 635 SCI. TOTAL ENV'T, 1191, 1192 (2018).

237. *Id.*

238. *Id.* at 1191.

239. See LA VIÑA, *supra* note 99, at 124-42.

240. *Id.*

absence of a specific reference to climate change, since it has been established that implementing environmental laws benefits climate action.

### *C. Implementing Existing Environmental Law Critical to Climate Fight*

Responding to the climate crisis requires action on multiple fronts. One of the battle lines is the implementation of environment and natural resources laws and many of these heavily involve and rely on local governments to be effective and successful. The laws surveyed in this Article identify some of the critical environmental laws which impact, directly or indirectly, climate action.

#### 1. Forestry Code

Forests are important in climate adaptation and mitigation methods. As a mitigation tool, forests — the lungs of the earth — act as carbon sinks helping to reduce the amount of carbon dioxide in the atmosphere.<sup>241</sup> Equally important are their functions on climate adaptation. Forests help reduce climate induced risks and hazards such as floods and landslides.<sup>242</sup> Healthy forests also help ensure a thriving ecosystem and biodiversity, which in turn can address issues such as food and water scarcity.<sup>243</sup> They can also help ensure the protection of wildlife and other flora and fauna, a key component in preventing future deadly pandemics.<sup>244</sup>

#### 2. The Clean Air Act

Preventing air pollution and regulating emissions has perhaps the clearest benefits for climate action. Major sources of carbon emissions are pollution

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241. Forests and Climate Change, *available at* <http://www.fao.org/3/ac836e/AC836E03.htm> (last accessed May 11, 2021) [<https://perma.cc/P55H-QJNT>].

242. See European Environment Agency, Forests Can Help Prevent Floods and Droughts, *available at* <https://www.eea.europa.eu/highlights/forests-can-help-prevent-floods> (last accessed May 11, 2021) [<https://perma.cc/757N-8G3S>] & KEITH FORBES & JEREMY BROADHEAD, FORESTS AND LANDSLIDES: THE ROLE OF TREES AND FORESTS IN THE PREVENTION OF LANDSLIDES AND REHABILITATION OF LANDSLIDE-AFFECTED AREAS IN ASIA vii (2d ed. 2013).

243. International Union for Conservation of Nature, Forests and Climate Change, *available at* <https://www.iucn.org/resources/issues-briefs/forests-and-climate-change> (last accessed May 11, 2021) [<https://perma.cc/UU7C-UM8L>].

244. *Id.*

from transport and industries.<sup>245</sup> Enforcing existing standards is a logical first step to curbing further rise in carbon emissions, and for eventually implementing more stringent measures and new mechanisms (some of which will be discussed below).

### 3. The Clean Water Act and the Fisheries Code

The proper implementation of the Clean Water Act will help ensure that water is available as it becomes scarcer due to climate change.<sup>246</sup> Protecting existing fresh water sources from pollution as well as ensuring its rational use will help meet climate adaptation goals. Similarly, the protection of marine resources not only from pollution but from over exploitation, through the Fisheries Code,<sup>247</sup> will help the country adapt to a world where food systems will be pushed to its limits due to climate change. Climate impacts on the oceans will make protecting and conserving marine resources more imperative, especially for an archipelagic and coastal country like the Philippines.

### 4. The Ecological Solid Waste Management Act

One might argue that waste management has nothing to do with the climate crisis. On the contrary, effectively dealing with waste and ensuring the proper implementation of the Ecological Solid Waste Management Act<sup>248</sup> has both direct and indirect benefits to addressing climate change. Its proper implementation will mean the absence of garbage which can clog drains and waterways. This will in turn reduce flood hazards due to increased and stronger rainfall, and also help ensure the availability of fresh water supply. Ensuring that only sanitary landfills are in operation also has climate benefits — open dumps with mixed waste produces higher amounts of methane, another greenhouse gas more potent than carbon dioxide.<sup>249</sup> Lastly, ensuring

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245. United States Environmental Protection Agency, Carbon Pollution from Transportation, *available at* <https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation> (last accessed May 11, 2021) [<https://perma.cc/ED6L-QFPD>].

246. Philippine Clean Water Act of 2004, § 2.

247. FISHERIES CODE.

248. Ecological Solid Waste Management Act of 2000.

249. Erica Gies, Landfills Have a Huge Greenhouse Gas Problem. Here's What We Can Do About It., *available at* <https://ensia.com/features/methane-landfills/#:~:text=But%20at%20the%20landfill%2C%20the,worsening%20health>

proper segregation, recycling, and eventual re-use of products (e.g., plastics) will help reduce the need to produce new ones which will require the use of more fossil fuels.

#### 5. Philippine Environmental Impact Statement System (PEISS)

The PEISS is one of the oldest enforced major environmental laws in the Philippines.<sup>250</sup> Although it has been updated and modernized through administrative issuances of the DENR, it is a testament to the importance of conducting an environmental impact assessment before any project or activity is allowed. As a screening and decision-making tool, the PEISS allows the government, including LGUs, to have all the information made available to them in terms of the project's environmental impacts, hazards, and risks; including how to mitigate or eliminate the same.<sup>251</sup> This assessment becomes even more critical when viewed through the lens of climate change. On the other hand, local governments are also not exempt from the requirements of conducting an EIA and securing an ECC — which underscores the importance of this decision-making tool to environmental protection and climate action.<sup>252</sup>

#### IV. CONCLUSION: SETTING IN MOTION LOCAL ACTION ON CLIMATE CHANGE

At this point, an apt question to raise is that if LGUs have sufficient powers and the legal mandate and authority to address climate change, then how come little or not enough has been done so far?

To answer this question, there is a need to look at what is happening at the national level. A national legal framework exists in the Climate Change Act,<sup>253</sup> the DRRM Act,<sup>254</sup> and other laws and policies, such as the PSF and Climate Budget Tracking. However, climate action seems to be limited to

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<sup>250</sup>problems%20like%20asthma (last accessed May 11, 2021) [<https://perma.cc/4GT2-TXRG>].

<sup>250</sup>. Juan Miguel T. Cuna, OIC-Director, Opening Remarks at the First National Convention on the Philippine Environmental Impact Statement System (PEISS) (June 19, 2013).

<sup>251</sup>. Presidential Decree No. 1586.

<sup>252</sup>. See *Republic v. City of Davao*, G.R. No. 148622, 388 SCRA 691 (2002).

<sup>253</sup>. Climate Change Act of 2009.

<sup>254</sup>. Philippine Disaster Risk Reduction and Management Act of 2010.



paper owing to the lack of, or very few, mandatory provisions in the Climate Change Act (the DRRM act being an exception with its institutional structure and implantation mechanisms well in place). The Climate Change Act<sup>255</sup> provides for an overall framework and for the policies to address the climate crisis (i.e., the Framework Strategy & the NCCAP), but it is arguable that it is missing teeth as it lacks penalties and mandatory targets and goals for government to take climate action. However, it is equally arguable that the Act itself put the climate crisis on the agenda of the Philippines, and sends a signal to the global community of the country's seriousness in addressing the climate crisis.

At the local level, LGUs are called upon to develop their own local climate change action plans.<sup>256</sup> However, very few LGUs have a plan in place despite the seemingly mandatory nature of the provision. The Climate Change Commission tries to provide support to develop LCCAPs but it has limited resources to do so for the thousands of LGUs in the country.<sup>257</sup>

Thus, the legal and policy framework exists but its actual and full implementation, especially at the local level, has yet to be achieved due to limited resources of the government. One reason is the lack of budget to prioritize climate adaptation and mitigation. In 2015, the national government reported that 5% of the national government budget was identified as climate change expenditures in the General Appropriations Act.<sup>258</sup> The World Bank reported that bulk of this was for flood control projects.<sup>259</sup> There have been

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255. Climate Change Act of 2009.

256. *Id.* § 14.

257. See e.g., Climate Change Commission, Accelerated Climate Action And Transformation For Local Communities, available at <https://climate.gov.ph/events/accelerated-climate-action-and-transformation-for-local-communities> (last accessed May 11, 2021) [<https://perma.cc/Y6H9-8WV>].

258. See Climate Change Commission & Department of Budget and Management, Climate Budget Brief 2015: An Analytical Review of the National Climate Budget, at 9, available at <https://climate.gov.ph/files/FY-15-CBB.pdf> (last accessed May 11, 2021) [<https://perma.cc/2TBZ-JJ4U>].

259. World Bank, Mobilizing the Budget for Climate Change in the Philippines, available at <https://www.worldbank.org/en/country/philippines/publication/mobilizing-budget-for-climate-change-in-philippines> (last accessed May 11, 2021) [<https://perma.cc/6TCD-Y84N>].

efforts to roll out climate budgeting at the local level but this still needs to be scaled-up.

Another reason for slow progress on local climate action is that LGUs need to deal with more pressing issues of their constituencies. Local governments are tasked and mandated to deliver basic services to the people<sup>260</sup> and in far flung and lower-class municipalities these services are the lifeline of the population, particularly health services and basic education. The Covid-19 pandemic has made this mandate more difficult, and has pushed environmental and climate issues oftentimes to the side.

Lastly, the impacts of climate change are not as drastic and immediate which will urge the LGUs to take action immediately. Due to the gradual and increasing rise in global mean temperatures, the worst impact of climate change will be felt mid-century, when all will be too late and lost.<sup>261</sup> That is a long time ahead for most local leaders who may be focusing on the next election in the three-year term cycle and not on the far future. Climate action requires visionary sustained planning and implementation, a tall order for some local politicians who are simply concerned about keeping their grip on power, despite the clear danger signs and risk of a changing climate.

#### *A. Time for Some LOCALmotion*

Despite these challenges and hurdles to local climate action, LGUs can take the initiative and act fast and act now. Existing powers, as discussed in this Article, provide the legal and policy justifications for the recommendations below.

##### 1. One Small Step for a Giant Leap: Declare A Climate Emergency

There is no doubt that the Philippines is in a climate crisis. A key first step to responding to this crisis is to acknowledge its urgency and to take decisive action. Thus, local governments can take the bold step and declare a climate emergency within their jurisdiction.

Around the world there have been calls for national governments to declare a climate emergency — which has been defined as “a situation in which immediate action is needed to reduce or stop climate change and

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260. LOCAL GOV'T CODE, § 17.

261. CHRISTOPHER B. FIELD, ET AL., CLIMATE CHANGE 2014: IMPACTS, ADAPTATION AND VULNERABILITY 11 (Christopher B. Field, et al. eds., 2014).

prevent serious and permanent damage to the environment[.]”<sup>262</sup> 1,903 jurisdictions in 34 countries have declared a climate emergency, covering over 826 million citizens.<sup>263</sup> In the Philippines, local environmental groups and advocates have also called for President Duterte to declare a climate emergency given that the country is in the top five of most vulnerable to climate change.<sup>264</sup>

Local governments need not wait for the national government to act. The Constitution and existing laws give sufficient powers to LGUs to make such a declaration. It will send a strong signal to the constituents that the local leadership is taking the climate crisis seriously and with urgency. The declaration can also lay down guiding principles for climate action, or a framework on what the local government should prioritize in the short, medium and long term. In addition, action from the local level may gain traction and prod the national government to declare a climate emergency as well.

## 2. For Now: Focus on Existing Environmental Laws

As emphasized earlier in this Article, existing environmental laws and policies are also critical to climate action. Thus, one of the immediate steps which the LGU can take is to scale up and improve implementation of these laws. This can also be highlighted as a priority measure in declaring a climate emergency.

The nexus between environment and climate is stark and clear, and protecting nature and biodiversity through the enforcement and implementation of environmental laws will immensely benefit climate action.

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262. Oxford Learner’s Dictionaries, Climate Emergency, *available at* <https://www.oxfordlearnersdictionaries.com/us/definition/english/climate-emergency> (last accessed May 11, 2021) [<https://perma.cc/2DQB-GVYT>]. See also United Nations Environment Programme, Facts About the Climate Emergency, *available at* <https://www.unep.org/explore-topics/climate-change/facts-about-climate-emergency> (last accessed May 11, 2021) [<https://perma.cc/EF2P-RW52>].

263. Climate Emergency Declaration, Climate Emergency Declarations in 1,903 Jurisdictions and Local Governments Cover 826 Million Citizens, *available at* <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens> (last accessed May 11, 2021) [<https://perma.cc/R87P-A7DL>].

264. See Greenpeace Philippines, Declare a Climate Emergency, *available at* <https://www.greenpeace.org/philippines/act/declare-a-climate-emergency> (last accessed May 11, 2021) [<https://perma.cc/4NPK-Q7KNr>].

Local governments can leverage and work upon the numerous devolved environment and natural resources functions such as those on forestry, fisheries, and waste management, among others, towards greater climate action. What is needed is political will and long term commitment to the creative reimagining of local governments powers for climate change.

### 3. Reimagining Local Government Powers for Climate Change

Climate change is an unprecedented phenomenon and the greatest threat to humanity today. Thus, conventional and “business as usual” thinking will not solve the problem. What we need is a combination of determination, creativity, and imaginative thinking to find the right solutions to the climate crisis. Local governments — often already caught between a rock and hard place — must find ways to exercise its constitutional and legal powers towards climate action.

Below are some ideas LGUs can tinker with and explore as they creatively reimagine local climate action.

#### *a. Flexing the Police Power Muscle*

Local governments can start by enacting and strictly enforcing a local land use plan which designates “green zones” — areas where no structures must be built either because of existing forests and vegetation, or because of its potential to be such. These areas can also serve a disaster mitigation purpose either as an evacuation zone, a no-build zone due to natural hazards, or perhaps as a natural buffer to threats such as floods, storm surges and landslides. Urban redevelopment can also be undertaken to re-build and re-zone areas based on the land-use plan as illustrated below.

In the issuance of building permits, LGUs can also take into consideration climate change. Properly enforcing national building standards to ensure safe and sturdy structures can be a start.<sup>265</sup> Local governments can also possibly require buildings within their jurisdiction to include energy efficiency standards and methods, and use of local materials to reduce the carbon footprint of the structure(s), among others.

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265. See Department of Public Works and Highways, Philippine Green Building Code, available at [https://www.dpwh.gov.ph/DPWH/references/guidelines\\_manuals/green\\_building](https://www.dpwh.gov.ph/DPWH/references/guidelines_manuals/green_building) (last accessed May 11, 2021) [<https://perma.cc/LM2P-T4HC>].

On transportation, one idea local governments in urban areas can look into is to designate permanent car-free zones, where pedestrians and bikes are the priority. Cars can park at designated areas and walk to their destination; or perhaps take clean transportation options such as e-jeepneys or even a monorail going around the carless area, providing the last mile access needed. This may require significant investments but this move can help un-choke city centers from traffic and pollution.

On clean energy and reducing air pollution, local governments can take the bold step of banning carbon emitting energy systems such as coal or even gas power plants from operating within their jurisdiction. Several LGUs have already passed ordinances banning coal and other local governments can follow suit.<sup>266</sup> Not only will this ensure cleaner air in their jurisdictions, this can also indirectly support calls for the national government to phase out coal from the Philippine energy mix and spur the country's energy transition. This may seem like something LGUs cannot afford to do, but this decision coupled with other measures like local incentives for renewable energy developers and locally generating renewable power can result in positive gains for climate action. This decision will also align with the Department of Energy's recent decision to not approve any new coal power plant projects.<sup>267</sup>

On the Clean Air Act<sup>268</sup> and Clean Water Act,<sup>269</sup> local governments can potentially enact their own emissions and effluents standards, provided that they are within the parameters and limits under the respective laws, and in coordination with the DENR. These can be coupled with effective land-use planning and zoning ordinances to better manage air and water quality in the locality.

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266. Some of the LGUs that have banned coal plants in their jurisdictions include Antique, Occidental Mindoro, Guimaras, Sorsogon, and Ilocos Norte. Glenda Tayona, *Antique Bans New Coal Power Plants*, PANAY NEWS, Feb. 25, 2020, available at <https://www.panaynews.net/antique-bans-new-coal-power-plants> (last accessed May 11, 2021) [<https://perma.cc/2LXP-R9B2>].

267. Department of Energy, DOE Sec. Cusi Declares Moratorium On Endorsements For Greenfield Coal Power Plants, available at <https://www.doe.gov.ph/press-releases/doe-sec-cusi-declares-moratorium-endorsements-greenfield-coal-power-plants> (last accessed May 11, 2021) [<https://perma.cc/Z3WF-9EXL>].

268. Philippine Clean Air Act of 1999.

269. Philippine Clean Water Act of 2004.

*b. Justified Taking for a Public Purpose*

One can argue that the climate crisis and the climate emergency is a justified public purpose for the exercise of the power of eminent domain.<sup>270</sup> The taking of private property, subject to payment of just compensation, will be beneficial for the whole community since climate change impacts everyone in different ways. Thus, this can be another area where LGUs can use its powers for climate action.

Eminent domain can be utilized in several ways. The local government can initiate an urban redevelopment plan, taking into account the land use plan and the climate hazards and impacts, which may require the purchase of private property. The subject lands may be used for a variety of ways, all beneficial to the public: implementing green spaces to serve as “lungs” for the city, or as a natural buffer to climate impacts; removing hazardous structures which may aggravate disaster risks due to climate change; and redesigning the local government’s territory to meet climate targets and goals. The acquired property can even be used to house poorer residents living in hazard or danger zones, or those forced to relocate due to the land use and zoning plans.

The use of eminent domain can complement the measures done under police power. On the other hand, since the taking will require just compensation, measures under the power of taxation can help provide the needed funds for compensation.

*c. The Power of the “Climate” Purse*

Perhaps the most important power for climate action is that of taxation. Without funds and resources, local governments may find it difficult to implement and enforce other measures under police power or that of eminent domain. Allocations from the national budget through the Internal Revenue Allotment will not be enough as this has most likely been earmarked for other basic and essential services already done by the LGU. Therefore, local governments must find creative ways of shoring up funds for climate related initiatives.

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270. Eileen Joy D. Lauricio, GROWING GREEN CITIES: Urban Resilience to Climate Change Through the Exercise of Eminent Domain as a Means for Urban Redevelopment, at 117 (2021) (unpublished J.D. thesis, Ateneo de Manila University) (on file with Author).

One measure done by local governments in other countries is to impose a carbon tax<sup>271</sup> on businesses, industries, and establishments in their jurisdiction. This is implemented along with a carbon trading scheme among the covered establishments. The tax is usually based on the carbon footprint or emissions of the establishment or business. Trading is based on limits and caps on carbon emissions per business, which can be exchanged and traded like commodities.<sup>272</sup> The tax gives the LGU direct funds, usually reserved for climate related programs, while the trading scheme give LGUs revenues through the purchase of the initial credit, which can then be traded as if it were a commodity. Both schemes require that local governments be able to measure and monitor carbon emissions within their jurisdiction — which will make up for the upfront costs.

Other sources of revenues can include a form of climate tax added to real property taxes and to business permits. This can be a form of a special collection or assessment to fund the LGUs climate programs and activities. Similar fees can also be added when the LGU issues or approves ECCs within its jurisdiction, subject to DENR guidelines on the PEISS.

#### *B. Epilogue: The Time for Local Climate Action is Now*

Many experts agree that the world is reaching a point of no return when it comes to the climate crisis and to seeing and experiencing the worst impacts of climate change. The time to act is now, because tomorrow may be too late to save the planet from the worst that is to come. Although progress has been made, these are arguably not enough to stop runaway climate change — maybe enough to level-off emissions and the rise of greenhouse gases, but too little to reverse course and to head towards a more sustainable future. All of us — and not just our governments and leaders, have a duty and responsibility to take climate change seriously — because our very lives and our future, and our children's future are at stake.

Greta Thunberg, the youth climate activist, famously said that she does not need world leaders' hope — she wants them to panic as if their house was

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271. See Carbon Tax Center, What's a Carbon Tax?, available at <https://www.carbontax.org/whats-a-carbon-tax/#:~:text=A%20carbon%20tax%20is%20a,destabilizing%20and%20destroying%20our%20climate> (last accessed May 11, 2021) [<https://perma.cc/6YA2-R89E>].

272. BBC News, *Carbon Trading: How Does it Work?*, BBC NEWS, Sept. 25, 2015, available at <https://www.bbc.com/news/science-environment-34356604> (last accessed May 11, 2021) [<https://perma.cc/WW78-P8H7>].

on fire.<sup>273</sup> This point brings down climate change to people's homes and communities, and to the local governments that lead and take care of their constituents. Our homes, communities, and the very life we know is being threatened by the climate crisis. And people are looking towards their local governments — who are themselves members of the community — to lead the fight and take climate action. Not tomorrow, but today in the here and now before it is too late.

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273. James Workman, "Our House Is on Fire." 16 year-old Greta Thunberg Wants Action, *available at* <https://www.weforum.org/agenda/2019/01/our-house-is-on-fire-16-year-old-greta-thunberg-speaks-truth-to-power> (last accessed May 11, 2021) [<https://perma.cc/4M8H-2GET>].