Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects: The Philippine Experience

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Executive Summary

The Philippine Department of Environment and Natural Resources (DENR) is the designated national authority (DNA) for the clean development mechanism (CDM). DENR Administrative Order No. 2005-17 (DAO 2005-17) put in place a process for the national approval of proposed CDM project activities. The Manual of Procedures for DAO 2005-17, which will spell out the details of the approval process, is currently being prepared.1

While the DENR’s reforestation programme has targets for increased forest cover, public funding for afforestation and reforestation (AR) projects is very limited. AR activities under the community-based forest management (CBFM) system and other community projects have largely been donor-driven. Funding and resource constraints are significant conditions which would support the additionality of CDM AR projects. It is not clear, however, if AR projects carried out to comply with legal obligations would be considered additional. For instance, holders of industrial forest management agreements must reforest open/denuded lands found within areas classified as protected forest lands and within 20m from both sides of river banks, and holders of forest land grazing management agreements must reforest at least 10% of the leased area.

A Constitutional restriction exists with respect to CDM AR projects. Fully foreign-owned entities may avoid potential issues relating to this limitation by limiting their equity participation in a CDM AR project to 40%, or by being lenders or purchasers of certified emissions reductions (CERs) without any involvement in project implementation.

Many of the ongoing carbon sequestration projects are expected to contribute to improved data on carbon sequestration potentials and to assist in decisions to allocate CERs, as well as cost and pricing of CERs. Many legal issues are tied to improved data collection, land classification, and boundary delineation. In general, the projects showed the importance of stakeholder identification, the necessary involvement of forest communities, and the multiple potential economic and social benefits of such projects for these communities. Great potential for “hybrid” projects, i.e. the combination of energy-forestry projects, and the combination of waste management-forestry projects exists. These experiences will contribute to the on-going discussion and refinement of the sustainable development indicators of such projects.

Past and planned carbon sequestration projects partake more of the nature of unilateral initiatives with funding sought or received from official development assistance (ODA) or multilateral funding institutions. The stakeholders that will be crucial to the implementation and success of CDM AR are the local and indigenous communities, whose social and economic base consists of the forests in and around which they live.

There is a clear bias toward CDM projects in the energy sector, and still some apparent reluctance with respect to CDM AR projects. For CDM AR projects to gain wider acceptability and achieve the potential to improve AR projects, strategic pilot projects need to be developed that can demonstrate greater socio-economic and environmental benefits particularly for local communities. For such pilot projects to become a reality, a sound institutional and capacity-building framework for CDM is needed.

DENR regulations provide guidelines for both environmental and social impact assessments and analyses. The environmental impact assessment (EIA) process includes requirements intended to ensure

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1 DAO 2005-17 was adopted after the completion of the case study. Details pertaining to this Order have been added by the editors.
Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects

The right to a CER is not defined in national law. The lack of legal guidance and a uniform definition of CERs would likely lead to confusion in the treatment of transactions dealing with CERs. The DNA regulations should provide at least preliminary guidance for the treatment of CERs, as the implementation and interpretation given by the agency with technical expertise and experience would be highly persuasive reference for future legislation. It would, however, be most advisable that legislation be enacted to define CERs and the rights to CERs. It is unlikely, nonetheless, for the legal characterization of CERs to be a high legislative priority.

The option of characterizing the right to CERs as a real right over immovables that can be registered or annotated on the land title, would appear to the “best” option, i.e. that is consistent with domestic laws, not inconsistent with international rules, and that provides greater stability for contracting and other affected parties. Under the Torrens system, rights over real property registered on the certificate of title renders these rights binding and enforceable even as against third parties.

Under current regulations, a proposed CDM project activity shall be assessed using sustainable development criteria and indicators which are meaningful from a project level perspective and are in line with Philippine Agenda 21. A proposed CDM project activity shall be evaluated by a Technical Evaluation Committee, which will make a recommendation to the CDM Steering Committee that will advise the DENR Secretary to issue a Letter of Approval or Letter of Non-Approval.

The existing EIA system in general should be used as the framework to determine whether a CDM AR project will contribute to sustainable development, inasmuch as this system already incorporates essential environmental, social and economic indicators. The requirement for public comment under the Kyoto Protocol will most likely be aligned with the existing EIS system and its requirements on stakeholder consultation and social acceptability.

The legal issues identified in the case study are fundamentally rooted in the uncertainty in land rights and tenure in the Philippines, the lack of a rational land use policy, the absence of a legal framework for CDM and the need to characterize the right to a CER. The social and economic problems resulting in deforestation are so prevalent that there would likely be legal and social issues of varying degrees that would emerge in an AR project, regardless of location.

These legal issues may be minimized by limiting the number and scale of CDM AR projects to a manageable pilot phase, so that the Government and other parties concerned may gain more experience in resolving different issues. A more proactive approach would be for the Government (through the multi-sectoral Interagency Committee on Climate Change, for example) to evaluate the wealth of legal research and experiences from on-going and completed carbon sequestration, activities implemented jointly (AIJ) or similar projects domestically and internationally and to use the lessons therefrom to identify legal issues and formulate a responsive legal framework. Since it is unlikely that the Executive Branch can pursue a legislative agenda solely and narrowly in relation to CDM AR, it would be more pragmatic to develop legislation on CDM AR within the larger context of sustainable forestry management legislation.

The general situation of Philippine forest communities and forests is very difficult and complex, and the issues involved will not be immediately resolved by the introduction of any single strategy, no matter how innovative. A multi-pronged approach needs to be consistently applied over time, encompassing policy reform, improved enforcement capacity, and community empowerment and development. CDM AR projects, if designed and implemented properly, can play a significant role in such a long-term strategy, as these have the potential to contribute to improved governance of the forestry sector through increased compliance with and enforcement of the different legal and environmental standards and regulations. The
public nature of CDM brings a new level of exposure to such projects that has the potential to discourage corrupt or illegal practices, and to improve awareness and legal compliance.

While it is unlikely that the introduction of CDM AR projects will alter or change the AR objectives of the country, these will complement and add significant new dimensions to current objectives which are already environmental, economic, and social in nature. If properly designed and implemented, CDM AR projects have the potential to provide more opportunities for CBFM initiatives and public-private sector collaboration. These also have the potential to enhance the protection of forestry resources and contribute to meeting the country’s commitments under the Convention on Biological Diversity (CBD). If the CDM framework can help to expand a more accurate database and improve capacity in response to these new requirements, it will strengthen the AR programme and make it more reliable and credible. The introduction of a CDM AR project has the potential to introduce a new paradigm where the replanting and protection of trees themselves can result in additional “property” with concrete economic benefits in the form of CERs, thus creating greater incentives for AR.
Introduction

The Philippines is an archipelago in Southeast Asia slightly above the equator. Of the country’s total land area of 30 million hectares, about 15.9 million or 53% are legally classified as forest lands. Forest cover, however, is estimated at only about 5.4 million hectares or 18% of the country’s total area, down from 50% in 1948, due primarily to unabated logging and destructive forestry practices. Despite this drastic decline, Philippine forests are still home to rich biodiversity including an estimated 13,500 species of flora.

Although it has a relatively small total land area, it has the 14th largest population in the world with 80 million in 2002 and a projected 88 million by 2008. Up to 19 million people are estimated to be living in the uplands, half of whom rely on some form of shifting cultivation. With a growth rate of about 4.5% in 2003, socio-economic development and poverty alleviation continue to be the country’s top priorities.

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2 Lasco, Philippine Forests and the Kyoto Protocol.
### Acronyms and Abbreviations

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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<td>AIJ</td>
<td>Activities Implemented Jointly</td>
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<td>AO</td>
<td>Administrative Order</td>
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<td>AR</td>
<td>Afforestation and Reforestation</td>
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<td>CADT</td>
<td>Certificate of Ancestral Domain Title</td>
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<td>CALT</td>
<td>Certificate of Ancestral Land Title</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CBFM</td>
<td>Community-Based Forest Management</td>
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<td>CBFMA</td>
<td>Community Based Forest Management Agreement</td>
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<td>CDM</td>
<td>Clean Development Mechanism</td>
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<td>CDMP</td>
<td>Community Development Management Plan</td>
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<td>CD4CDM</td>
<td>Capacity Development for Clean Development Mechanism</td>
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<td>CENRO</td>
<td>Community and Environment Natural Resources Office</td>
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<td>CSC</td>
<td>Certificate of Stewardship Contract</td>
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<td>CSI</td>
<td>Carbon Sink Initiative</td>
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<td>DENR</td>
<td>Department of Environment and Natural Resources</td>
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<td>DNA</td>
<td>Designated National Authority</td>
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<td>DOJ</td>
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<td>ECA</td>
<td>Environmentally Critical Areas</td>
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<td>Environmental Compliance Certificate</td>
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<td>Forest Land Grazing Management Agreement</td>
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<td>FMB</td>
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<td>GEF</td>
<td>Global Environment Facility</td>
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<td>IACCC</td>
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<td>ICCs/ IPs</td>
<td>Indigenous Cultural Communities/Indigenous Peoples</td>
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<td>IEE</td>
<td>Initial Environmental Examination</td>
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<td>IEMSDP</td>
<td>Integrated Environmental Management for Sustainable Development Programme</td>
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<td>IFMA</td>
<td>Industrial Forest Management Agreement</td>
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<td>IPRA</td>
<td>Indigenous Peoples Rights Act</td>
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<td>ITP</td>
<td>Industrial Tree Plantation</td>
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<td>LGU</td>
<td>Local Government Units</td>
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<td>LISCOPl</td>
<td>Laguna de Bay Institutional Strengthening and Community Participation Project</td>
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<td>LMB</td>
<td>Land Management Bureau</td>
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<td>LRA</td>
<td>Land Registration Authority</td>
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<td>NCIP</td>
<td>National Commission on Indigenous Peoples</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>PD</td>
<td>Presidential Decree</td>
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<td>PFDA</td>
<td>Private Forest Development Agreement</td>
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<td>PNOC-EDC</td>
<td>Philippine National Oil Corporation-Energy Development Corporation</td>
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<td>PO</td>
<td>People’s Organization</td>
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<td>RA</td>
<td>Republic Act</td>
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<td>SFM</td>
<td>Sustainable Forestry Management</td>
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<td>SIFMA</td>
<td>Socialized Industrial Forest Management Agreement</td>
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<td>SLUP</td>
<td>Special Land Use Permit</td>
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<td>SPLUMA</td>
<td>Special Land Use Management Agreement</td>
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<td>TLA</td>
<td>Timber License Agreement</td>
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<td>UPLB</td>
<td>University of the Philippines Los Baños</td>
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Responses to Questionnaire

A. General Questions

1. Administrative and regulatory set-up

   a. Which government institutions are responsible for:
      
i. forestry;
      
ii. land; and
      
iii. the environment?

Which law(s) is/are the source(s) of the mandates of these institutions? Are these institutions national or local institutions? In the case of local institutions, please indicate which local level (e.g., state, provincial or district) they refer to and describe their relationship with related national institutions (i.e., institutions with related or similar mandates).

Pursuant to Section 4 of Executive Order (EO) No. 192, and as confirmed under the Revised Administrative Code of 1987 (EO 292), the Philippine Department of Environment and Natural Resources (DENR) is the national government agency principally responsible for the conservation, management, development and proper use of the country’s environment and natural resources. Its mandate includes the licensing and regulation of forests and other natural resources.

Under the DENR, technical, policy and advisory staff work in the areas of forestry and the environment are exercised respectively by the Forest Management Bureau (FMB) and the Environmental Management Bureau (EMB). The FMB’s role is to advise the DENR Secretary on matters pertaining to forest development and conservation. Its principal functions include the recommendation and implementation of policies and/or programmes for the:

   “effective protection, development, occupancy, management and conservation of forest lands and watersheds, including the grazing and mangrove areas; reforestation and rehabilitation of critically denuded or degraded forest reservations, improvement of water resource use and development, development of national parks, preservation of wilderness areas, game refuges and wildlife sanctuaries, ancestral lands, wilderness areas and other natural preserves, development of forest plantations, including rattan, bamboo, and other valuable non-timber forest resources; and rationalization of the wood-based industries, regulation of the utilization and exploitation of forest resources, including wildlife, to ensure continuous supply of forest and goods and services.”

The role of the EMB is to advise the DENR Secretary on matters relating to environmental management, conservation, and pollution control. It is tasked with recommending and implementing legislation, policies, regulations and programmes in these areas, including administering the Environmental Impact Statement (EIS) system and overseeing the implementation of the Philippine Clean Air Act of 1999.

With respect to land, the Land Management Bureau (LMB) under the DENR is responsible for advising the DENR Secretary on matters pertaining to rational land classification management and disposition. The specific functions of the LMB include recommending and implementing:

   “policies and programs for the efficient and effective administration, survey, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies; such as reclaimed areas and other areas not needed for or are not being utilized for the purposes for which they have been established.”

3 Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, renaming it as the Department of Environment and Natural Resources and for Other Purposes (10 June 1987).

4 Section 14, EO 192.

5 Section 17, EO 192.

6 Section 15, EO 192.
The Land Registration Authority (LRA), on the other hand, is an agency attached to the Department of Justice and is mandated to issue decrees of registration and certificates of title under the Torrens System for landowners, agrarian reform-beneficiaries, and the public in general. The LRA was established as an attached agency of the Philippine Department of Justice pursuant to Chapter 9 of Title III, Book IV of the Administrative Code of 1987 (EO 292). Act 496 or the Land Registration Law enacted in 1902 remains the principal law that the LRA is mandated to implement. This law established the Torrens System of registration and created Registers of Deeds throughout the country.

Other government agencies with responsibilities over aspects relating to the forestry, environment and land sectors include: the DENR’s Protected Areas and Wildlife Bureau, tasked with the management of the country’s protected areas, and the National Commission on Indigenous Peoples (NCIP), a separate national agency created by law to oversee the delineation and grants of certificates of titles to indigenous peoples over their ancestral domains and lands.

Under Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991, Local Government Units (LGUs) also have important responsibilities with respect to land, forestry and environment sectors. LGUs consist of provincial, city and municipal governments, with Barangays or villages as the smallest political unit.

The responsibilities of the Sangguniang Bayan and Sangguniang Panlungsod, the legislative bodies of municipalities and cities respectively, include the:

- adoption of a comprehensive land use plan for their respective jurisdictions in coordination with the provincial comprehensive land use plan;
- power to reclassify land within its jurisdiction; and
- power to enact integrated zoning ordinances.

The Sangguniang Panlalawigan or legislative body of the province shall review the comprehensive land use plans and zoning ordinances of component cities and municipalities and adopt a comprehensive provincial land use plan.

The DENR also shares certain environment and forest management responsibilities with LGUs with respect to areas within the latter’s territorial jurisdiction. These responsibilities are subject to the supervision, control and review of the DENR.

Specifically, provincial LGUs are primarily responsible for the enforcement of community-based forestry projects and other laws on the protection of the environment. On the municipal level, LGUs shall be involved in:

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7 Established pursuant to Section 18, EO 192.
9 LGUs are generally created by law, subject to approval by plebiscite. A municipality refers to a group of barangays with a minimum average annual income of at least $45,000, a population of at least 25,000, and a contiguous area of at least 50km2. A city refers to more urbanized and developed barangays with an average annual income of at least $365,000, and either a contiguous territory of at least 100km2 or a population of not less than 150,000. Cities with a minimum population of 200,000 and with an annual income of at least $909,000 shall be classified as highly urbanized cities. Finally, a province refers to a cluster of municipalities and/or cities with an average annual income of not less than $365,000 and either a contiguous territory of at least 2,000km2 or a population of not less than 250,000. Income levels are based on 1991 constant prices (Sections 440–461, Local Government Code).
10 Sections 447 and 458, Local Government Code.
11 Section 468, Local Government Code.
The implementation of community-based forestry projects, which include Integrated Social Forestry programmes and similar projects;

- the management and control of communal forests with an area not exceeding fifty (50) km²; and
- the establishment of tree parks, greenbelts and similar forest development projects.

City LGUs carry out the same functions or roles as those devolved to provinces and municipalities.

Joint Memorandum Circular No. 2003-01 (2003) of the DENR and the Department of Interior and Local Government also provides that reforestation projects (such as new reforestation projects, completed family and community-based contract reforestation projects, and regular reforestation projects) may be devolved to the LGUs. Such devolution shall be effected by a Memorandum of Agreement between the DENR and the concerned LGU. This Circular also set forth the policy that the DENR and LGUs should undertake forest land use plans as an integral activity of comprehensive land use planning.

b. Is there a central permitting system for afforestation and reforestation (AR) projects? Otherwise, how would an AR project implementer go about obtaining the necessary permits?

The permitting system for AR projects is generally centralized in the DENR which regulates and enforces laws on forestry, public lands, protected areas, and required environmental assessments. However, there are varying permitting processes for the different regulatory instruments which depend, among others, on the applicants involved, the objectives of the project, and the area applied for. The process for many permits for or involving AR usually begins with an application at the local level of the DENR, the Community Environment and Natural Resources Office (CENRO). It then usually proceeds through to the DENR central level for final approval by the DENR Secretary.

As previously discussed, a proponent would in certain cases, also need to consult the concerned LGU or LGUs. In addition, projects in ancestral domains and lands will require a separate certification from the NCIP that the concerned indigenous communities have given their free and prior informed consent to the project.12

c. Is there a designated national authority (DNA) in the host country? Is the DNA part of any of the institutions described above, or any other institution? What is the scope of the powers of the DNA (e.g. Is it empowered to look into the terms of the contractual arrangements between or among the project participants and other contracts relating to the project, such as contracts with other occupants of the land?)?

On 25 June 2004, Philippine President Gloria Macapagal-Arroyo issued EO 320 “Designating the Department of Environment and Natural Resources as the National Authority for [the] Clean Development Mechanism”.13

As provided in this issuance, the powers and functions of the Philippine DNA are to:

- Formulate and develop a national CDM policy;
- Develop the criteria, indicators, standards, systems and procedures, and evaluation tools for the review of CDM projects;

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13 The Philippine President possesses “Ordinance Power”, i.e., the power to issue orders and rules. Executive Orders are acts of the President providing for rules of a general or permanent character in the execution of constitutional or statutory powers (Chapter 2, Title I, Book III, Administrative Code of 1987). Accordingly, the President may establish such governmental committees or bodies as may be deemed necessary for the implementation of law or policy. These entities and the Presidential issuances governing them are administrative in nature and may be revised or repealed by later administrative issuances or legislation.
Undertake the assessment and approval of CDM projects that will be submitted to the UNFCCC and Kyoto Protocol;

Monitor the implementation of CDM projects;

Create Technical Evaluation Committees necessary for the efficient and effective implementation of its functions (e.g. the Department of Energy shall take the lead role in the evaluation of energy-related projects); and

Promulgate, within 120 days from the Order’s issuance, the necessary rules and regulations to effectively carry out its functions.

The Order did not address any specific operational issues nor did it provide further guidance for the detailed execution of the DNA’s functions. For example, the Order does not define the DNA’s power to monitor the implementation of CDM projects which, depending on the DNA, may include either or both project-specific monitoring to ensure compliance and general data-gathering.

By its brief and broad terms, the Order’s clear intent was to formally establish the DNA and then leave it to the DENR, acting as the DNA, to formulate implementing regulations. The Order does not contemplate any review of the issuances or operations of the DNA, although pursuant to the President’s executive power of control, the President always retains the power to review the issuances and actions of any entity or committee within the executive branch.

Inasmuch as the operational rules for the DNA have not yet been issued, the extent to which it can and will look into project and project-related transactions is not yet certain.

Prior to the formulation of the DNA’s implementing regulations, however, the DNA is tasked by the Order to use existing procedures to evaluate CDM proposals. These include procedures under the Environmental Impact Assessment system and other permitting procedures depending on the nature and location of a project. For example, there are existing procedures for the evaluation and approval of energy and forestry projects which are under the jurisdiction of the Department of Energy and the DENR, respectively.

Based on current practices in forestry, mining, energy and other resource-based development activities, various clearances, permits and agreements are required, necessitating government involvement. The government acts as the regulator and, in many cases, as a party to agreements such as joint ventures, co-production, and production-sharing agreements. As regulator, the government through the DENR has the authority to evaluate project documents and grant (or deny) the issuance of an Environmental Compliance Certificate. As a party to a production-sharing agreement, the government necessarily reviews and evaluates said agreement, including the legal terms and conditions that impact on revenue, profit, and government share. In general, pertinent laws and regulations provide guidance on which contracts and legal arrangements require governmental review or approval. For example, the Mining Act of 1995 provides general guidelines on just compensation for surface rights holders affected by a mining activity and further requires that voluntary agreements between surface rights holders and mining proponents should be registered with the DENR Regional Office. It does not, however, require DENR review or approval prior to registration. With respect to ancestral domains, the NCIP is mandated to issue appropriate certifications (e.g. of an indigenous community’s free and prior informed consent) as a pre-condition to the grant of any permit or similar authority for the disposition, utilization, management and appropriation by any private or governmental entity of ancestral domains or lands. For this purpose, community agreements involving a proponent and an indigenous group may be reviewed by the NCIP.

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14 As articulated in Book III, Title I, Chapter I, Administrative Code of 1987 (EO 292).
15 As in the case of Mineral-Production Sharing Agreements under the Mining Act of 1995 (RA 7942).
16 Section 44, IPRA.
d. If there is no DNA, are there plans to establish a DNA in the next 12 months?

Not applicable.

e. How would you describe the relationship of the DNA with the institutions described in 1.a, as well as other agencies charged with the regulation of a CDM AR project?

The DENR, which is the national agency principally tasked to oversee land, forestry, and the environment, is the same agency now designated as the DNA. Moreover, the DENR is also the co-chair of the Inter-Agency Committee on Climate Change (IACCC), the inter-governmental and multi-sectoral committee tasked to coordinate climate change-related activities, propose climate change policies, and prepare Philippine positions to the UNFCCC negotiations. The IACCC was established by virtue of Presidential Administrative Order (AO) 220 (1991). It is co-chaired by the DENR and the Department of Science and Technology and is composed of different government agencies and NGO representatives. The DENR-EMB acts as the Secretariat to the IACCC.

The DENR thus exercises these different but inter-related responsibilities directly, with staff support from its bureaus and offices. The DENR’s mandate, technical expertise, familiarity and experience with climate change issues makes its designation as the DNA a structurally, operationally and financially sound choice. The convergence in the DENR of crucial roles – exercised by the DENR as IACCC co-chair with respect to broad climate change direction, and by the DENR as DNA with respect to specific CDM operationalization – can help prevent inconsistencies in policy development and implementation and, correspondingly, contribute to better coordination in the evaluation of projects and attendant permitting procedures. However, DENR-DNA regulations will need to clarify specific roles and responsibilities within the DENR and provide for mechanisms for checks and balances in order for the agency to exercise its different but overlapping responsibilities in a rational and credible manner.

The DNA’s relationship with other government agencies and LGUs will likely be project-specific, as in the cases of AR and other projects in general. The Order establishing the DNA expressly provided that the Philippine Department of Energy will lead the evaluation of a CDM energy project, for example. For reforestation projects, the LGU having jurisdiction over the project site will be involved in the project planning, evaluation and implementation.

2. Overview of the forestry sector

a. How is the term “forest land” defined in the country of study?

Pursuant to Presidential Decree (PD) No. 705 otherwise known as the Revised Forestry Code, “forest land” is defined by enumeration, i.e., as inclusive of the following:

- **Public forests** – unclassified lands of the public domain for which no determination has been made as to whether these lands are needed for forest purposes;
- **Permanent forest or forest reserves** – lands of the public domain classified as such and which have been declared as needed for forest purposes; and
- **Forest reservations** – forest lands reserved by the Philippine President for any specific purpose or purposes, including watersheds established as such to protect the condition of the water yield.

The Revised Forestry Code further provides that lands eighteen percent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands unless they are already covered by existing titles or approved public land applications.
The regulations implementing Community-Based Forest Management (CBFM)\textsuperscript{17} define a “forest” in terms of:

“Either natural vegetation or plantations of the forest crops such as trees, or both, occupying a definable, uninterrupted or contiguous area not less than one hectare in size with the tree crowns covering at least ten (10) percent of the area, exclusive of the associated seedlings, saplings, palms, bamboo and other undercover vegetation. A natural forest is a stand constituted by natural succession without human intervention which includes such stand types as dipterocarp, pine, mossy, beach and/or mangrove and for purposes of these rules are classified according to: 1) primary use and management; and 2) growth formation. As to primary use of management, a forest shall be either a: 1) protection forest; or 2) production forest. As to growth formation, a natural forest is classified according to either 1) primary or old growth forest or 2) a residual or second growth forest which refers to natural forest which has been previously subjected to either harvesting or extraction.”\textsuperscript{18}

Forests are thus generally classified into natural (forests composed of naturally growing indigenous trees) and plantations, which refer to forests established by planting or seeding in the process of afforestation or reforestation.\textsuperscript{19} It should be noted, however, that AR activities can take place on public or private land that may have previously been forested but which is not classified as forest land. This is evident from Section 33 of the Revised Forestry Act which includes private lands, river banks, and other areas as targets for reforestation or afforestation (as further discussed under question 5a hereof).

FMB has also issued guidelines in an attempt to harmonize the varying definitions of forests. For this purpose, it has largely adopted the basic definition of the Food and Agricultural Organization (FAO, 2000),\textsuperscript{20} to wit:

“land with an area of more than 0.5 hectare and tree crown cover (or equivalent stocking level) of more than 10 percent. The trees should be able to reach a minimum height of 5 meters at maturity in situ. It consists either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest formations with a continuous vegetation cover in which tree crown cover exceeds 10 percent. Young natural stands and all plantations established for forestry purposes which have yet to reach a crown density of more than 10 percent or tree height of 5 meters are included under forest.

These are normally forming part of the forest area which are temporarily unstocked as a result of human intervention or natural causes but which are expected to revert to forest. It includes forest nurseries and seed orchards that constitute an integral part of the forest; forest roads, cleared tracts, firebreaks and other small open areas; forest within protected areas; windbreaks and shelter belts of trees with an area of more than 0.5 ha. and width of more than 20 m; plantations primarily used for forestry purposes, including rubber wood plantations. It also includes bamboo, palm and fern formations (except coconut and oil palm).”\textsuperscript{21}

Being in the nature of a guideline, the foregoing definition does not have the same legal authority or strength as definitions provided by law (such as the definition provided in PD 705). However, definitions adopted by international organizations to which the Philippines is a member, such as the FAO, can

\textsuperscript{17} CBFM was instituted through EO 263, entitled “Adopting Community Based Management as the National Strategy to Ensure the Sustainable Development of the Country’s Forestlands Resources and Providing Mechanism for its Implementation” (1995).
\textsuperscript{18} Section 4, DENR AO 29, Series of 1996, “Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community Based Forest Management Strategy (CBFMS)**.
\textsuperscript{19} Glossary, Philippine Forestry Statistics (FMB, 2002).
\textsuperscript{20} www.fao.org/forestry/index.jsp
\textsuperscript{21} “Harmonization of Forest Related Terms and Definitions on Land Cover Statistics” FMB http://forestry.denr.gov.ph/index.html
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influence domestic policy and law. Evidence of this is the incorporation of this definition into the previously proposed House Bill No. 5162 at the House of Representatives during the Twelfth Congress of the Philippines entitled “The Sustainable Forest Management Act of 2002.”

b. In general terms, how are forest land, forest-related activities and forest products regulated in the country of study (e.g., Is there a separate law governing the sector, or are forestry provisions found in a more general law, such as an environment or natural resources code)? How does this system compare with the way the sector is regulated in other countries in the region?

Separate laws, administrative regulations, and policy statements govern the forestry sector in the Philippines. Fundamentally, the Philippine Constitution upholds the ‘Regalian Doctrine’ which provides that the ownership of all forests or timber and other natural resources is vested in the State. Their exploration, development and utilization are under the full control and supervision of the State. The private sector may, however, participate in the exploration, development and utilization of forest and other natural resources through co-production, joint venture, or production-sharing agreements between the Government and Filipino citizens, or corporations at least 60% of whose capital is owned by such citizens.

The forestry sector has been governed by the Revised Forestry Code since its promulgation in 1975. Presidential executive orders and many DENR administrative regulations have also been issued to regulate and manage forest lands, forest-related activities and forest products.

Under the Revised Forestry Code, no person may utilize, exploit, occupy, possess or conduct any activity within any forest and grazing land, or establish, install, add and operate any wood or forest products processing plant, unless authorized under a license, agreement or permit. Critical watersheds, national parks and established experimental forests shall not be subject to commercial logging or grazing operations.

The regulation of the forestry sector in the Philippines is also broadly directed or governed by policy statements such as the Master Plan for Forestry Development (1990; revised 2004). This policy document serves as the guide or blueprint for the long-term development of the Philippines’ forestry sector. It covers the management and utilization of forest resources and focuses on people’s participation as a key to forest conservation. Consistent with this premise is EO 263 on CBFM.

The recent revision of the Master Plan was based on a review conducted by the UN Development Programme of the original targets, status of implementation, and accomplishments particularly from 1990 to 2000. While the current revision does not expressly incorporate Kyoto-related issues such as the CDM, the review noted that new concerns have emerged since the Plan’s formulation in 1990 which should be addressed. These include forestry and land-use implications related to climate change and the development of criteria and indicators for sustainable forest management.

Most recently, EO 318 “Promoting Sustainable Forest Management (SFM) in the Philippines” was issued on 9 June 2004. The Order’s preamble provides the principles, rights and authority that SFM flows from, including:

- the protection and advancement of the right of the people to a balanced and healthy environment;

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22 Philippine House of Representatives website http://erbl.pids.gov.ph/searchbills.phtml
23 As will be discussed in Part 3 below on “Overview of Land-Related Legislation”, the indigenous concept of ownership of ancestral domains and lands was introduced under the Indigenous Peoples Rights Act of 1997.
24 Section 2, Article XII of the 1987 Constitution on National Economy and Patrimony, provides the general legal framework on resource utilization in the Philippines.
25 The Master Plan for Forestry Development may be found on the website of the FMB at http://forestry.denr.gov.ph/MPFD.htm
26 Introduction to the Master Plan For Forestry Development, http://forestry.denr.gov.ph/MPFD.htm
Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects

- protection from disasters like floods or landslides, and from threats to environmental and economic security like wood and water shortage, biodiversity loss, air pollution and drought;
- the full, efficient and rights-based use of natural resources to abate poverty, promote industrialization and full employment, affirm the diverse cultures of the Filipinos, and ensure their availability to present and future generations; and
- the incorporation of SFM in the Global Plan of Implementation of the World Summit on Sustainable Development adopted in Johannesburg, as an international strategy for developing and managing forests.

EO 320 also provides that the SFM policies of the Government include: the promotion of sound, effective, efficient, globally-competitive and equitable forestry practices in both public and private domains; and management of watersheds as ecosystem units in a “holistic, scientific, rights-based, technology-based and community-based manner, observing the principles of multiple-use, decentralization and devolution, and active participation of LGUs, synergism of economic, ecological, social and cultural objectives, and the rational utilization of all resources found therein”. 27

The Order does not define specifically what constitutes SFM nor does it refer to the Kyoto Protocol or any specific international commitments of the Philippines. As in the case of EO 320 establishing the DNA, EO 318 directs the DENR to formulate the implementing rules and regulations to implement SFM. EO 318 enumerates the principles which should govern SFM implementation, to wit:

- Delineation, classification and demarcation of state forestlands;
- Holistic, sustainable and integrated development of forestry;
- Community-based forest conservation and development;
- Incentives for enhancing private investments, economic contribution and global competitiveness of forest-based industries;
- proper valuation and pricing of forestry resources; and
- institutional support for SFM.

Other than EO 318 establishing the DNA, there is presently no other Philippine law, administrative rule, or policy issuance on CDM. The rules and regulations implementing EO 318 will likely be the first legal issuance articulating specific issues relating to CDM AR projects.

With respect to other forestry sectors in other Asian countries, Thailand and Indonesia have agencies similar to the DENR which are national or central in character and which have broad charge of forest management. 28 Both have recently undergone periods of restructuring and decentralization. As in the Philippines, the circle of those involved in governance extends beyond government to forest companies, communities and NGOs.

The institutional arrangement in China appears more centralized, where the forestry sector is the responsibility of the State Forestry Administration. This is the national government agency primarily in charge of forestry administration, planning, and enforcement of forest laws and policies.

The Philippine framework under which certain forestry activities are jointly managed by the DENR and LGUs is analogous to India where forestry is considered a concurrent subject under the administration and management of both the Government of India, through the Ministry of Environment and Forests, and by concerned State forest departments.

Common trends in forest policies have emerged, despite the differences among Asian countries in forestry sector administration. These trends are toward decentralization, devolution and privatization of forest management, in response to the problems commonly experienced led by deforestation (as a result of

27 Section 1, EO 320.
28 The Royal Forest Department for Thailand, and the Ministry of Forestry for Indonesia.
illegal logging and destructive forestry practices) and the increasing gap between the supply and demand of timber products.  

c. If the majority of forest land is owned by the government (national or local), does the law allow afforestation or reforestation projects to be undertaken by private persons, including individuals, corporations and communities on government-owned forest land? What would the terms of such an arrangement be?

Lands classified as forest lands are owned by the State, which allows AR projects to be undertaken by private entities. About 15.8 million out of the total area of the Philippines of 30 million hectares are classified as “forestlands” forming part of the public domain (see Table 1).

**Table 1. Land Classification (in hectares)**

<table>
<thead>
<tr>
<th>Total area</th>
<th>Total Certified Alienable &amp; Disposable</th>
<th>Forestland Classified Total</th>
<th>Established for Reservations</th>
<th>Timberland National parks</th>
<th>Military &amp; naval reserv’n</th>
<th>Civil reserv’n</th>
<th>Fishpond</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 Million</td>
<td>14,145,078</td>
<td>15,854,922</td>
<td>1,894,118</td>
<td>14,765,804</td>
<td>3,272,912</td>
<td>10,227,847</td>
<td>893,221</td>
</tr>
</tbody>
</table>

**Source:** 2002 Philippine Forestry Statistics (DENR-Forest Management Bureau).

AR projects may be undertaken through different arrangements by private individuals, corporations, and communities on government-owned forest lands. Examples of voluntary arrangements for AR activities and their terms are:

**Table 2. Legal Instruments relating to AR Projects**

<table>
<thead>
<tr>
<th>Legal instrument</th>
<th>General terms</th>
<th>Legal basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community-Based Forest Management Agreement (CBFMA)</td>
<td>A production sharing agreement entered into between a community and the government to develop, utilize, manage and conserve a specific portion of the forest land, consistent with the principles of sustainable development and pursuant to a Community Resource Management Framework.</td>
<td>DENR AO 22-93; EO 263 (1995); DENR AO 96-29 (1996)</td>
</tr>
<tr>
<td>Certificate of Stewardship Contract (CSC – established under the CBFMA framework)</td>
<td>A contract, for 25 years, renewable for another 25 years, awarded to individuals or families actually occupying or tilling portions of forest lands.</td>
<td>EO 263 (1995); DENR DAO 96-29 (1996)</td>
</tr>
<tr>
<td>Industrial Forest Management Agreement (IFMA)</td>
<td>A 25 year production sharing agreement entered into between the DENR and an individual or corporation to develop, utilize and manage a tract of forest land, other public land or private land to grow timber species including rubber and non-timber species including bamboo and rattan.</td>
<td>DENR AO 04-97; DENR AO 99-53</td>
</tr>
<tr>
<td>Socialized Industrial Forest Management Agreement (SIFMA)</td>
<td>An agreement entered into by and between a natural or juridical person and the DENR wherein the latter grants to the former the right to develop, utilize and manage a small tract of forest land (1–10ha for individuals or single families, 10–50ha for associations or cooperatives), consistent with the principle of Sustainable Development.</td>
<td>DENR AO 24-96; DENR AO 30-04</td>
</tr>
</tbody>
</table>


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30 SIFMA regulations do not define ‘Sustainable Development’. The Philippines, however, is a signatory to the Rio Declaration on Environment and Development and adheres to internationally accepted principles relating thereto which integrate environmental protection with economic
Inasmuch as the foregoing instruments for voluntary AR aim to benefit local communities (whether as direct party-beneficiaries to the agreement, or as third parties pursuant to a community agreement or development plan under the agreement) and contribute to socio-economic development and environmental protection, they may be applicable for CDM AR. In addition, and for purposes of considering the current instruments under which CDM AR may be undertaken, there are agreements and permits that may be issued for “special land use” broadly including all forms of legal uses of public forest lands. These may be issued under Special Land Use Management Agreement (SPLUMA) or Special Land Use Permits (SLUP). A SPLUMA may be entered into with a person to occupy and possess, in consideration or a return fee, public forest lands generally not exceeding 24 hectares, for a specific use or purpose. The agreement is valid for twenty-five (25) years and can be renewed for another twenty-five (25) years. A SLUP may be issued to an applicant in an area where no improvement has been introduced or added. The validity of SLUP is one (1) year, renewable for another year. It can be converted into a SPLUMA provided substantial improvements or development have been introduced in the area and no violations of the terms and conditions of the permit are committed by the permittee.

**d. In an AR project, how are benefits (such as harvesting, recreational or hunting rights) required by law to be shared with other parties who are not project participants, i.e.:**

- i. with the landowner (if the landowner is not the one implementing the AR project);
- ii. with other persons occupying or using the land; and
- iii. with users or occupants of adjacent parcels of land?

**Are existing laws sufficient to protect the interests of these other parties?**

In general, no AR projects on privately owned land can be undertaken without the agreement of the landowner. In this regard, a Private Forest Development Agreement (PFDA) may be issued by the DENR to a private landowner or his duly authorized representative for the establishment of tree plantations within his private property.

The PFDA allowed private landowners to harvest naturally grown timber crops that included premium species such as dipterocarps. However, since the issuance of DENR Memorandum Order No. 12, which indefinitely suspended the issuance of cutting permits for naturally growing timber species in PFDA areas, there have been no new applications for PFDA since 2000. The introduction of CDM AR may provide new impetus for the PFDA, since the incentive thereof will be the planting and protection, rather than the cutting, of trees. However, other operational issues affecting the PFDA system, which are further discussed under question 3(a)(iii), will need to be addressed.

Absent any further guidelines, other AR projects may be undertaken by third parties within privately owned lands through negotiated agreements with landowners. Some form of permit or approval from the DENR will be necessary if the AR project is a government-initiated or driven project, or if such agreements involve tree-cutting (particularly in the case of regulated species). And any AR project undertaken in the
future as a CDM AR project will necessarily pass through an official evaluation process and ultimately require government approval evidencing compliance with sustainability and other national criteria.

Tenurial arrangements have varying provisions with respect to other persons occupying or using the land, and users or occupants of adjacent parcels of land. For example, there are no provisions expressly on the role or benefits for such parties under a SLUP or IFMA. The latter does, however, require the development and approval of a Comprehensive Development and Management Plan (CDMP) which should incorporate benefit-sharing agreements with individuals or communities dependent on the IFMA area.\textsuperscript{34}

Other persons occupying or using the land, and users or occupants of adjacent parcels of land may be directly involved under a SIFMA and especially under a CBFMA. Residents or occupants of an area, whether natural or juridical entities, are the preferred applicants for SIFMAs covering that area. As for CBFMA, the principal parties thereto are local communities whose members may be:

- Actually tilling portions of the area to be awarded; or
- Traditionally using the resource for all or a substantial portion of their livelihood; or
- Residing in or adjacent to the areas to be awarded.

Such parties would thus have a right to participate in a CBFMA through their representative organizations (denominated ‘Peoples’ Organizations’ or POs) which are required to be, among others, registered entities. Regulations further provide that the responsibilities of such POs include active involvement in all phases of forest management such as the development and implementation of AR projects and mechanisms for the equitable sharing of responsibilities and benefits from the project area and adjacent forestlands.\textsuperscript{35}

While private landowners with title would enjoy legal protection with respect to an AR project sought to be undertaken within their land (e.g. just compensation in case of expropriation,\textsuperscript{36} entitlement to the fruits of the land in case of third-party planters in bad faith, plus damages if deemed warranted by the court),\textsuperscript{37} the same would not automatically be the case for users or occupants of land or adjacent areas who are not otherwise covered by any tenurial arrangement. There does not appear to be any legal guidance with respect to the specific benefits available to users or occupants of the land on which an AR project is undertaken (or adjacent thereto) but who are not directly involved or participating therein. There are mechanisms, however, that may be used for involving these parties such as the Environmental Impact Assessment\textsuperscript{38} process, under which community agreements, development plans (such as those already required under the IFMA), and multi-stakeholder monitoring may be required. Such mechanisms and other conditions providing for the role, responsibilities, and benefits for users or occupants of the CDM AR project areas should be incorporated in future rules and legislation on CDM.

e. Based on official records, are there major plans to host afforestation and reforestation projects in the country in the next 12 months?

The DENR’s Reforestation Program has targets for increased forest cover through government-led projects (e.g. CBFMA), agreements with the private sector (e.g. IFMA, SIFMA), and mandatory plantation development (e.g. by timber licensees). The DENR-FMB envisions increased private sector involvement for the establishment of 3 million hectares of forest plantation over the next 25 years. However, there are no specific targets with respect to geographical location for AR projects for which public funding is very

\textsuperscript{34} DENR AO 99-53.
\textsuperscript{35} Section 3, Article II, DENR AO No. 29, Series of 1996, Rules and Regulations for the Implementation of EO 263 on CBFM.
\textsuperscript{36} Section 9, Art. III, Constitution; Art. 435, Civil Code of the Philippines.
\textsuperscript{37} Art. 449-551, Civil Code of the Philippines.
\textsuperscript{38} Further discussed under the section “CDM Project Cycle”.

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limited. AR activities under CBFM and other community projects have largely been donor-driven. The Revised MFPD notes that the constraints facing reforestation goals include: inadequate funding or lack of funding; lack of support from financial institutions; improper use of funds appropriated; and high capitalization requirements in the case of private plantations. Legitimate funding and resource constraints (which preclude, however, constraints due to the improper use of funds) are significant conditions which would support the additionality of CDM AR projects.

With respect to specific on-going and new projects on reforestation, these include:

The **National Clonal Forestry Program** – an on-going initiative identified by the DENR as a reforestation programme led by the Government sector. It is designed to support the National Forestation Program for the Philippines through the production of genetically superior clonal seedlings of forest trees and other equally important plant species, and to institutionalize the practice of clonal forestry. The considerations for the choice of appropriate species of trees that would be cloned include those for CBFMA and the establishment of forest tree plantations and tree plantation corridors. The Program began in 2002 with a target of at least 200,000 seedlings of various forest tree species. According to official targets, all clonal facility complexes should be fully operational by the end of 2004 so that all of the needed clones will be available for large and commercial plantings of trees as well as for the other purposes.

The **Laguna de Bay Institutional Strengthening and Community Participation (LISCOP)** project which aims to reduce pollution and improve the environmental quality of Laguna De Bay, the second largest freshwater lake in Southeast Asia. The project’s first component is on co-managed micro-watershed environmental interventions. This will be funded from a US$5 million loan agreement between the Philippine Government and the World Bank to assist the Laguna Lake Development Authority (LLDA), local government units (LGUs), the private sector and community groups in improving the environmental quality of the Laguna de Bay watershed by supporting, among others, financing investments by LGUs to control soil erosion through reforestation. A US$5 million grant from the Netherlands Government will fund the second component on strengthening institutions and instruments. Both agreements were signed in January 2004.

### 3. Overview of land-related legislation

**a. In rough terms and only to the extent they pertain to lands that, based on their legal classification, are permitted to have afforestation and reforestation projects:**

i. Please describe the system of land ownership and the rights that attach to land ownership (e.g., right to exclude others from entering the land, right to sell the fruits of the land, including CERs, and rights of succession to land), including the system of respecting pre-existing rights over the land (e.g., rights of indigenous peoples, rights of long-time occupants that could ripen into ownership).

DENR-FMB lists approximately 120 hectares only of private lands (consisting of “other” private lands and PFDA-covered lands) of the total area of 25,260 hectares reforested in 2002. Private lands have not been the priority location for AR projects and this will likely be the case with respect to CDM AR projects due

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39 Section 23.7 of Part 2.0, Subsectoral Assessment, Revised MPFD.
40 A clone seedling is the exact copy of an original individual tree. It is expected that the Watershed Resources Development Project (WRDP), Community Based Forest Management, Coastal Mangrove Rehabilitation and Urban Forestry will benefit from this project. http://forestry.denr.gov.ph/ncfp.htm
41 Please see related project on page 29.
42 http://web.worldbank.org/WBSITE/EXTERNAL/NEWS
43 2002 Philippine Forestry Statistics.
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to several factors. As previously discussed, there is some uncertainty with respect to the PFDA and it appears there are neither clear legal arrangements nor economic incentives for landowners to undertake or participate in AR projects within their private lands. Even assuming that CDM projects can create new incentives for private landowners (through the generation, allocation and sale of CERs), such projects on private lands will likely be limited. This is due to the low ratio of private lands that have been targeted for AR, other operational challenges affecting PFDA, and to the fact that forestry regulations since the mid-90s have expressly adopted CBFM, situated on public lands, as the preferred forest management strategy. This is even more so the case with the focus placed by EO 320 on CBFM as a guiding principle for SFM and on the management of watersheds as a government policy in the pursuit of SFM.

However, considering that EO 320 on SFM also provides that the sustainable management of forests includes the promotion of globally competitive and equitable forestry practices in both public and private domains, a discussion of private land ownership remains relevant.

In general, the civil law concept of land ownership is observed and practiced in the Philippines. In 1997, the IPRA also recognised the indigenous concept of ownership over ancestral domains and lands which will be discussed further in this section.

Under the Constitution, only Filipino citizens and corporate entities, at least 60% of the capital of which is owned by Filipino citizens, may own land. Individuals and entities may acquire title to private lands and lands of the public domain classified as alienable and disposable, through the following modes provided in the Civil Code of the Philippines:

- **Private grant** – voluntary transfer or conveyance of private property by a private owner, such as sale or donation;
- **Public grant** – acquisition of alienable lands of the public domain by homestead patent, free patent, sales patent, or other government awards;
- **Involuntary grant** – acquisition of private party against the consent of the former owner, such as foreclosure sale, execution sale, or tax sale;
- **Inheritance** – acquisition of private property through hereditary succession;
- **Reclamation** – filling of submerged land, subject to existing laws and government regulations;
- **Accretion** – acquisition of more lands adjoining the banks of rivers due to the gradual deposit of soil as a result of the river current; and
- **Prescription** – acquisition of title by actual, open, continuous, and uninterrupted possession in the concept of an owner for the period required by law.

Private corporations cannot acquire lands of the public domain classified as alienable and disposable, but may only lease them for a period not exceeding twenty-five years, renewable for the same term, and not to exceed 1,000 hectares.

The best evidence of land ownership in the Philippines is the Torrens Certificate of Title because it is considered indefeasible, imprescriptible, and binding against the whole world. However, title to land may also be shown by other evidence or monument of ownership, such as tax declarations, realty tax receipts and deeds of sale.

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44 As discussed further under 3(a)(iii).
45 Exceptions are provided in the case of hereditary succession (Section 7, Article XII, 1987 Constitution) and natural-born Filipinos who have lost their Philippine citizenship. The latter are entitled to own 1,000m2 of urban land, and one hectare of rural land for residential purposes (Batas Pambansa Blg. 185 of 1982). They may also own a maximum of 5,000m2 of urban land or 3 hectares of rural land for business or commercial purposes (RA 8179 amending RA 7042 also known as the Foreign Investments Act of 1991).
46 Under the Torrens system of registration, once a parcel of land has been registered, a certificate of title covering the land is issued. The original of the certificate of title remains on file at the office of the Register of Deeds having jurisdiction over the land. A duplicate copy of title is issued to the owner. Once a title is issued, the title becomes incontrovertible after one year from the date the land was registered. When the owner sells the land, his certificate of title is cancelled and a new certificate is issued to the new owner.
Private owners may have AR projects on their landholdings, subject to minimal conditions and restrictions. Titled owners hold their real properties in fee simple, i.e. accompanied by a bundle of rights or attributes considered inherent in ownership and which are exercised without any limitations other than those imposed by law or contract. These include the right to use, possess and dispose of the land, the right to enjoy its fruits, and to vindicate or recover it in case it is taken by someone other than the owner.

In general, private land ownership gives the right by accession to any and all fruits of the land, i.e. everything which is produced on or by such land, or which is incorporated or attached thereto, whether naturally or artificially. These consist of:

- **Natural fruits** – the spontaneous product of the soil;
- **Industrial fruits** – those produced by land cultivation or labour; and
- **Civil fruits** – e.g. the rental income of lands or structures thereon.

Being a ‘new’ form of property, CERs have not yet been characterized under any of the foregoing categories. Inasmuch as CERs represent sequestered carbon that spontaneously results from afforestation or reforestation, these may be characterized as natural fruits. In addition, since CERs or the sequestered carbon are also the result of land cultivation and labour, then these may also be characterized as industrial fruits.

Viewed in this way, CERs that are generated are not unlike actual fruits that are gathered, such as coconuts, which the Philippine Supreme Court has characterized as “natural or industrial fruits which are meant to be gathered or severed from the trees, to be used, enjoyed, sold or otherwise disposed of”.47

The common restrictions or limitations on the private landowner’s bundle of rights are legal or governmental in nature, to wit:

- **Zoning** – refers to land use classifications and the allowable utilization under each classification;
- **Taxation** – the power of the government or any of its political subdivisions to impose a charge or burden upon persons, property or property rights, including CERs and the right to CERs, for the use and support of the government;
- **Eminent domain** – the power of the State or any of its instrumentalities to take private property for public use and payment of just compensation;
- **Other provisions of law** such as legal easement, the requirement of legitime in succession, prohibition against sale and encumbrance of property acquired by patent, rent control, laws on subdivision development, urban and agrarian reform; and
- **Contractual or voluntary limitations** – Those imposed by the grantor of the property to the grantee, either by contract (e.g. donation), or by last will; or those imposed by the owner himself such as voluntary easement, mortgage, lease, use restrictions in subdivision contracts.

The foregoing limitations may affect the landowner’s rights to his land. With respect to CERs or the rights to CERs that may be generated in a CDM AR project, these may be affected by taxation,48 expropriation,49 and limitations imposed by contract.

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48 Gains derived from dealings in property constitute part of the gross income of an individual or corporate entity. Hence, the sale of a CER or the right to a CER would be a taxable transaction. (Section 32, RA 8424 otherwise known as the Tax Reform Act of 1997).
49 Section 9, Art. III, Constitution; Art. 435, Civil Code of the Philippines. The Executive Branch, municipal or local governments, and other government entities may exercise the power of eminent domain if authorized by law, subject to procedures provided in the authorizing legislation and in general by the Rules of Court issued by the Philippine Supreme Court.
Unless otherwise provided, the rights and obligations under contracts over immovables are transferable to successors-in-interest. Upon his death, land owned by an individual passes on to his estate for the payment of creditors and division of the net estate among his legal heirs by either testamentary or intestate succession.

The IPRA provides for an ‘Indigenous Concept of Ownership’ which holds that ancestral domains and all resources found therein are the private but community property of the indigenous cultural communities or indigenous peoples (ICCs/IPs), constituting the material basis of their cultural integrity, belonging to all generations and which therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.50

Ancestral domains refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial. The rights of ownership and possession of ICCs/IPs to their ancestral domains include the rights to:

- claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds;
- develop lands and natural resources;
- stay in the territories and not to be removed therefrom;
- regulate entry of migrants; and
- resolve land conflicts in accordance with their customary laws.

Ancestral lands refer to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots. The rights of ownership and possession of the ICCs/IPs to their ancestral lands include the rights to:

- transfer land/property to or among members of the same community, subject to customary laws and traditions;
- redemption in cases where the transfer of land or property rights to a third party outside the indigenous group was tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration.

The IPRA provides that formal title to ancestral domains and lands, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT) issued by the NCIP.51 These shall be awarded pursuant to a delineation process provided in the IPRA. However, ICCs/IPs with ancestral domains and lands delineated prior to the enactment of the IPRA and pursuant to DENR AO No. 2, Series of 199352 or other community/ancestral domain programme have the right to apply for a CADT or CALT without going through the process outlined in the IPRA.53

Individual members of cultural communities who have been in continuous possession of their ancestral lands for not less than 30 years immediately preceding the approval of the IPRA have the option, within 20 years from IPRA approval, to secure title thereto under the Public Land Act (Commonwealth Act No. 141, as amended), or the Land Registration Act (Act No. 496).54 In any case, the NCIP shall register issued CADTs and CALTs before the Register of Deeds in the place where the property is situated.55

50 Section 5, Chapter III, IPRA.
51 Section 11, IPRA.
53 Section 52, IPRA.
54 Section 12, IPRA.
55 Section 52(k), IPRA.
Prior to the enactment of the IPRA in 1997, the DENR had awarded 181 certificates of ancestral domain claims covering 2,546,035 hectares, and 147 certificates of ancestral land claims over 10,955,888 hectares. These areas constitute roughly 8% of the country’s total land area and 16% of ‘forestlands’ (i.e. lands not classified as alienable and disposable). To date, the NCIP has awarded 11 Certificates of Ancestral Domain Titles covering an aggregate area of 367,000 hectares, and one Certificate of Ancestral Land Title covering about 18.5 hectares. Consequently, areas formally titled under the IPRA with either a CADT or CALT constitute only about 1% of the country’s total land area and a little over 2% of the country’s forestlands.

Traditionally, it has been development activities such as commercial mining or logging that have been in conflict with ICC/IPs rights to their ancestral domains and lands. Conceptually, because a CDM AR project emphasises community participation and benefits through the protection of forests, it would be an ideal option for ICCs/IPs with respect to their ancestral lands or domains. AR projects and the generation of CERs may be designed in order to be consistent with the traditional resource uses of an indigenous group.

CDM AR projects may take place on ancestral lands and domains, although difficult practical and legal issues would need to be addressed. As previously stated, relatively few ancestral domains and lands have actually been titled under the IPRA. Other parties to a proposed CDM project will likely seek a stable and secure title in order to proceed. Furthermore, the process of obtaining the free and prior informed consent of an indigenous group to a CDM AR project (as with any project) can also be difficult especially if areas and groups are not determined with certainty. Independent verification will be needed to evidence that the ICCs/IPs consent to any transfer of property rights (such as the right to CERs) is genuine. And especially because the IPRA recognised the indigenous concept of ownership by an ICC/IP of its ancestral domains or lands, the legal issue of ownership of CERs generated will need to be addressed and negotiated among the parties.

ii. Short of ownership over land on which CDM AR projects can be implemented, what other rights can be granted over such land (e.g., in the case of government-owned land, licenses, concessions, and in the case of privately-owned lands, servitudes, leases)? Please describe each right briefly (e.g. duration of the right, entitlements and obligations that come with the right, fees, if any, paid for the enjoyment of the right, documentation of the right). Which of these rights can co-exist with other land-based rights (e.g., license with an easement)?

A PFDA allows a private landowner or his duly authorized representative to establish tree plantations within his private property. As for government permits and agreements covering public forest lands on which CDM AR projects may be implemented, these include CBFM Agreements (CBFMA), IFMA, SIFMA and Forest Land Grazing Management Agreements (FLGMA). The following discussion of these arrangements, which are all administered by the DENR, provides an illustration of the different rights and responsibilities attaching thereto.

Pursuant to DENR AO 29 (1996) implementing EO 263 on CBFM, CBFMA shall, subject to prior vested rights, apply to all areas classified as forest lands including allowable zones within protected areas. It shall integrate and unify all people-oriented forestry programmes of the government. Local communities participating in CBFMA are entitled to security of tenure, and to the right to use and develop the forest land and resources for 25 years. A “community” under DENR AO 29 (1996) is defined as:

56 Dalupan, A Discussion Paper on the Mining Industry and the Indigenous Peoples Rights Act (based on data previously obtained from the DENR Special Concerns Office).
57 www.ncip.gov.ph/resources/ancestral.php
“A group of people who may or may not share common interests, needs, visions, goals, and beliefs, occupying a particular territory which extends from the ecosystem, geographical, political/administrative and cultural boundaries and any resources that go with it.”

Communities that enter into a CBFMA must be represented by People’s Organizations (POs). The rights granted to POs under CBFMA with respect to their project areas include:

- To occupy, possess, utilize and develop the forest lands and its resources;
- To allocate to members and enforce rights to use and sustainably manage forestland resources;
- To be exempt from paying rent;
- To be exempt from paying forest charges on harvested timber and non-timber products;
- To be properly informed of and consulted on government projects;
- To give (or withhold) consent to the grant or renewal by DENR of contracts, leases and permits for the extraction and utilization of natural resources, provided that an equitable sharing agreement shall be reached with the PO prior to any grant or renewal to an individual or legal entity that is not from or based in an affected community;
- To receive all income and proceeds from sustainable utilization of forest resources, subject to the provisions of the National Integrated Protected Areas System law;
- To enter into agreement or contracts with private or government entities for the development of the whole or portions of the CBFMA area provided that public bidding and transparent contracting procedures are followed; provided further, that development is consistent with the Community Resource Management Framework developed by the PO and approved by the DENR;
- To enter into agreements or contracts with government entities, provided that existing governmental accounting regulations and guidelines are adhered to.\(^{58}\)

With respect to funding or financing for CBFMA, as provided under Article VII of DENR AO 29 (1996), the DENR and concerned LGUs shall seek to provide adequate funds and shall, when necessary, seek supplementary funding from local and foreign donor agencies. The DENR shall also consult with government financial institutions to promote the creation of favorable financing mechanisms and shall establish a CBFM Special Account through local and international grants to provide financial support and other incentives for deserving POs, communities, NGOs and government personnel.

Furthermore, the PO under a CBFMA shall establish a Community Forestry Development Fund to finance forest protection activities, reforestation, agro-forestry, investments in livelihood enterprises, preparation of management plans, purchase of tools and equipment, and other investments to improve the well-being of the community. This Fund may consist of: a percentage of gross sales less forest charges and government share of forest products harvested from natural forest and plantations; endowments or grants; a percentage of income from other livelihood projects; and membership fees and other sources.

The IFMA\(^{59}\) is a production-sharing agreement between the DENR and a qualified Filipino applicant over an area from 500 to 40,000 hectares, which grants to proponents the exclusive right to develop, manage, protect and utilize a specified area of forest land and forest resources therein for a period of 25 years, renewable for another 25-year period. All trees and other crops established belong to the IFMA holder who has the right to harvest, sell and utilize them. The IFMA holder may also export logs, lumber and forest products derived from the IFMA area, provided that logs harvested from naturally growing trees (not planted) and the lumber manufactured from such logs will not be exported. Plantation products derived from an IFMA area are generally exempted from forest charges, and the IFMA holder is also entitled to relevant incentives under the Omnibus Investment Code and forestry laws.

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\(^{58}\) Section 2, DENR AO 29, Series of 1996.

\(^{59}\) The rules and regulations on IFMA are provided under DENR AO 99-53.
The responsibilities of the IFMA holder include: the conduct of an Initial Environmental Examination (IEE), consultations and agreements with affected communities; delineation of the perimeter boundaries of the IFMA area including timber inventory at 5% intensity; submission of a Community Development Management Plan (CDMP); regular submission of aerial photos or landsat imageries covering the entire IFMA area; planting timber species; limiting agricultural crops to 10% of the IFMA area; conversion of any degraded residual natural forest into productive state; establishment of plantations; management and protection of production residual forests; and reforestation of open/denuded lands found within areas classified as protection forest lands and within 20m strips from both sides of river banks. The IFMA holder also has the right to be compensated for the fair market value of permanent improvements introduced, such as plantation forest crops remaining in the area upon the expiration or termination of the IFMA, or for reduction of the IFMA area for right-of-way or when public interest so demands.

A recent study yielded various difficulties in the enforcement of the IFMA, including:

- Instability due to regulatory changes and new requirements under four AOs issued by different DENR Secretaries on IFMA from 1991 to 1999;
- Lengthy processing time and redundant requirements for CDMP and ECC;
- Difficulty of IFMA holders in procuring aerial photos/satellite imageries every five years (for those with natural forests and areas of more than 5,000ha);
- Need for stiffer sanctions against IFMA holders who abandon their areas after harvesting;
- Lack of clarity in the process of IFMA renewal and cancellation; and
- Lack of clarity with respect to the procedures for negotiated profit-sharing between the government and IFMA holders.

Despite these difficulties, there are still about 193 IFMAs (combined with previous Industrial Tree Plantation Lease Agreements) covering approximately 696,000 hectares.

Through the SIFMA, the DENR grants a private individual or entity the right to develop, utilize and manage a small tract of forestland ranging from 1–10 hectares for individuals or single-family units and over 10–500 hectares for associations/cooperatives and corporations. All planted trees belong to the SIFMA holder who shall have the right to harvest, sell and utilize such trees and crops, except those retained for environment purposes. The SIFMA holder is also allowed to export logs, lumber and other forest products harvested from the SIFMA in accordance with the government allocation system. All plantation products derived from the SIFMA area, which may conceptually cover CERs, shall be exempted from payment of the forest charges. With DENR approval, the SIFMA holder may use the covered area as collateral for obtaining loans for the improvement of the site.

Under FLGMA, proponents are entitled to develop, manage and utilize the grazing lands for a period of twenty-five (25) years, renewable for another twenty-five (25) years. The area that may be covered by an FLGMA shall not be less than 50 hectares but not more than 500 hectares for an individual holder, and not more than 2,000 for an association, cooperative or corporation. Responsibilities of FLGMA holders include the reforestation of at least 10% of the leased area and the maintenance of the required number of animal units of cattle based on the computed grazing capacity of the area.

There does not appear to be a common basis for setting the application fees for the different forest management instruments. The application fee for IFMA is $0.009 per hectare (ranges from $0.90 to $364 per application for 500 and 40,000ha, respectively) while that for FLGMA is $0.18 per hectare (ranges

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61 The rules and regulations on SIFMA are provided under DENR AO 30, Series of 2004.
62 Section 13, DENR AO 30, Series of 2004, Incentives to the SIFMA Holder.
63 The rules and regulations on FLGMA are provided under DENR AO 36, Series of 1999.
from $9.09 to $364 for 50 and 2,000 ha, respectively). For SIFMA, it ranges from $9.09 to $182 per application (maximum of 500 ha per application).  

iii. Does this system of rights described above accurately represent what exists on the ground, or are certain forms of entitlement not given legal recognition?

The PFDA is theoretically intended to encourage private landowners to establish plantations within their landholdings. However, it effectively does not exist on the ground. Among the criticisms of it is that the application requirements are too cumbersome and costly. These include the requirements to conduct a complete forest inventory regardless of area and obtain an Environmental Compliance Certificate or ECC from the DENR, even when no cutting is involved. Furthermore, those without existing forests are not encouraged to invest because of the high capital required, particularly when the prices of forest products are unstable. Finally, the suspension of cutting permits for naturally grown timber species further discouraged applications.

With respect to other tenurial arrangements and rights, the situation on the ground is characterized in many cases by confusion and uncertainty owing to the multiplicity of rights and claims arising not just from forestry regulations but also from rules on protected areas, ancestral domains and lands, and resource-extractive industries (e.g., mining and energy). In addition, there have been instances when LGUs have refused to recognize rights granted by the national government. Overlapping, inconsistent and sometimes conflicting legal provisions necessarily lead to instances where certain forms of entitlement are not given legal recognition.

For example, some IFMA holders and other proponents whose rights pre-dated the requirement to obtain NCIP certification (of the free and prior informed consent of affected indigenous peoples) questioned the need for NCIP consent in the renewal of their agreements. Similarly, difficulties in obtaining LGU endorsement are not uncommon. The situation on the ground can be confusing given that the DENR, LGUs and NCIP have, by law, overlapping areas of responsibility that can not be unilaterally encroached upon by the other. The agencies have made significant attempts to harmonize their efforts toward improved collaboration through inter-agency orders, although administrative regulations are not as legally stable as legislation.

iv. If there is a gap in the law, how could this complicate CDM AR projects in the country of study?

In general, the multiplicity of rights and claims as well as overlapping institutional responsibilities with respect to the administration of many forest lands contribute to uncertainty and unpredictability in the legal framework. Even the perception of uncertainty and unpredictability works as a great disincentive to project consideration, particularly for the private sector. Foreign mining companies, for example, have largely withdrawn from the country due in part to uncertainty surrounding the constitutionality of their participation in mineral development and utilization as provided under the Mining Act of 1995. The lack of legal certainty surrounding the franchise to operate the country’s electric transmission facilities has

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64 Figures are provided in US dollars, at the exchange rate of 55 Philippine pesos to US$1.00.
65 Discussed under question 5(b) hereof.
66 An example is DENR-LGU collaboration on forestry activities provided under Joint Memorandum Circular No. 2003-01 (2003) of the DENR and the Department of Interior and Local Government, discussed briefly under question 1(a) hereof.
67 The petition assailing the constitutionality of the Mining Act of 1995 was filed in 1997 and remained pending before the Philippine Supreme Court for about seven years before the Court ruled, in late January 2004, that provisions allowing the participation of fully foreign-owned companies were unconstitutional. On 1 December 2004, the Philippine Supreme Court reversed its earlier decision and declared the Mining Act and its implementing rules and regulations constitutional. See La Bugal-B’Laan Tribal Association et al. v. Victor O. Ramos et al., GR. No. 127882, December 1, 2004.
dampened investor interest in the privatization of the National Transmission Company.\textsuperscript{68} Project proponents naturally consider, among others, a country’s political and regulatory risk, factors which are crucial in obtaining financing for a project.

In relation to regulatory and political risk, the Philippines ranked as the 11\textsuperscript{th} highest in the 2003 Transparency International Corruption Perceptions Index, tied with Pakistan, Ethiopia, Argentina, Albania, Gambia, Tanzania among a total of 133 countries.\textsuperscript{69} While the Philippines has anti-corruption laws in place, the political will and capacity to enforce these laws remain a real and continuing challenge.

Development agencies working in environment and other Philippine sectors have largely acknowledged gaps in law, implementation of the law, and enforcement capacity.\textsuperscript{70} For this reason, agencies such as the World Bank, Asian Development Bank, UNDP, UNEP and aid agencies of the United States and of other countries are providing assistance on legal reform and capacity building in forestry and other sectors of the environment. Specific projects continue to be undertaken with donor agency assistance in areas agreed upon by the DENR, concerned LGUs and other stakeholders.\textsuperscript{71}

With respect to private landowners, the status of the PFDA is in question. Otherwise, there does not appear to be an institutional or legal arrangement under which a CDM AR project is undertaken by a landowner. Neither is there any guidance for such a project to be undertaken by third parties on private land. These arrangements could be implemented through voluntary contractual negotiations and memoranda of agreement among the different private parties and direct project participants. However, the lack of legal guidance may mean that a CDM AR project may effectively deprive other occupants and users of the land or adjacent areas, who are not directly involved, of their previous access or of any benefits they may have previously enjoyed.

With respect to public lands, the CBFMA framework is designed to directly involve and benefit communities in and surrounding the CBFMA area. However, other tenurial instruments do not give adequate guidance in this area as such stakeholders are not directly or expressly involved. Mechanisms on which to build do exist, however, such as in the case of the CDMP under the IFMA which should include benefit-sharing agreements with individuals and communities dependent on the IFMA area.

Another gap that exists is the absence of any legal definition of CERs. Various government agencies and private entities are involved in either regulating or facilitating property ownership and financial transactions (such as the sale of CERs). The lack of legal guidance and a uniform definition would likely lead to confusion in the treatment of transactions dealing with CERs.

Whether the nature of CERs is legally defined (e.g. as immovables or movables), a constitutional restriction (rather than a gap) exists with respect to CDM AR projects. This pertains to the limitation to 40% foreign equity in joint venture, co-production, or production-sharing agreements with respect to natural resources exploration, development or use. It could conceivably be argued that CDM AR projects may not fall under the constitutional restriction insofar as these projects are conservation activities that would not involve ‘exploitation’. However, in the interpretation and implementation of this constitutional provision, the management of natural resources must reside in and remain with Filipino citizens or corporations at least 60% of whose capital is Filipino-owned, with the State exercising full control and supervision thereafter.\textsuperscript{72} Furthermore, the objective of CDM AR is not solely conservation for the sake of

\textsuperscript{68} National transmission assets were directed to be privatized under the Electric Power Industry Reform Act of 2001. This franchise issue has remained unresolved since 2002 although Congress is now reviewing the issue. Recent news reports on this issue include Today@abs-cbnNews.com – 16 September 2004.

\textsuperscript{69} www.infoplease.com/ipa/AO781359.html

\textsuperscript{70} Noted in, among others, the ‘Donors’ Joint Statement on the Improvement of the Philippine Business Environment, Consultative Group Meeting for the Philippines (November 7 And 8, 2003, Cebu). Cited in www.adb.org/Documents/others/Improving_Business_Climate_PHCO.pdf

\textsuperscript{71} Such as the World Bank’s LISCOP project discussed under question 2(e) and 4(a) hereof.

\textsuperscript{72} Bernas, pp. 1010–1014.
conservation, but also the generation of CERs that could certainly be the subject of joint venture, co-production, or production-sharing agreements. Fully foreign-owned entities may avoid potential issues relating to this constitutional limitation by limiting their equity participation in a CDM AR project to 40%, or by being lenders or purchasers of CERs without any involvement in project implementation.

b. **Will land need to be reclassified and land use plans need to be changed in order to accommodate CDM AR projects?**

It is not absolutely essential for the introduction of pilot or a few CDM AR projects to broadly reclassify lands or change land use plans. Certain areas are readily identifiable as candidates for potential CDM AR projects. However, even without the introduction of CDM AR projects, land classification and land use plans need to be developed and updated. Significant data gaps exist and maps are generally outdated. Improved delineation of forests and land use plans will be necessary if a broader CDM AR programme is planned. This is essential in order to broadly identify and verify the areas that are eligible for CDM AR projects.

In this regard, EO 318 on SFM expressly provides that forest lands shall be identified, classified and delineated or demarcated on the ground. They shall be categorized and managed either as primarily for production or as primarily for protection purposes, and in both cases, placed under a formal management scheme.

Furthermore, the priority development, protection and management activity under EO 318 shall be the rehabilitation of open and/or denuded, degraded, fragile forestlands, and slope stabilization and protection to address occurrence of floods, landslides and similar ecological disasters. The establishment of tree parks, regreening and roadside planting of forest species in open and appropriate spaces shall be prioritized to mitigate worsening urban air quality and global warming.

4. **Review of carbon sequestration projects in the country (or in a country in the same region applying a similar legal system)**

   a. **Please describe past (if any) and present carbon sequestration projects in the country (or in the region applying a similar legal system, in case there were no such project in the country of study), including which stakeholders participated in their development and implementation. Please focus on AIJ or PCF projects, if there are any in the country of study. If the projects are too numerous to describe, please select those that are, in your best judgment, most relevant to this study.**

   **CO₂ Storage and Sequestration in the Leyte Geothermal Reservation**

   The Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) manages a largely forested watershed (20,438 hectares) in its geothermal reserve in Leyte. Its power plants in the area have a generating capacity of 640 MWe emitting 644,389 tCO₂/year. The World Bank had awarded the PNOC-EDC a Global Environmental Facility (GEF) grant to conduct a study of the area from March 1998 to June 1999 to (a) estimate quantitatively the carbon stocks and the rate of sequestration of the different vegetative cover, and (b) determine whether the CO₂ emissions of the geothermal power plants could be offset by C stored in the vegetative cover and soil.

   The GEF grant of $30 million was a relatively small but significant portion of the total project cost of about $1.3 billion. The results thereof were critical in the choice of geothermal over the least-cost coal

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73 Lasco et al., CO₂ Storage and Sequestration of Land Cover in the Leyte Geothermal Reservation.
alternative. This completed project involved the construction of 430km of twin overhead transmission lines from two new converter stations to cable terminal stations in order to provide more reliable, cost-effective, and environmentally sound power while reducing CO₂ emissions by 120 million tons over 25 years.74

- **Assessment of Carbon Sequestration Potential and Management Strategies on Philippine Forests, including Carbon Stocks Assessment of a Secondary Forest in Mount Makiling Forest Reserve**75

These studies were conducted at the Makiling Forest Reserve with the assistance of the University of the Philippines at Los Baños, the Japan International Research Center for Agricultural Sciences, and the International Rice Research Institute. This study assessed the carbon sequestration potential of CBFM, Timber License Agreements (TLA), IFMA, and of the secondary forest and two agroforestry systems in Mount Makiling Forest in Los Baños, Laguna. The study used biomass and carbon densities derived from previous studies to assess the carbon sequestration potential of these activities. The study found that the CBFM, TLA and IFMA programmes were able to store a total of 133 Tg of carbon and sequester 6.9 Tg of carbon per hectare per year, with CBFM having the largest share (56 Tg C stored and 2.6 Tg C/ha/year sequestered in areas totalling 495 hectares).

The study of the secondary forest and two agroforestry systems also aimed to provide a more accurate estimate of the ability of a secondary forest ecosystem to store and sequester carbon, specifically: (1) determine the biomass accumulation; (2) determine the carbon stored in the aboveground biomass, necromass and soil; and (3) estimate the carbon sequestration rate.

- **Carbon Sink Initiative**76

Mirant Philippines is an independent power producer of more than 2,200 MW in the Philippines. One of its plants is situated in Pagbilao, Quezon (Northern Philippines) which is considered to have one of the most diverse mangrove forests in the world. Mirant pledged an initial $545,000 in its partnership with the DENR, LGUs, NGOs, the local community and the University of the Philippines at Los Baños (UPLB) to implement the on-going Carbon Sink Initiative (CSI). CSI, which began in April 2003, aims to mitigate or capture CO₂ in the area by developing 150 hectares of mangroves and 150 hectares of upland forests. Other objectives include increased water supply through watershed rehabilitation, protection of coastal marine, upland and mangrove forest resources, and community participation and ownership of the programme. UPLB will measure project impacts.

- **Magat Watershed Forestry – Carbon Sequestration Project**

This project has been recommended as a potential CDM AR project under the on-going CD4CDM project in the Philippines.77 With an area of 228,000 hectares, the Magat watershed in Nueva Viscaya supports the Magat Dam which, in turn, supplies water for power generation and irrigation. More than 19,000 families depend on the Watershed for livelihood and subsistence.

Logging activities have resulted in the watershed area’s degradation with grasslands constituting about 57% of the total area. A study done by the Environmental Forestry Programme (ENFOR) of the UPLB...

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74 World Bank data www.gefweb.org/Outreach/outreach-Publications/Project_factsheet/Philippines/leyte/2/cc/wb-eng.pdf
75 Environmental Forestry Program www.enfor.com.ph/projects.html and Lasco et al., Carbon Stocks Assessment of a Secondary forest in Mount Makiling Forest Reserve, Philippines.
76 www.pemsea.org/downloads_pdf/abstracts/B3/c2/5Morente_Mirant%20Corporate.pdf and www.rvr.aim.edu.ph/Website_Awards/nominees/144.htm
77 CD4CDM Project Portfolio at www.klima.ph/cd4cdm/ The CD4CDM-Philippines Project, implemented by the Klima Climate Change Center in the Philippines with support of the United Nations Environment Programme (UNEP) in coordination with the Philippine IACCC, is a three-year project that conducts public awareness activities, briefings and training courses on various aspects of the CDM project cycle.
reveals that a total of 110,000 hectares can become eligible for carbon sequestration under the CDM. Of the total area, 100,000 hectares will come from reforestation of the grassland area and the remaining 10,000 hectares from agroforestry farm development. For a total investment of US$34.5 million, the reforestation and agroforestry activities in the Magat Watershed can deliver up to 4.5 Mt C or an equivalent of up to 16.5 Mt CO₂e.

- Laguna de Bay Community Carbon Finance Project

An agreement between the Philippine Government and the World Bank, with grant funds of US$358,450 from the Japan Climate Change Initiatives Grants Program, was signed in late July of 2004 for the Laguna de Bay Community Carbon Finance Project. This Project will seek to develop opportunities for local governments and communities to reduce carbon emissions and gain carbon credits through reforestation and other activities such as treating polluting waste from pig farms.

Among the activities that will be targeted by the grant are subprojects under the ongoing Laguna de Bay Institutional Strengthening and Community Participation Project (LISCOP)⁷⁸ as well as subprojects not funded by LISCOP but identified in the Lake Environmental Action Planning. It is anticipated that when the reduction in emissions from these projects is combined, the Philippine Government would get between US$1–3 million from the World Bank’s Community Development Carbon Fund.

Other activities that will be supported by the grant include the conduct of a carbon emissions inventory and the preparation of micro-watershed environmental action plans.

b. What are the most important lessons that can be learned, if any, from these carbon sequestration projects, which can be applied to CDM AR projects, especially as they relate to the issues set out in this list?

Many legal issues pertinent to the introduction of CDM AR projects in the Philippines are tied to improved data collection, land classification, and boundary delineation. The projects described above contribute to improved data. Results of the CO₂ Storage and Sequestration in the Leyte Geothermal Reservation showed that while the area cannot absorb all the annual CO₂ emissions of the power plants, the amount of carbon stored in the biomass of the reserves as well as the carbon to be sequestered for 25 years will more than offset the total carbon that will be emitted by the power plants in the same period. This data may also be relevant in a discussion of CER allocation, i.e. when allocating CERs among project participants and/or beneficiaries, will it be a straight percentage sharing of the total CERs generated or will the physical source of the CERs (underground or above-ground) be considered? Assuming that it were technically possible to account for CERs by physical source, it may be that holders or owners of rights to different portions of the land or the trees would make separate claims accordingly.

The project also contributed significant data in terms of cost and the eventual pricing of CERs. The power project operator spends about P4.4 or US$ 0.12 per ton of carbon (tC) for every year of carbon storage and sequestration. For 25 years, the total cost is P 111.5 or US$ 2.94 per tC which is comparable to the cost of carbon offset in other tropical countries.

The Assessment of Carbon Sequestration Potential and Management Strategies on Philippine Forests, including the Carbon Stocks Assessment of a Secondary Forest in Mount Makiling Forest Reserve showed that the CBFM areas analysed had more potential for carbon storage and sequestration than the TLA and IFMA. Since available data is limited (e.g. as to factors that may have contributed to such results), it would be worthwhile to update, validate and broaden such results to determine whether accurate generalizations may be made.

⁷⁸ Please see brief description of LISCOP under question 2(e).
This study also showed that while more data should be collected, the resulting carbon storage and sequestration rates for secondary forests should help reduce errors in national estimates. The project demonstrated that second-growth forests such as the project area contain more biomass and carbon than tree plantations. This would mean that cutting natural forests may lead to greater carbon loss than would be stored in tree plantations. This data will be useful in quantifying carbon benefits of forestry projects in secondary forests and can be used as a basis for assessing the areas that may be identified and prioritized for CDM AR projects.

In general, the projects showed the importance and necessity of stakeholder identification, the necessary involvement of and impact of such projects on forest communities. They demonstrated the multiple potential economic and social benefits for communities, which are essential for CDM AR projects to have. These will contribute to the on-going discussion and refinement of the sustainable development indicators of such projects.

The projects also showed great potential for ‘hybrid’ projects, i.e. the combination of energy-forestry projects as exemplified by both the Mirant and Leyte Geothermal projects, and the combination of a waste management-forestry project in the World Bank’s Laguna de Bay project.

Finally, the planned generation of carbon credits in the Magat Watershed and Laguna de Bay projects, which are expected to be purchased by foreign entities or multilaterals like the World Bank, represents recognition of at least the general characterization of CERs as property that can be generated and sold.

c. If no carbon sequestration projects have been implemented in the country, which countries’ experience could the country of study benefit from the most?

Not applicable.

d. In your opinion and based on your research, what types of projects will be implemented under the CDM? Are unilateral CDM projects planned? Which stakeholders (e.g., government, private sector, communities, NGOs) will have an active role in the planning, design and implementation of CDM projects (both unilateral and bilateral)?

Energy projects will likely dominate potential CDM projects. The CDM project portfolio presently listed under the on-going CD4CDM initiative include several bagasse cogeneration, wind power and waste-to-energy projects, and only one AR project. Unilateral CDM projects are not ruled out, and in fact, both past and planned carbon sequestration projects partake more of the nature of unilateral initiatives with funding sought or received from ODA or multilateral funding institutions.

The planning, design and implementation of CDM projects will continue to be a multi-sectoral process under the over-all guidance of the DNA. Because the energy sector will likely be a focus area for CDM projects, the Department of Energy will be active in the evaluation, approval, implementation and monitoring of a CDM energy project. The private sector, NGOs, and academic/research institutions will also be very active drivers of this process, as they are already proving to be in the planning and design of potential CDM projects in energy and waste management. For CDM AR projects, academic/research institutions such as the University of the Philippines College of Forestry will be especially active. Local governments will also necessarily be involved in CDM AR projects situated within their territorial jurisdiction.

However, the stakeholders that will be crucial to the implementation and success of CDM AR are the local and indigenous communities, whose social and economic base consists of the forests in and around which they live. This is the case in general, because of the fundamental requirement for CDM to result in real benefits and contributions to sustainable development. It is especially true for small-scale CDM AR projects which must be developed or implemented by low-income communities or individuals. Given these considerations, these communities must have an active role in planning, designing and implement-
ing CDM AR projects consistent with the policies establishing community-based forestry arrangements as the national strategy toward sustainable forestry management.

B. The CDM Project Cycle

5. CDM AR project design and formulation

a. What substantive standards (e.g., species of trees to be used, types of land on which projects can be implemented), if any, are used for AR project activities:

i. as required by law?
ii. used in practice although not required by law (e.g., in development agency funded projects)?

Section 33 of the Revised Forestry Act identifies the following lands to be reforested or afforested:

- Public forest lands;
- Bare or grass-covered tracts of forest lands;
- Brushlands or tracts of forest lands generally covered with brush, which need to be developed to increase their productivity;
- Open tracts of forest lands interspersed with patches of forest;
- Denuded or inadequately timbered areas proclaimed by the President as forest reserves and reservations such as critical watersheds, national parks, game refuges, bird sanctuaries, national shrines, national historic sites;
- Inadequately-stocked forest lands within forest concessions;
- Portions of areas covered by pasture leases or permits needing immediate reforestation;
- River banks, easements, road right-of-ways, deltas, swamps, former river beds, and beaches; and
- Private lands.

In addition, the Revised Master Plan for Forestry Development provides that areas under forest and tree cover shall be expanded through AR with appropriate species (from the point of view of site factors, utilization needs and profitability criteria) in available bare (non-forest) lands, degraded lands, deforested areas and marginal lands. Tree planting should further be extended to farm lands, grazing lands, recreation areas, margins of roads and railways, as well as peri-urban lands.

Many development agencies are involved in AR projects, including the World Bank, the Asian Development Bank, and the governments of the United States, New Zealand and Germany, among others. The forestry projects supported by different donor organizations generally adopt CBFM as the principal approach to the sustainable development of forest communities through the promotion of environmental protection and poverty alleviation. These projects stress collaboration among government agencies and community organizations. Public-private sector partnerships are increasingly encouraged and implemented. Areas generally targeted are highly degraded areas, protected areas, watersheds, and biodiversity ‘hotspots’. Importance is likewise placed on projects that are, or potentially are, financially viable.79

There is limited data available with respect to more specific substantive requirements set by LGUs. In general, however, the Joint Memorandum Circular 98-01 between the DENR and the Department of Interior and Local Governments sets forth the policy that the DENR and LGUs should undertake forest

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79 Culled from various references (e.g. Critical Ecosystems Partnership Fund’s “The Philippines Hotspot”; USAID Forestry and the Environment report; ADB Regional Study on Forest Policy and Institutional Reform; Sec. 118 of the US Foreign Assistance Act).
land use plans as an integral activity of comprehensive land use planning to determine the optimum and balanced use of natural resources to support local, regional and national growth and development.80

Geographically, there is also an increasing trend toward AR projects in Mindanao and other areas more seriously affected by conflict and poverty. This underscores recognition of the link between improved environmental management with peace and development efforts.

Finally, and as previously discussed, Philippine law and DENR rules implementing Constitutional principles on natural resources provide that tenurial arrangements for AR activities may be undertaken only by Filipino citizens or corporate entities, at least 60% of the capital of which belongs to Filipino citizens. In general, and especially with respect to private sector commercial parties, applicants for such tenurial arrangements must show an appropriate level of financial and technical capacity.

b. Under existing laws, what kind of study, at the minimum, must a proponent of an AR project undertake? Do the requirements for such study provide guidelines for an environmental impact analysis? A socio-economic impact analysis?

Forestry projects must generally undergo an Environmental Impact Assessment (EIA).81 Philippine law requires the submission of an Environmental Impact Statement (EIS) for environmentally critical projects and an Initial Environmental Examination (IEE) for projects which are located in environmentally critical areas.82 These requirements pertain to both government agencies and private entities.

An EIS is a document prepared and submitted by the project proponent and/or EIA consultant that serves as an application for an Environmental Compliance Certificate (ECC). It is a comprehensive study of the significant impacts of a project on the environment, including an Environmental Management Plan or Program that the proponent will fund and implement to protect the environment. An IEE is a document similar to an EIS, but with reduced details and depth of assessment and discussion.83

DENR regulations provide guidelines for both environmental and social impact assessments and analyses. The EIA process includes requirements intended to ensure public participation and assess social acceptability. An environmentally critical project or project within an environmentally critical area may not be undertaken without first securing an ECC. Existing forestry-related policies generally require the issuance of an ECC prior to commencement of these projects.

c. If there are guidelines:

i. Are the guidelines for an environmental impact analysis different from those that are required by law for an environmental impact assessment?

ii. Are the guidelines for a socio-economic impact analysis different from those that are required by law for a socio-economic impact assessment?

No distinction is made in either law or regulations between environmental or socio-economic impact analyses from assessments, although the procedures, details and depth of assessment are less rigorous for projects requiring an IEE. The procedures and requirements for such assessments are contained in orders and guidelines issued by the DENR, pursuant to Section 8 of PD No. 1586 establishing the Philippine EIS

80 Sec. 1.3, Joint Memorandum Circular No. 98-01.
82 DENR AO 2000-30 (Implementing Rules and Regulations) and Presidential Proclamation No. 2146, series of 1981. ECA and ECP categories are defined and further discussed under question 2(e) hereof.
83 Section 3, DENR AO 2000-30.
System. Accordingly, the DENR has issued both broad and sector-specific orders and guidelines on the implementation of the EIS System. With respect to forestry projects which are considered environmentally critical, or for projects within environmentally critical areas, DENR guidelines require an EIA study which shall include the following:

- **Temporal Scope**
  - **Baseline data:** Primary data is required on terrestrial flora and fauna, hydrology, and water quality, among others. Secondary data can be obtained on meteorology and geology. For such primary data gathering, spatial and temporal variables should be considered (i.e. seasonal, and across sites).
  - **Social acceptability of the project:** For potentially controversial forestry projects, sufficient time should be allotted for the social preparation process. Methods of conflict resolution can be employed in such projects to effectively address the issues/concerns/opposition that might arise during the course of the EIA study.
  - **Location of the project:** Additional study time shall be allotted for projects in national parks, protected areas, water protection zones, archaeological sites, sensitive areas, sites of special scientific interest, and areas of outstanding natural beauty, among others.
  - **Life of the project:** The time span for the prediction of the future state of the environment should be comparable with the life of the proposed development since the complexity of the assessment increases with the life of the project. Projects that will last for a long period will necessitate prediction forward for several decades.
  - **Duration of impacts:** The EIA study should include proposed mitigation measures for:
    i. Short-term impacts, i.e., those impacts which can only be experienced for a brief period or segment of the project, i.e. during the pre-construction, construction, commissioning, or certain period of the operation stage.
    ii. Long-term impacts, i.e., those impacts which can be experienced for a prolonged period of time such as during the entire duration of the project operation.
    iii. Permanent impacts, i.e., those impacts which cause irreversible change in the environment.
  - **“Rate of change” of impacts:** Impacts which slowly cause change in the environment as well as those which cause rapid change should be considered in the EIA study. The cumulative and synergistic impacts should also be predicted. Cumulative impacts are collective effects of impacts that may be individually minor but in combination, often over time, may prove major.

- **Geographical Scope**
  The EIA study should generally include data on the following:
  - The directly impacted area (settlers, landowners, farmers and sensitive ecosystems that will be directly affected by the project);
  - At least one (1) km radius of the proposed site.
  - The adjacent community where the impacts of the project will likely be encountered.

  The EIS for environmentally critical projects should also include:
  - Project description (including alternatives for siting and technologies)
  - Activities under project phases
  - Data on land use and zoning (e.g. right-of-way)
  - Demographic data (population size, density, household size, dependency ratio, educational attainment, morbidity and mortality rates, number of households directly affected)
  - Data on social services (housing, education, health, employment and income)
  - Data on direct and indirect dislocation/displacement of people; business institutions; villages; community facilities; loss of income; employment; etc
  - Analysis of future environmental conditions with and without the project

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84 Environmentally critical projects and environmentally critical areas are further defined in the next section.
Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects

- Environmental Management Plan, including:
- Information, Education and Communication Plan (IEC) Plan
- Social Development Program
- Contingency/Emergency Response Plan
- Environmental Monitoring Program
- Environmental Guarantee and Monitoring Fund proposal

For community-based forest resources utilization projects with areas having more than 500 hectares, an ECC is required. For project areas with less than 500 hectares, an IEE is required which shall contain: general project information; a description of the project; description of project surroundings (including physical, biological and socio-economic conditions); and predicted and assessed impacts and proposed mitigation measures.

The procedures involved in the EIS process have been criticized as expensive (with respect to the high cost, for example, of employing IEE or EIS ‘preparers’) and cumbersome, due to the many requirements, redundant procedures, and different layers of required reviews and endorsements. The monitoring of compliance is generally regarded as weak given the EMB’s limited personnel and resources relative to the large number of pending and issued ECCs and IEEs. DENR AOs have been issued to clarify and streamline procedures, through DENR AO 37 in 1996 and more recently through DENR AO 30 in 2003.

d. If there are no guidelines, what default technical guidelines could the project participants follow, which, in your opinion, would be acceptable to the host country?

Not applicable.

e. How is the term “significant impact” defined by the host country’s law? Is this the criterion that triggers the need for an environmental and/or socio-economic impact assessment, or does some other criterion trigger this requirement? Is there a list of projects that require an environmental and/or socio-economic impact assessment? If there is such a list, are afforestation and/or reforestation projects included in such list?

Projects with “significant impact” refer to environmentally critical projects (ECPs) and projects within environmentally critical areas (ECAs). An ECP is a project which, by its very nature, is considered to have high potential for significant negative environmental impacts and is listed as such under proclamations issued by the Philippine President.

Specifically, the nature of the project considers the:
- Size of the project
- Cumulative nature of impacts vis-à-vis other projects
- Use of natural resources
- Generation of waste and environment-related nuisance
- Environment-related hazards and risk of accidents

Under the previous DENR AO 96-37 on the EIS System, the four main categories of environmentally critical projects are listed as (1) heavy industries; (2) resource extractive industries; (3) infrastructure projects and (4) golf course projects. Under each heading are sub-categories that may be expanded or revised by the DENR depending on technological advancements and other considerations. The sub-categories under resource extractive industries include the following forestry projects:

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- Logging
- Major wood processing projects
- Introduction of fauna (exotic animals) in public/private forests
- Forest occupancy
- Extraction of mangrove products
- Grazing

AR projects are not expressly listed as ECPs, although they may arguably fall under “forest occupancy” projects which refer to tenure-related, livelihood projects, and associated management projects within public forest lands. In current practice, AR activities are usually carried out under arrangements which also authorize an extractive activity, i.e. harvesting. These arrangements include CBFM, IFMA, SIFMA and others. These projects are expressly required to undergo the EIS process pursuant to separate DENR orders. In the case of “AR only” projects (with no harvesting), these would still have to undergo the EIS process if these will take place within an ECA, as discussed below.

As in the case of ECPs, projects within an ECA must undergo the EIS system. An ECA refers to an area that is environmentally sensitive and is listed as such under Presidential proclamations. The factors to be considered are:

- Vulnerability of the project area to disturbances due to its ecological importance, endangered or protected status;
- Conformity of the proposed project to existing land use, based on approved zoning or on national laws and regulations;
- Relative abundance, quality and regenerative capacity of natural resources in the area, including the impact absorptive capacity of the environment.

The nature of the potential impact analysed include the:

- Geographic extent of the impact and size of the affected population
- Magnitude and complexity of the impact
- Likelihood, duration, frequency and reversibility of the impact

Under DENR AO 96-37, ECAs include:

- All areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries;
- Areas set aside as aesthetic potential tourist spots;
- Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine wildlife (flora and fauna);
- Areas of unique historic, archeological or scientific interest;
- Areas which are traditionally occupied by cultural communities or tribes (indigenous cultural communities);
- Areas frequently visited and/or hard-hit by natural calamities (geological hazards, floods, typhoons, volcanic activity, etc.);
- Areas with critical slopes;
- Areas classified as prime agricultural lands;
- Recharged areas of aquifers;
- Critical water bodies, mangrove areas and coral reefs.

Areas with critical slopes refer to all lands with slopes of 50% or more, and shall cover alienable and disposable forest lands and unclassified forests. AR and other forestry projects within such areas must thus undergo the EIS system. While areas with slopes of less than 50% are not, for that reason, considered ECAs, activities conducted within such areas may still need to undergo the EIS system if these activities fall within the category of ECPs or if other rules expressly provide therefor. For example, DENR AO 96-
29 and DENR AO 99-53 require that CBFMAs and IFMAs, respectively, must undergo the EIS system regardless of the area.

f. Which government institution approves the environmental impact assessment? The socio-economic assessment? The mitigation plan to address projected negative impacts?

The approval of the EIA, including the socio-economic assessment and mitigation plan, are in the form of the ECC issued by the DENR which certifies that, based on the representations of the proponent as reviewed and validated by the Environmental Impact Assessment Review Committee, the proposed project will not cause a significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS system, and is committed to implement its approved Environmental Management Plan in the EIS or the mitigation measures in the IEE.

For environmentally critical projects, an EIS is submitted to the EMB for review and eventual approval or denial of an ECC by the DENR Secretary. For projects within an ECA, proponents shall submit the IEE to the appropriate Environmental Management and Protected Areas Sector (EMPAS) of the DENR Regional Office for review and eventual approval or denial of an ECC by the Regional Executive Director.

In this regard, a proponent who submits an IEE may opt to, or be required by the Regional Executive Director, to submit an EIS if the project:

- Has significant potential environmental impacts that have not been adequately addressed by proposed mitigation and enhancement measures;
- Is faced by strong public opposition or low social acceptability;
- Poses high potential risks to public safety, welfare and health;
- Uses a significant amount of highly pollutive substances producing toxic or hazardous wastes; or
- Has significant socio-cultural impacts.

g. What types of AR projects are recognized by the host country’s law (e.g., agroforestry, monocultural or mixed industrial plantations, forest landscape restoration projects, for instance, on degraded or protected lands, community forest projects, other AR projects with focus on timber production, biomass energy, watershed management etc.)?

The Revised Forestry Code (as amended by Presidential Decree No. 1159) provides for the establishment and development of industrial tree plantations (ITP), tree farms and agroforestry farms to attain reforestation objectives. ITP is defined “as any forestland extensively planted to tree crops primarily to supply raw material requirements of existing or proposed wood processing plants and related industries”. Tree farms, “refers to any small tract of land purposely planted to tree crops”, while agroforestry is defined “as the sustainable management of land which increases overall production, combines agricultural crops and forest trees and /or animals simultaneously or sequentially, and applies management practices which are compatible with the cultural patterns of the local population”.

The Philippine Government’s official reforestation programme includes afforestation, enrichment planting, and assisted natural regeneration. The DENR-FMB classifies the current reforestation programmes as follows:87

**Government-led**

- Community-Based Forest Management
- Watershed Rehabilitation
- DENR Projects, including Foreign Assisted Projects

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87 Taken from the presentation of Jesus A. Javier, Chief, Reforestation Division, DENR-FMB, June 2004.
The Philippine Experience

- Pilot Dipterocarp Plantations
- Urban and Roadside Forestry Program
- National Clonal Forestry Program

**Private sector**
- Integrated Forest Management Agreement
- Socialized Industrial Forest Management Agreement
- Private Forest Development Agreement
- Tree Planting Near Electric Power Line Systems
- Timber Corridor

**Mandatory plantation development under**
- Timber License Agreements
- Forest Land Grazing Lease Agreements
- Mining Lessees

**h. Are these AR project types treated differently under the law, e.g., in terms of incentives, requirements? Do the regulations make certain project categories easier/more difficult, cheaper/more expensive to implement?**

Tenurial arrangements under which AR projects can be undertaken vary with respect to proponents or parties involved, objectives and area coverage, among others. They are thus treated differently in certain respects. Philippine policy expressly favors CBFM as the national strategy for forest management, as first declared in EO 263 and recently confirmed in EO 318 on SFM, to wit:

“2.3.1 Community-Based Forest Management (CBFM) shall be the primary strategy in all forest conservation and development and related activities, including joint ventures, production sharing and coproduction; it shall be encouraged in all private sector forestry enterprises and ventures.”

The goal of regulations on CBFM projects is to facilitate their development and implementation. Recent efforts have been taken to streamline the processes and issuance of CBFMA, including reduction in application requirements and processing time and reduced processing costs. Unlike other programmes, the community forestry programmes rely heavily on external funding in order to provide communities with technical and financial assistance. Severe limitations in the DENR budget have been, and continue to be, compensated by foreign grants or loans.

With respect to forestry management agreements in general (under which AR projects can be undertaken), the processing of applications is often lengthened by the cumbersome and sometimes repetitive procedures at different DENR levels resulting in higher transaction costs. Application fees and approving authorities also differ. While an IFMA is approved, for example, by the DENR Secretary, a SIFMA between 10 and 500 hectares is approved by the Regional Executive Director, and those under 10 hectares are approved by the DENR Provincial Office.

Unlike proponents for other forestry programmes, IFMA proponents are not required to present an indicative business plan as part of their application requirements. They are, however, required to have a duly approved CDMP and ECC. These entail higher costs and longer processing time. In addition, separate permits are required for harvesting and utilization.\(^8^8\) IFMA holders are also required to submit aerial photos/satellite imageries every five years (for those with natural forests and areas of more than 5,000ha).

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\(^8^8\) Other forms of utilization may include: construction of permanent structures or roads; and construction and operation of wood-processing or manufacturing facilities.
6. Negotiations of the CDM AR contract

a. Is the right to a CER defined in national law? If so, please describe how it is defined and how the law seeks to protect the right (E.g., Under which type of property, if any, does the right to a CER fall? What form of registration within the country is required, if any, to protect the right (e.g., annotation on the title to the land, recording in a special registry)).

The right to a CER is not defined in national law.

b. If the right is not defined by law:

i. Are there plans to define the right through legislation in the near future (i.e., in the next 12 months)?

The DNA was only recently established in late June 2004 by virtue of a Presidential Administrative Order, with the mandate to promulgate, within 120 days from the Order’s issuance, the necessary rules and regulations to effectively carry out its functions. These rules include the criteria, indicators, standards, systems and procedures, and evaluation tools for the review of CDM projects. These rules should provide at least preliminary guidance for the treatment of CERs.

While legislation would provide greater detail and stability to the CDM framework and the treatment of CERs, strong arguments may be made to support the view that the DENR has the legal authority to issue provisional rules thereon. Its authority is derived from various legal sources: expressly from EO 320 establishing the DNA and from its general mandate under EO 192 and the Revised Administrative Code to implement declared environmental policies. Having the force and effect of law, such rules would be entitled to great respect and would be binding on all persons subject to them. Furthermore, the courts take judicial notice of administrative regulations. The implementation and interpretation given by the agency with technical expertise and experience, while not controlling on the legislature, would be highly persuasive reference for future legislation.

However, given that the 13th Congress of the Philippines only recently commenced and that a number of other economic and social bills have been certified as urgent, it is unlikely that the legal characterization of CERs will be a high legislative priority. It should be recalled that the ratification of the Kyoto Protocol was pending in the Philippine Senate for several years before finally being positively acted upon only in late 2003.

ii. Based on existing property and contractual law, what would be the best way to characterize the right? Is there only one way, or are there several possibilities?

A CER represents and refers to the underlying emission reduction which is a unit equal to one metric ton of CO₂e. There are several legal theories under Philippine property and contractual law for the characterization of CERs and the right to CERs.

Philippine law enumerates different categories of immovable property, among them, land, trees or plants, and contracts for public works, servitude, and other real rights over immovable property.

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89 EO 192 and the Revised Administrative Code provide for the establishment, mandate, powers, and functions of the DENR and are discussed under question A(1) hereof.
90 It is worth noting that a similar situation exists in the case of natural gas development, where no specific national law is yet in place. The Department of Energy, relying on its general mandate to implement energy policies, issued interim regulations in 2002 on the transmission, distribution and supply of natural gas. These rules are the principal reference for pending natural gas legislation.
91 Article 415, Civil Code of the Philippines.
While a CER may be viewed as a servitude, i.e. a legal burden placed on the land for the parties involved not to release carbon, this characterization would not be consistent with the definition of a CER as representing a unit of sequestered carbon.

And while the sequestered carbon may be found in the land or standing trees, they are clearly neither the land nor trees themselves. Furthermore, defining them as land or a right to land would prohibit CERs from being transferred to non-Filipinos due to the constitutional limitation against land ownership by aliens. Neither would the sequestered carbon constitute part of trees only since carbon is retained not only in trees but in the soil and root system.

Inasmuch as CERs represent avoided carbon emissions or carbon sequestered by natural resources (trees, plants, biomass), it may be argued that the sequestered carbon may conceptually be treated as a natural resource. It may further be argued that sequestered carbon, as represented or evidenced by CERs, is unlike wood from trees or extracted minerals that are physically distinct properties that may be sold after separation from the ground or trees to which they were previously attached. If this were the case, CERs could not be transferred to private parties, much less foreign entities, since the underlying resource represented by the CER could not be transferred thereto, strictly following the constitutional principle that all natural resources of the Philippines are owned by the State. This restriction would effectively eliminate the possibility of CDM AR projects. This is a very rigid, narrow and conservative construction that yields no practical benefits. It is unlikely to be asserted, but is nevertheless relevant to note as a possible legal interpretation that should be precluded by future rules or legislation.

CERs may be classified as forest resources, which are defined under DENR regulations as “natural resources whether biomass such as plants and animals or non-biomass such as soil and water, as well as intangible services and values present in forestlands or in other lands devoted for forest purposes.” In this way, they are akin to wood/forest products which are manufactured, or to minerals that are produced, which are legally allowed to be sold to private and even foreign entities. The right to forest resources and all fruits (natural, civil, or industrial) of the land are owned by the State but may be assigned or transferred under production-sharing, co-production, or joint venture agreements between private parties and the State.

Under a framework where CERs are treated as or in a manner similar to forest resources, it can be strongly asserted that the right to CERs generated from public lands and forests would belong to the State unless and until such right were expressly transferred or shared. Furthermore, it may be argued that existing concessions, such as a CBFMA, can not and could not have intended to confer rights greater than those expressly provided under the original concession, much less rights previously not even contemplated. Hence, the right to CERs generated would belong and remain with the State unless expressly transferred or assigned to other parties.

The treatment of the right to CERs may be different, however, with respect to private lands. The crucial issue would be whether, in the removal of such land from the public domain and transfer thereof to private parties, an implicit reservation exists in favour of the State with respect to rights (such as the right to a CER) which were not previously contemplated. Is the right to CERs in private land akin to the right to sub-surface minerals which are retained by the State under Philippine law, regardless of the privatization of the surface rights?

For minerals that may be found in public and private lands, the reservation thereof in favour of the State is well-settled in both statute and jurisprudence. In contrast, Philippine law and regulations expressly recognise that a private landowner has all the rights of ownership over his land and the natural, civil and industrial fruits of his land. Standing trees and any trees planted thereupon by him are thus recognised as

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92 DENR Administrative Order No. 29, Series of 1996.
his rightful property unless he transfers his rights thereto. It would, consequently, be difficult for the State to claim a retained ownership of the right to CERs generated in private lands.

Whether the right to a CER is necessarily a State right or a private right, it may be treated as an immovable in the sense of being a real right over immovable property. Under Article 1358 of the Philippine Civil Code, acts which have for their object the creation or transmission of real rights over immovable property must appear in a public instrument. Non-compliance with this requirement does not affect the validity or enforceability of the acts of the parties as among themselves. However, such acts and instruments may be registered on the land title which would then be binding even against third parties such as subsequent purchasers of the land.

Since CERs are a new creation, there is no absolute legal certainty as to their nature in Philippine law. As discussed in the immediately preceding section, however, great weight and respect would be accorded to the rules and interpretation of the DENR as the agency technically qualified and legally mandated to implement environmental policies, in general, and CDM-related policies in particular.

Contractually, project parties could agree that CERs are a right or interest in property subject to negotiation. The Clean Air Act of the Philippines opened the door to emissions trading by local companies without discussion of the nature of emission quotas or credits. Hence, the nature of CERs could likewise be left to contracting parties as rights or interests over which they would negotiate. This may lead to confusion and conflict among project participants, however, especially if some agreements are deemed less equitable than others, particularly for communities and other local participants.

Whether legislation or administrative regulations will formally establish the legal nature of CERs and the right to CERs, it is important to note that international law forms part of the law of the land. Consequently, the Government recognises rules and principles of international law as contained in treaties to which it is a signatory. With the Senate ratification of the Kyoto Protocol in 2003, it may thus be asserted that the Protocol, together with the recognition of the CDM regime and the CER as a new and assignable commodity, are deemed incorporated into Philippine law. These are general principles and further guidance is needed to operationalize CDM on the national level, including the characterization of the right to a CER in a manner that is consistent with the Constitution and international rules, and which affords the greatest legal protection and security to contracting and other affected parties.

Among the options discussed, the option of characterizing the right to CERs as a real right over immovables that can be registered or annotated on the land title, would appear to the ‘best’ option, i.e. that is consistent with domestic laws, not inconsistent with international rules, and that provides greater stability for contracting and other affected parties. Under the Torrens, rights over real property registered on the certificate of title renders these rights binding and enforceable even as against third parties.

While the legal characterization of CERs may be done through regulations promulgated by the DNA, these rules could be challenged or changed more easily. With reliable commodities, serious purchasers would be more interested and sellers would be able to negotiate better prices and terms. It is thus important that issues surrounding the nature and allocation of CERs are provided with as much legal stability as possible. For this reason, it would be most advisable that legislation be enacted to define CERs and the rights to CERs. This would be more legally secure than rules promulgated by the DNA.

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93 Section 2, Art. II, Philippine Constitution. It should also be noted that duly ratified treaties can be invoked before and directly enforced by the courts and administrative authorities if they implicitly or explicitly establish rights and duties for private persons [Muyot and Yambao, discussing the case of Kuroda v. Jalandon (832 Phil. 171)].
c. **In the absence of a clear legal definition of the right to a CER, can the concept be defined sufficiently between Parties to a project through their contractual agreement?**

The concept of the right to a CER can be defined sufficiently between project parties so as to make their agreement valid, binding and enforceable as between them. Philippine law on obligations and contracts provides that contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order and public policy.94

The absence of a clear legal definition may, however, provide basis for parties outside the agreement to challenge any provisions on the right to the CERs and allocation of CERs. For example, a current holder of a SIFMA may enter into an agreement for a CDM AR project with another private party on a portion of the SIFMA area, allocating the rights to CERs between themselves. The Government may question the parties’ agreement and claim that it has the right, in the first instance, to any CERs inasmuch as the land subject of the agreement is public land owned by the State and that the generation of CERs was never contemplated in the original SIFMA grant.

While the contractual agreement between the parties may not preclude legal challenges, the parties may be protected by resorting to damages on the basis of warranties found in their contract. In a case against the Government, however, it would be necessary to ascertain other important inter-related legal issues such as: whether and under what conditions the contract authorizes indemnification; whether and under what conditions the Government has waived its sovereign immunity; whether the suit against the Government is enforceable; and if it is enforceable and valid, if and how a claim for indemnification may be satisfied. In cases where the Government allows itself to be sued and no specific source of funds from which to satisfy a possible judgment is identified, a Congressional appropriation is generally needed.

d. **Would defining the right to a CER by contract still be an available option even if the right were sufficiently defined by law?**

As previously discussed, contracting parties may establish such terms as they may deem convenient, provided they are not contrary to law. Hence, even if the right to a CER were defined by law, it would still be legally permissible to stipulate further terms or conditions with respect to such right as long as such terms are not inconsistent with relevant laws.

e. **Does the country’s law on contracts set the venue and jurisdiction for dispute settlement? Can this requirement be waived?**

The 1997 Rules of Civil Procedure95 provide that actions affecting title to or possession of real property or interest therein, shall be tried in the proper court with jurisdiction over the area where the real property is situated. With respect to personal actions, these may be commenced and tried where the plaintiff or defendant resides. In cases against non-residents of the Philippines which affect property located in the Philippines, an action may be commenced and tried in the court where the property or any portion thereof is situated.

These requirements will not apply, however, if a specific rule or law96 in the future should provide otherwise. In addition, these requirements may be waived if the contracting parties have validly agreed in writing before the filing of the action on the exclusive venue thereof. However, such an agreement on

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94 Art. 1306, Civil Code of the Philippines.
95 Sections 1-4, Rules of Civil Procedure.
96 No specific law or rule exists as yet with respect to CDM AR projects. The terms under certain tenurial arrangements, however, contain dispute resolution provisions. The CBFMA and IFMA, for example, have clauses requiring arbitration in case of dispute.
venue will be valid only as between the contracting parties. In the event a party outside the agreement challenges the project, the venue of such a legal challenge would be determined by the Rules of Civil Procedure discussed above.

f. Under the law, is there any class of persons who are recognized as requiring the special protection of the law when entering into contracts (e.g., indigenous peoples, unorganized communities)? What special protection does the law grant this class of persons (e.g., higher burden of proof in demonstrating that the party entered into the agreement voluntarily, entitlement to special assistance from the DNA in the negotiation of CDM AR contracts)?

Indigenous peoples and local communities are afforded special protection under the law, particularly in relation to contracts over forestry and other natural resources. Pursuant to the Indigenous Peoples Rights Act, the NCIP must look into whether an indigenous community has given its free and prior informed consent to various agreements with or between third parties within its ancestral domains and lands, to ensure that such consent was given in accordance with their respective customary laws, free from any external manipulation, interference and coercion.

The free and prior informed consent of the concerned indigenous cultural peoples is required, as evidenced or covered by NCIP certification of compliance, prior to undertaking any of the following activities within their ancestral domains or lands:

- issuance, renewal, or grant of any concession, license or lease, or production-sharing agreement;
- the grant of any license, lease or permit for the exploitation of natural resources;
- transfer of the responsibility over areas found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover or reforestation; and
- permitting access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources.

Under the CBFM framework, the DENR, LGUs, other government agencies, NGOs and other private entities shall cooperate in developing the enabling environment to support and strengthen local communities in managing forest lands and coastal resources on a sustainable basis. The DENR shall provide security of tenure and technical assistance to these local communities. Local communities shall be assisted by DENR, LGUs, NGOs and other government agencies or entities in the preparation of the Community Resource Management Framework.97

7. National Approval

a. Under present laws, are there special requirements that CDM AR project participants need to comply with to become CDM AR project participants (apart from the general capacity to enter into contracts, e.g., financial capacity, track record in the implementation of CDM AR projects, proven commitment to environmental protection)?

There have been no special requirements as yet set forth that apply specifically to CDM AR project requirements. Such requirements will likely be included in the rules, criteria, standards, systems and procedures that will be developed by the DNA within the next 120 days or four months from Executive Order No. 320 establishing it in June 2004.

97 DENR Administrative Order No. 29, Series of 1996, Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community-Based Forest Management Strategy (CBFMS).
b. **What legally mandated criteria are used for determining whether a CDM AR project assists in achieving sustainable development?**

There are no criteria that have been mandated by law which are specifically applicable to whether CDM AR projects assist in achieving sustainable development. General sustainability guidelines as well as proposed CDM-specific criteria exist which are discussed below.

c. **Is there a legally specified mechanism for determining that a CDM AR project assists the host Party in achieving sustainable development (e.g., sustainable development indicators, if any, for CDM projects, and for CDM AR projects in particular)? If so, please describe this process. Who is authorized to issue this certification? Can this certification be issued even in light of objection from other agencies and from stakeholders?**

There is as yet no legally specified mechanism or process for determining that a CDM AR project assists the Philippines in achieving sustainable development. The DNA, as mandated by Executive Order No. 320, will develop the systems, procedures and evaluation tools for the review, assessment and approval of CDM projects.

d. **If there are no substantive and procedural guidelines on determining that a CDM AR project assists in achieving sustainable development, in your opinion and based on your knowledge of the related law and policy in the country of study, what basis would the DNA use to determine that this requirement has been met? For instance, are there voluntary criteria that have been used in past (not necessarily CDM) projects (e.g., donor-funded afforestation and reforestation projects?) which could be acceptable to the DNA?**

While there are no legally mandated substantive criteria and procedures on determining whether a CDM AR project assists in achieving sustainable development, general guidelines exist and CDM-specific proposals have been made.

The DENR, through its Integrated Environmental Management for Sustainable Development Programme (IEMSDP), previously issued operational criteria for sustainability of projects at the local level, the “Sustainable Development Operational Framework – a People’s Framework”.98 These operational tests of sustainability consist of:

- **Economic viability** – everybody is better off and nobody is worse off because of a project;
- **Ecological viability** – ecological functions of the environment and regeneration capacity of natural resources are not significantly hampered or altered;
- **Technological viability** – technology is environment friendly;
- **Political viability** – people participate in the planning, ownership, implementation and benefits from a project;
- **Socio-cultural viability** – life-giving core values, beliefs and worldview of the community are respected;
- **Institutional viability** – local institutions responsible for the project have the capacity to sustain development activities.

The DENR has also identified the following as a possible checklist to determine whether a proposed CDM project would contribute to sustainable development:99

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Social criteria – whether, how, and the extent to which the project will:
- Improve quality of life
- Alleviate poverty
- Improve equity

Economic criteria – whether, how, and the extent to which the project will:
- Provide financial returns to local entities
- Result in positive impact on balance of payment
- Transfer of new technology

Environmental criteria – whether, how, and the extent to which the project will:
- Reduce GHG emissions and the use of fossil fuels
- Conserve local resources
- Reduce pressure on local environments
- Provide improved health and other environmental benefits
- Meet local renewable energy portfolio standards and other environmental policies

In addition, CDM project type priorities may also be identified under positive and negative lists. For example, a project based on nuclear power may be placed in the negative list, which will mean that such CDM-proposed projects will not be considered.

In terms of process, rather than creating an entirely new or duplicative process, the existing EIA system in general should be used as the framework to determine whether a CDM AR project will contribute to sustainable development, inasmuch as this system already incorporates essential environmental, social and economic indicators. In addition, specific tenurial arrangements such as CBFMA and SIFMA through which CDM AR projects might be carried out also require consistency with sustainable development principles. Existing procedures to determine and monitor such consistency may likewise be applied. The rules to be promulgated by the DNA (and/or which may also be later legislated) should further identify CDM-specific criteria, such as additionality, which can then be incorporated in current procedures with respect to CDM projects.

In addition, the DENR had proposed two possible processes for National Approval. These are briefly described as:

Proposal A
- Project Developer submits Project Identification Note (PIN) to CDM Secretariat
- CDM Secretariat evaluates PIN against national criteria
- If the project is found to comply with national criteria, the CDM Secretariat forwards PIN to the Technical Evaluation Committee (TEC) for further evaluation
- Upon favourable evaluation, the PIN is sent back to the CDM Secretariat which will prepare recommendations to the IACCC
- Upon favourable review of the evaluation report, the IACCC will endorse it to the DENR (now also the DNA) for host country approval

or

Proposal B
- Proposal A, except that approval in the last step will be conditional, subject to validation by the Designated Operational Entity, and endorsement of the IACCC
- Project Design Document will be prepared for validation by a Designated Operational Entity
- The validated PDD will be forwarded to the CDM Secretariat then to the TEC
- If found to conform with the PIN, the PDD is forwarded to the IACCC for endorsement to the DENR (DNA) for host country approval

100 Ibid. Also, it should be noted that while DENR proposals do not expressly state that all other necessary permits should have been obtained prior to the National Approval Process, it may be assumed that this is the case given that the different committees and authorities must logically be able to evaluate all the CDM project documents, which necessarily include the fundamental forest agreement and such other basic permits/agreements.
Most recently, EO 318 provided both general and specific principles which should govern SFM implementation. These principles are likewise appropriate for and applicable to CDM AR projects. In general, the priority development, protection and management activity under SFM shall be the rehabilitation of open and/or denuded, degraded, fragile forestlands, and slope stabilization and protection to address occurrence of floods, landslides and similar ecological disasters. The establishment of tree parks, regreening and roadside planting of forest species in open and appropriate spaces shall be prioritized to mitigate worsening urban air quality and global warming.

Specifically, SFM shall be guided by, among others: delineation, classification and demarcation of forestlands; community-based forest conservation and development; incentives for enhancing private investments and global competitiveness of forest-based industries; and proper valuation of forestry resources.

8. Project Validation

a. Under existing law, how is the requirement for public comment under the Kyoto Protocol likely to be complied with in the host country?

The requirement for public comment under the Kyoto Protocol will most likely be aligned with the existing EIS system and its requirements on stakeholder consultation and social acceptability.

Under the 2003 regulations implementing the Philippine EIS System, all project proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan. The conduct of public hearings is mandatory for new ECPs, although the DENR-EMB may also require other projects to conduct public hearings. All public consultations and public hearings conducted during the EIA process, including stakeholder comments and the proponents’ response to these, shall be documented. The public hearing/consultation process report shall be validated by the EMB and shall constitute part of the records of the EIA process.

These requirements are in consonance with requirements under the international CDM framework to invite, respond to, and document local stakeholders’ comments.

b. What weight would stakeholder opinion have on the issuance of permits?

The IPRA requires the consent of concerned indigenous peoples to projects within their ancestral domains and lands, without which permits can not be issued. The opinion of LGUs also has great weight given that environmental and forestry responsibilities have been devolved to them under the Local Government Code, although subject to review and supervision by the DENR. There have been cases, however, where resolutions of local government legislative councils banning certain mining and energy projects have effectively resulted in the curtailment of these developments.

The process of determining social acceptability is critical to the EIS process. Social acceptability by affected communities must be based on timely and informed participation in the EIA process particularly with regard to environmental impacts that are of concern to them. One of the principal criteria for review of the EIS is that social acceptability is based on informed public participation. Public participation is defined as an open, transparent, gender sensitive, and community-based process aimed at ensuring the social acceptability of a project or undertaking, involving the broadest range of stakeholders, commencing at the earliest possible stage of project design and development and continuing until post-assessment monitoring.


102 Section 3(aa), DENR AO 2003-30.
As a general rule, it is neither necessary nor realistic that a project will have the unanimous agreement or absolute support of all stakeholders. In practice, the weight of stakeholder opinion would depend on many different considerations, including the nature and extent that a particular stakeholder would be affected and the response measures designed to address such impacts. There are no hard and fast rules for measuring stakeholder opinion or the relative weight of different stakeholder groups, but in practice, there must at least be consensus for a project to be socially acceptable.

9. Project Monitoring

a. In monitoring a CDM AR project, can project participants use monitoring processes put in place for other purposes (e.g., EIA law, forestry laws, CBD) as a guide?

Monitoring processes already in place under the EIA system may be used as a guide, to which CDM-specific indicators or criteria should be added. The EIS framework requires that a multi-partite monitoring team (MMT) shall be formed to monitor compliance with the ECC conditions and the Environment Management Plan (EMP). The MMT shall be composed of representatives of the proponent and of stakeholder groups, including representatives from concerned LGUs, locally accredited NGOs/POs, the community, the concerned EMB Regional Office, other relevant government agencies, and other sectors that may be identified during the EIS process.

For this purpose, project proponents are required to set up Environmental Monitoring Funds that will support the activities of the MMT. In addition, proponents are also required to conduct regular self-monitoring of specific parameters indicated in their EMPs.

To address CDM-specific criteria, however, guidelines would need to be incorporated in the EIS system and process. For example, the evaluation and monitoring processes for CDM projects will need to evaluate, review and monitor both project and environmental additionality.

b. What happens if monitoring indicates that there has been a violation of national law governing the project? How would that affect the project’s implementation? Can the certification that a project assists in achieving sustainable development be subsequently withdrawn?

Consequences for violation of national laws will depend on the nature and extent of the violation, and will be determined by governing and relevant legal provisions in such cases.

For example, pursuant to law and DENR regulations, violation of ECC conditions or other environmental regulations or misrepresentations by proponents in EIS-related documents are punishable by suspension or cancellation of the ECC and fines. Suspension or cancellation of an ECC results in closure of the project. Under the IPRA, the concerned indigenous peoples have the right to stop or suspend, in accordance with law, projects that are commenced or operating without their free and prior informed consent.

The rules on CDM projects in the Philippines to be formulated by the DNA should address the issue of whether a certification that a project assists in achieving sustainable development may be withdrawn, and under what circumstances, if subsequent monitoring reveals that the project is violating national laws. As a general rule, government certifications are not revoked except for the most serious causes and only after due process including exhaustive and validated investigation. Such causes would include serious misrepresentation of facts or positions (on which the certification essentially relied), fraud, or corrupt practices.
C. Conclusions and Recommendations

1. Will the introduction of CDM AR projects in the host country significantly alter the afforestation and reforestation objectives of the country, as stated in law, and the nature of afforestation and reforestation projects that are currently being implemented in the country of study (as registered with the pertinent national/local agency), if any?

While it is unlikely that the introduction of CDM AR projects will alter or change the AR objectives of the country, these will complement and add significant new dimensions to current objectives which are already environmental, economic and social in nature. If properly designed and implemented, CDM AR projects have the potential to provide more opportunities for CBFM initiatives and public-private sector collaboration. These also have the potential to enhance the protection of forestry resources and contribute to meeting the country’s commitments under the Convention on Biological Diversity (CBD), which include promoting environmentally sound and sustainable development in areas adjacent to protected areas as well as rehabilitating and restoring degraded ecosystems. The Philippines is regarded as a biodiversity hotspot, and its tropical forests are home to thousands of endemic plant and terrestrial vertebrate species. CDM AR projects, which aim to generate CERs through increased forest cover, can significantly further the general CBD goal of protecting and conserving biological diversity.

The state of degradation of Philippine forests has long been recognised as so severe a problem that objectives for AR are provided by law, and ambitious targets continue to be updated through policy issuances covering the next 15 to 25 years. Data shows that while modest gains in reforestation have sometimes been made, on the whole, the rate of AR fails to cope with the level of degradation. It has been projected that even at the rate of 100,000 hectares a year, it would take more than 100 years to rehabilitate the denuded and degraded upland areas.

In response, the objectives of the Reforestation Program (i.e. AR, enrichment planting and assisted natural regeneration) include the rehabilitation of watersheds and other critically degraded areas, environmental upgrading, and economic development. In addition, the recent Presidential Executive Order on Sustainable Forestry Management provided that tree parks and other such projects will be prioritized to mitigate global warming. Such express recognition affirms that GHG mitigation and carbon sequestration will likely be an additional dimension to the environmental objectives and desired socio-economic benefits of AR projects.

A CDM AR project, which can theoretically be undertaken within the existing framework of current tenurial and regulatory instruments, has the potential to significantly affect the nature of these activities including how they are undertaken as well as the additional institutional and contractual arrangements that will be necessary. These are due to the added socio-economic dimensions of CDM AR projects, which necessitate technically rigid requirements for monitoring, measuring, determination and allocation of CERs.

Many AR projects in the past have either failed or were considered merely ‘paper projects’ because there was no real monitoring of project status. A recent example of this is the 2003 report of the Philippine Commission on Audit claiming it uncovered more than 2.3 million pesos (about US$40,000) worth of unaccounted DENR reforestation projects in Cagayan Valley. These projects, according to the agency, could not be located or identified due to lack of documents or insufficient evidence.

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103 Conservation International www.biodiversityhotspots.org
104 Lasco, Philippine Forests and the Kyoto Protocol.
105 Villamor, Philippine Daily Inquirer.
There has been uncertainty in the actual progress of many reforestation projects due to, among others, forest fires, pests and diseases, continued illegal activities, and other factors which have not been adequately monitored. With a CDM AR project, baseline data will need to be accurate and results need to be scientifically measured and verified. If the CDM framework can help to expand a more accurate database and improve capacity in response to these new requirements, it will strengthen the AR programme and make it more reliable and credible.

Another significant dimension that can be added by CDM AR projects is the concrete link to real, measurable, and long-term sustainable development, particularly of the communities in and adjacent to project areas. Existing rules for tenurial arrangements under which AR may be carried out – such as CBFMA, IFMA and SIFMA – all contain the requirement that such projects must be consistent with sustainable development. DENR and FMB reports, however, do not as yet expressly describe or measure whether and to what extent this objective is actually met. The introduction of CDM AR projects, with its emphasis on sustainable development and monitoring requirements, can significantly strengthen, clarify and even quantify the link between AR and improved socio-economic and environmental conditions.

More fundamentally, the introduction of a CDM AR project has the potential to radically alter the attitudes of stakeholders toward forests which then can lead to more long-term behavioural change. Traditionally, it is only when trees are viewed and treated as harvested products that they gain clear and immediate economic value. A CDM AR project can introduce the new paradigm where the replanting and protection of trees themselves can result in additional ‘property’ with concrete economic benefits in the form of CERs, thus creating greater incentives for AR.

It should be noted, though, that there is a clear bias toward CDM projects in the energy sector, and still some apparent reluctance with respect to CDM AR projects in the Philippines. For CDM AR projects to gain wider acceptability and achieve the potential to improve AR projects in the Philippines, strategic pilot projects need to be developed that can demonstrate greater socio-economic and environmental benefits particularly for local communities. And for such pilot projects to become a reality, a sound institutional and capacity-building framework for CDM is needed.

2. In case there is as yet no clear legal definition of the right to a CER in the country of study, if participants to different CDM AR projects use varying contractual characterizations of that right within the same country, will this situation result in any particular legal and related difficulties in the host country?

There is as yet no clear or express legal definition of the right to a CER in the Philippines. And if participants to different CDM AR projects use varying contractual characterizations of that right without any common fundamental framework, a host of legal difficulties may arise, as discussed under question 6(b)(ii). Every characterization discussed thereunder gives rise to other legal issues, among others: who owns or holds the right to CERs in the first instance; under what conditions can a conveyance or reservation of the right be implied, if at all; and on what basis can or should an assignment or allocation of the rights be made. If parties to a CDM AR project refrain from clarifying the right, or characterize the right to the exclusion of certain stakeholders, other parties who believe they have been unjustly excluded may claim a ‘share’ based on their challenge of the fundamental basis of the right and allocation thereof.

These legal issues may be even more complex given the often overlapping and confusing state of land tenure, rights, and claims in the Philippines. The following examples are provided below to illustrate the multiplicity of legal issues that may arise in this regard.

Consider, for example, a CDM AR project undertaken within ancestral domains, where an indigenous community, adjacent local communities, LGU, private developer and the national government are all involved. The indigenous community can very well claim under the IPRA that they are the owners of the land and all the resources therein, and are thus the owners of the right to the CERs unless they convey this right to other parties. The national government can challenge this claim and assert its ownership, based on
the interpretation that what the IPRA conferred to indigenous groups is ownership in the ‘indigenous’ form, i.e. more in the nature of stewardship, rather than a right of ownership in the civil law sense which they further claim continues to reside in the State pursuant to the Constitution.

Similar legal issues may arise in the case of CDM AR projects undertaken on private lands, in protected areas, or on public lands already covered by a pre-existing tenurial arrangement. Under question 6 hereof, another example was given with respect to a CDM AR project to be carried out by parties to a pre-existing CBFMA in the area covered thereby. As discussed, the State may assert that it owns the right to the CERs generated because it did not and could not have contemplated the inclusion of such a right when it granted the original concession. On the other hand, the communities party to the CBFMA may also claim that CERs fall squarely within the definition of ‘forest resources’ under DENR AO 96-29 (on CBFM), specifically as intangible “values present in forestlands or in other lands devoted for forest purposes”, and that the State had already allocated such rights in the original production-sharing agreement.

These legal uncertainties can very well result in complex and protracted litigation and can seriously threaten the establishment and success of CDM AR projects. Ideally, there should be adequate guidance in order to provide consistency in at least the general legal principles to be applied when characterizing the rights to a CER and determining the allocation of such rights. Pursuant to such guidance and in order to minimize uncertainty, it would be preferable to effect a rational or consistent amendment of agreements in order to clarify whether a grant (such as a CBFMA) includes a transfer of rights to any CERs that may be generated.

In the event of litigation and in the absence of clear guidance on the right to a CER, the courts will have to examine relevant legal principles (both national and international), rules as well as concrete practices. As previously discussed, great weight and respect would normally be accorded to the rules and interpretation of the DENR, but these may appear far less persuasive and even be negated, if the right to a CER is interpreted and applied inconsistently in different projects.

Philippine society is economically and socially polarized, with many marginalized groups having little or no access to legal counsel or to justice. Rural communities who rely on forests for their subsistence, particularly in remote upland areas, are considered among the poorest. Inasmuch as they may be neither landowners nor legally recognised occupants of land that may be used for a CDM AR project, they may be either excluded altogether or severely disadvantaged in the negotiations on the allocation of the right to CERs. Indigenous peoples, who are theoretically protected under the IPRA, may also be similarly disadvantaged given the lack of funding, enforcement capability, and slow place of CADT and CALT issuance by the NCIP. Indigenous groups whose rights are as yet undocumented are particularly vulnerable.

In addition, there may be multiple rights or claimholders over a particular area where a CDM AR project might be undertaken. Without any legal guidelines, the allocation of CERs may be dominated or completely taken over by those with traditional negotiating strength, for example, the national government and the private sector. Different communities, who may have some form or right, claim or traditional benefit from the land, may receive more, less, or no allocation of CERs. Worse, they may be deprived of access and traditional benefits due to a CDM AR project. This may result not only in an economically inequitable situation, but also give rise to, or exacerbate, social conflicts.

To leave all terms and conditions to the “will of the parties” in contractual negotiations will likely result in legal and social difficulties that will run counter to the sustainable development objectives of the CDM. While no set of rules can ever be formulated to prevent all conceivable difficulties, a fundamental legal framework which defines the right to a CER and provides at least minimum guidelines on stakeholder identification and CER pricing and allocation is needed to address the foreseeable conflicts and to minimize uncertainty.
3. Based on the issues that were revealed by the analysis you have undertaken, how would you describe the nature of the legal issues identified? Are they avoidable or unavoidable? (For instance, could land tenure issues be resolved simply by choosing a different project site, or are the problems so prevalent that they would emerge, regardless of the project's location?) Are policies and legal provisions on CDM AR projects clear enough to prevent most disputes from arising in the future?

The legal issues identified are fundamentally rooted in the uncertainty in land rights and tenure in the Philippines, the lack of a rational land use policy, the lack of a legal framework for CDM and the characterization of the right to a CER. The situation becomes even more complex depending on the multiplicity and diversity of affected communities and other stakeholders.

Theoretically, some issues may be avoided by identifying a different project site where the tenure issues are more settled or where the stakeholders and their rights are more readily identifiable. In general, AR projects are not necessarily resource or land-specific in the same way as energy or mining projects, for example, that must be situated on or around a particular resource to be cost-effective.

The reality on the ground, however, is that the extent of deforestation is so vast that areas in dire need of AR projects are precisely in a degraded state because of the over-exploitation of forests and destructive forest practices of commercial proponents, communities and others. The social and economic problems resulting in deforestation are thus so prevalent that there would likely be legal and social issues of varying degrees that would emerge in an AR project, regardless of location.

These issues may be considerably less in areas that may be covered by a local land use plan, or in areas already subject of more stable tenurial arrangements or titles, such as a CBFMA or CALT where the stakeholders and their rights may be more established. Absent the development and enforcement of a comprehensive and rational land use plan, such areas would provide more stability for a CDM AR project which by itself, will introduce and test new legal issues relating to CERs.

Beyond the basic institutional framework of the DNA and the general policy to prioritize reforestation projects in order to mitigate global warming, policies and legal provisions are not yet in place on CDM AR projects which can prevent foreseeable disputes from arising in the future. Guidelines are still to be issued on whether or how CDM AR projects will be established within the current legal and regulatory framework. Guidelines on the allocation and pricing of CERs are likewise needed. Without further legal guidance, many legal issues will likely be unavoidable especially if CDM will be pursued on a broader scale.

For example, without any legal definition of CERs, different government agencies and other entities may either refuse to recognise the right thereto or treat the right differently. For example, Registers of Deeds of different provinces may respond differently as to whether the right to CERs may be annotated or registered on the land title. This would be even more problematic in the case, for example, of bundled CDM AR projects which involve several or many lands covered by separate titles. With regard to financing issues, the banking sector generally requires clear legal guidance and instructions before it will be willing to recognise the right to CERs in transactions such as collateral for a loan application.

The tax treatment of CER purchases and sales will also be a very complicated issue. Before determining whether transactions involving CERs are taxable under Philippine law, many fundamental issues need to be addressed, among them:

- the nature of the transaction;
- whether any gain on the transfer of CERs is deemed income derived from within the Philippines;
- whether CERs or the right to CERs would be considered capital assets;
the parties involved (e.g.: Filipinos; non-Filipinos; individuals; corporate entities; the Government; an international organization); and

where the transaction takes place.

Without legal guidance, it is not possible to predict exactly how specific transactions involving CERs will be treated under Philippine tax laws. However, certain general legal principles will be relevant, such as the requirement that citizens and non-citizens are taxable on income derived from within the Philippines (although this may be offset under applicable tax treaties for certain non-citizens), and that the sale of capital assets is subject to a tax on capital gains.

Capital assets refer to:

“property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation x x x; or real property used in trade or business of the taxpayer.”

In other words, capital assets refer to real or immovable properties that are not acquired, used, or disposed of in the ordinary course of a taxpayer’s business. If an entity dealing in the acquisition or sale of CERs or rights thereto is habitually engaged in such activities, the CERs are deemed ordinary (and not capital) assets subject to tax on trade or business such as Value-Added Tax. If, however, the acquisition or sale is an isolated transaction, then the CERs or rights thereto will be deemed capital assets subject to a tax on capital gains.

It should be noted that real properties classified as capital or ordinary assets in the hands of the seller or transferor may change their character in the hands of the buyer or transferee. CERs or the rights thereto may, therefore, be classified and taxed as ordinary assets when in the hands of a seller who is engaged in the business of trading CERs, but these same properties may be classified as capital assets in the hands of an entity which acquired these properties in an isolated transaction.

A transaction where a community involved in a CDM AR project, for example, is paid for selling its one-time allocation of CERs to another party would likely be subject to a tax on capital gains. In addition, all deeds of assignments or sales of property and interests therein are also subject to a Documentary Stamp Tax.

However, will the gain from the transfer of CERs generated from domestic CDM AR projects always be treated as income derived from within the Philippines? The added complexity lies in the fact that CERs are issued outside the country and the physical transfer or transfers thereof may also take place outside the country. If the view is that CERs represent an intangible value or property right within the Philippines, and that gains from the transfer thereof are necessarily deemed income from within the Philippines, then it may be asserted that both initial and subsequent transfers of such CERs would always be subject to Philippine tax laws.

The limitation of the DENR, acting as the DNA, is that it can not unilaterally issue specific guidelines on tax-related and other concerns that are not within its jurisdiction or mandate. It can not unilaterally order or issue directives to other co-equal national agencies, such as the Department of Finance. Absent a law or other Presidential EO that characterizes the right to a CER and provides for its treatment, inter-agency or multi-agency orders may be formulated so that DNA regulations can be implemented consistently and in coordination with other agencies.
Alternatively, agencies may formulate their own interpretation and implementation of the right to a CER based on the specific issues brought before them. For example, the Department of Finance may issue directives on the treatment of the right to CERs, which may be further articulated and implemented through the Philippine Central Bank and the Bureau of Internal Revenue. The Department of Justice (DOJ) may issue a legal opinion on the right to a CER, which is accorded great weight (although not controlling on the courts). In addition, the DOJ may also issue directives to the different Registers of Deeds with respect to the registration of the right to CERs.

But if the different issues are left to administrative agencies without a central or fundamental legal source from which they derive their authority and interpretation, the possibility of uncoordinated, inconsistent and even contradictory regulations may arise.

As discussed in this and the previous section as well as in question 6 hereof, there are many complicated legal issues that may arise in the implementation of CDM AR projects in the absence of further legal guidance on the right to CERs. These issues may be minimized by limiting the number and scale of CDM AR projects to a manageable pilot phase, so that the Government and other parties concerned may gain more experience in resolving different issues. The disadvantage of this approach is that the potential benefits and beneficiaries of CDM AR projects would likewise be limited. A more proactive approach would be for the Government (through the multi-sectoral IACCC, for example) to evaluate the wealth of legal research and experiences from on-going and completed carbon sequestration, AIJ or similar projects domestically and internationally. The lessons therefrom can be used to identify legal issues and formulate a responsive legal framework. These can also be used as basis for the Executive Branch to develop regulations responsive to these issues (through, for example, further EOs) and to work with Congress on prioritizing appropriate legislation.

The Executive Branch, particularly through the DENR, may be able to encourage CDM AR projects given the recent focus on the shortcomings of past reforestation efforts and the need for improved programmes. By itself and acting as the DNA, the DENR is currently in the process of formulating implementing rules for SFM and CDM where responsive measures can be incorporated. At the same time, the DENR continues to be the co-chair of the IACCC where it can further collaborate with other concerned government agencies and sectors in developing a comprehensive and consistent regulatory framework for CDM establishment and implementation.

With respect to more stable legislation, however, it is unlikely that the Executive Branch can pursue a legislative agenda solely and narrowly in relation to CDM AR, particularly in the absence of any legislation on CDM in general. While the Executive Branch can pursue the introduction of CDM legislation (covering all sectors), the process will likely be more difficult given the lack of any previous proposals. As will be discussed under question 5 of this section, it would be more pragmatic for the Executive Branch to work with Congress on developing legislation on CDM AR within the larger context of SFM legislation. Congress is currently consolidating four bills on SFM which have been filed or re-filed with the 13th session of the Philippine Congress. 107

4. How would you characterize the level of compliance and enforcement with the legal standards and regulations you have described above? Do you think the CDM AR framework can and will act as a trigger for improved compliance and enforcement for these standards and regulations?
The level of compliance with and enforcement of legal standards and regulations in forestry, land, and the environment are and have generally been weak and inconsistent. The continuing degradation of Philippine forests and upland poverty are largely blamed on the inadequacies and weaknesses of forestry sector organizations. Poor implementation of forest policies has been a major cause of unabated exploitation of timber from virgin forests at prices far below real market values.

A study sponsored by the ADB\(^\text{108}\) noted that an estimated 8.7 million hectares have not been delineated on the ground and are not covered by any management instrument, thus, these are considered *de facto* open access areas which are vulnerable to encroachment. Enforcement of the selective logging system is also weak because the DENR has neither adequate information nor control over the operations of logging concessions which are often carried out by those with political connections. The capacity of LGUs to develop Forest Land Use Plans is also very limited. The low number of enforcers and the lack of enforcement capacity leave forestry law enforcers vulnerable to bribery, harassment and violence in areas where rampant illegal logging takes place. Tragically, forestry law enforcers have even been killed while performing their forest protection duties. As for the legal system, this has also been found wanting, characterized by overloaded court dockets and very limited legal assistance especially in remote areas. It is also generally acknowledged that inequity and poverty in the uplands is a significant contributor to unrest and involvement in rebel activities such as those of the communist New People’s Army.

Institutional weaknesses that contribute to poor enforcement and compliance include: inadequacies in planning; funding shortages to provide properly equipped and trained enforcement personnel; corresponding inadequacies in training and unscientific management of forest resources; uncertainty and confusion in boundary delineation, including undefined areas of protection and production forests; and non-implementation of natural resources accounting.

The national and local governments generally lack the financial and technical capability to enforce and monitor compliance through traditional command-and-control measures. The lack of funds is often cited as a principal reason for poor enforcement, due to budgetary limitations and also due to policies which fail to capture the large economic rents accruing from forest harvests and other forest values.\(^\text{109}\) Improved governance of the forestry sector necessarily involves policy reform and the involvement not just of government, but of concerned communities, landowners and other proponents and stakeholders in forestry initiatives.

The general situation of Philippine forest communities and forests is very difficult and complex, and the issues involved will not be immediately resolved by the introduction of any single strategy, no matter how innovative. A multi-pronged approach such as that sought to be undertaken through SFM needs to be consistently applied over time, encompassing policy reform, improved enforcement capacity, and community empowerment and development. CDM AR projects, if designed and implemented properly, can play a significant role in such a long-term strategy, as these have the potential to contribute to improved governance of the forestry sector through increased compliance with and enforcement of the different legal and environmental standards and regulations. Clearly, traditional command-and-control measures are inconsistently applied and have had generally weak accomplishments. CDM is a new, voluntary and economic instrument that can enhance compliance and enforcement because:

- CDM provides a framework within which the capacity of concerned stakeholders to gather more reliable baseline data and to accurately monitor progress can be improved. The CDM framework requires improved data and monitoring which will enhance the ability of stakeholders, especially the national and local governments, to enforce and monitor compliance with environmental and other laws.

\(^{108}\) Ganapin, par. 25–31.
CDM provides economic incentives for success through the generation and allocation of CERs. Traditionally, especially for communities and proponents, the value of trees lay in their being cut as forest products. CDM provides an incentive not to cut trees by providing a new forest resource and property right with potential economic benefit which previously did not exist.

CDM requires public comment and involves a multi-sectoral process. If a CDM AR project is socially acceptable and successfully negotiated by the concerned stakeholders, there is an ownership component (of both the project and CER allocations) that would logically encourage the parties concerned to enforce each other’s obligations to protect their rights and future benefits, and to ensure the success of their efforts.

CDM will be subject to third-party verification, as well as to both national and international scrutiny. Over-exploitation and destructive forestry practices have largely gone unchecked due to a great extent to a general lack of awareness and public involvement, as well as to the remoteness of the areas and activities. The public nature of CDM brings a new level of exposure to such project that has the potential to discourage corrupt or illegal practices, and to improve awareness and legal compliance.

5. What recommendations for adjustments in legislation, if any, can you make, to address the issues set out above? In your best judgment, how likely is it that these adjustments will be made? Is it possible to estimate how long these adjustments would take, and how much they would cost? Please relate your response to any major legal reforms relating to forestry, land or the environment currently taking place in the county of study/region.

While the Master Plan for Forestry Development and the EO on SFM are progressive instruments governing the sector, these are administrative policy issuances that do not have the stability and force of law. The forestry sector is thus still governed by a law that is almost 30 years old – the Revised Forestry Act of 1975. As has long been the clamour, there is definitely a need to update and consolidate the laws on forestry to incorporate important goals and strategies toward sustainable development.

While the EO on SFM is a laudable step in the right direction, more stable legislation on SFM is needed which addresses social, economic and institutional reforms. Social reforms include the prioritization of community-based management, tenurial and resource security especially for communities, capacity building particularly for marginalized groups, and mechanisms for multi-sectoral engagement from project planning to monitoring.

Economic reforms in the forestry sector include the establishment of social-investment funds, incentives for income-generating activities, the creation of capacity to provide for counterpart funds through mechanisms that are based on more accurate values of forest resources and uses, the incorporation of environmental economics and natural resources accounting systems, innovative financing strategies, and the adoption of market-based instruments and mechanisms.

Institutional reforms include clarifying and harmonizing the responsibilities and functions of agencies with overlapping mandates, such as the DENR, NCIP and LGUs. Mechanisms are also needed to facilitate improved coordination among implementing agencies and strengthened collaboration with donors. Whenever practicable, permitting procedures should be streamlined to reduce duplicative steps and bureaucratic ‘red tape’ through fast-track or one-stop shop processes.

On the level of policy, there are many broad plans that are regularly developed and which also require harmonization. While this is a difficult effort, comprehensive and sustainable development will be difficult to pursue if sectoral plans are developed and carried out separately or with limited regard for each other. These plans include the Master Plan for Forestry Development, the Medium-term Philippine Development Plan, Investment Priorities List, and the Philippine Energy Plan. Broader plans are also needed in the areas of water use and land use.
Legislation on a national comprehensive land use plan has also long been pending which would be necessary in addressing overlapping and inconsistent legal provisions on land classification, allocation and use. Examples are the conflicting provisions of the Revised Forestry Act, the Mining Act of 1995, IPRA and the National Integrated Protection Areas System law on jurisdiction and uses of watershed areas. Confusion results due to the multiplicity of land tenure instruments being issued under laws and regulations on forestry, mining, energy, water, agrarian reform and other sectors. Disputes have already arisen with respect, for example, to reforestation projects undertaken by private parties within ancestral domains.

Legislation on sustainable forestry management and on a comprehensive land use plan should clarify institutional and territorial overlaps. These should also identify mechanisms to facilitate inter-agency collaboration which needs to be improved. For example, the roles and responsibilities of DENR and the NCIP are not clearly defined with respect to natural resources within ancestral domains and lands. Further jurisdictional issues arise within LGUs, and more so within the autonomous regions of Muslim Mindanao and the Cordillera which have their own respective autonomous governments.

It is not possible to predict with certainty when and how quickly the Legislature can or will act to pass certain measures. However, the 13th Congress of the Philippines has currently prioritized legislation on both a national land use policy and on SFM. The Committees on Natural Resources and Ecology recently approved the crafting of consolidated bills on these measures. The influential House Speaker Jose de Venecia has even called for the early passage of the National Land Use Code which, among others, aims to address concerns for environmental protection, food security, and competing demands in the allocation and utilization of land and other physical resources.110

SFM legislation has likewise been prioritized. The bills on SFM which will be consolidated are aimed at addressing forest degradation and shortages of forest products through, among others, the establishment of the metes and bounds of the country’s forest lands and national parks including watersheds.111 While these principles reflect those provided in the recently issued EO on SFM, it is important that the Executive Branch and Congress collaborate closely in the further development of SFM legislation.

As previously discussed, legislation on the CDM framework and the right to CERs should likewise be prioritized if the country would like to maximize the potential benefits from CDM AR projects on a broader scale. Such legislation may be proposed separately or it may also be appropriately incorporated in SFM legislation. The latter approach would conceptually be more sound, as CDM AR can then be clearly evaluated, developed and implemented in the context of broader SFM. As a practical matter, however, a bill with many complex components such as an SFM bill takes longer (as is already being experienced) to pass than one that is more focused on a narrower subject.

Legislation will provide the stability to the legal and fiscal regime for CDM that will be necessary to facilitate the investments and technology transfer that are expected, in turn, to translate to real and measurable contributions to the country’s sustainable development.

111 Ibid.
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- Klima – Climate Change Center www.klima.ph
- World Bank (Philippine activities) www.worldbank.org/ph
- Congress of the Philippines: House of Representatives www.congress.gov.ph