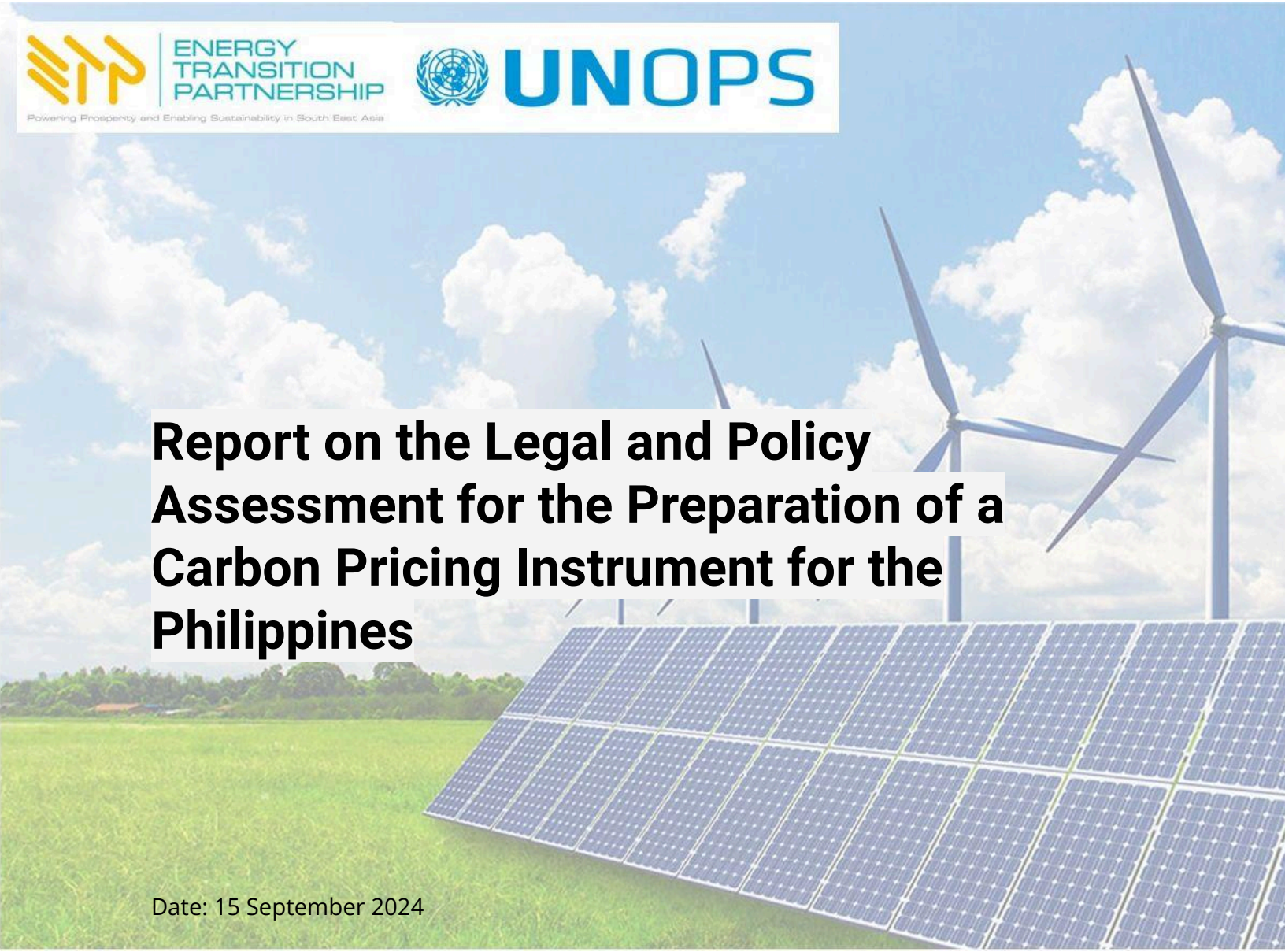

Report on the Legal and Policy Assessment for the Preparation of a Carbon Pricing Instrument for the Philippines

Date: 15 September 2024

This report is developed by Nina Araneta-Alana, JD, LLM, PhD under the Southeast Asia Energy Transition Partnership.

I. Introduction

The Philippines, in pursuit of sustainable development and climate resilience, is considering the adoption of a carbon pricing instrument ("CPI") to curb greenhouse gas emissions (GHG) and foster a greener economy. Carbon pricing is a crucial tool for achieving emissions reduction targets, and it generally manifests in two principal forms: a carbon emissions trading system ("ETS") and a carbon tax. Each instrument operates on a different principle; the ETS, also known as cap-and-trade, sets a maximum allowable level of emissions and allows entities to buy or sell permits to emit carbon dioxide within that cap. On the other hand, a carbon tax directly sets a price that emitters must pay per ton of carbon dioxide released, functioning as a straightforward fiscal policy.

These instruments require distinct legal frameworks to be effective. An ETS necessitates a complex regulatory setup that includes tracking emissions, issuing and trading permits, and monitoring compliance. This system depends on robust legal mechanisms to enforce caps and manage the trading scheme credibly. Conversely, implementing a carbon tax is relatively simpler, focusing on tax collection mechanisms and ensuring compliance through existing fiscal systems.

The aim of this report is to evaluate the Philippines' policy landscape and institutional frameworks to determine their suitability for adopting a CPI. It will identify alignments and conflicts within the existing policies, particularly in relation to introducing an ETS or a carbon. The analysis will focus on the compatibility of current national fiscal policies and sector-specific regulations in key areas such as power, transport, and industry, offering insights into the country's readiness to implement a CPI.

II. Emissions Trading System

Carbon emissions trading is a market-based approach that allows the market to determine the most cost-effective path to achieve emissions reductions. This differs from a "command and control" approach, where governments impose specific limits or standards on the amount of pollutants that can be emitted by companies, industries, or other entities.

The classic emissions trading mechanism is a "cap-and-trade" system. A cap-and-trade system establishes an overall limit on emissions, which determines the total number of allowances available. Each allowance grants the holder the right to release a specified amount of a particular type of emission. These allowances are typically distributed directly to participating entities, although they can also be allocated differently or auctioned.

Entities covered by the program are required to hold enough allowances to match their emissions, with the flexibility to trade allowances among themselves.[1]

An emissions trading system can also include a voluntary carbon market ("VCM"), which allows companies, organizations, and individuals to offset their carbon emissions by purchasing credits that fund climate-positive projects. Credits are generated by specific projects that remove or reduce emissions, such as *afforestation* or *reforestation* (planting trees to absorb CO_2), *renewable energy projects* (solar, wind, hydropower), *energy efficiency projects* (improving energy use in buildings or factories), and *carbon capture and storage* (technology that captures CO_2 before it enters the atmosphere). Many companies with regulatory obligations in an emissions trading system also choose to go beyond compliance by offsetting additional emissions through voluntary carbon credits. For example, a company might purchase credits to offset emissions that are not covered under the emissions trading system.

Legal Framework Governing the Establishment of a Carbon Emissions Trading System

1. Enabling and Synergistic Policies

Power of the Government to Protect the Environment

Under the concept of "police power," the state has inherent authority to enact laws, regulations, and measures to promote public health, safety, morals, and general welfare. It is one of the fundamental powers of the government.

There is a constitutional basis for the government to impose a cap on emissions. Article I, Section 16 of the Constitution provides that:

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

The sovereign right of the government to regulate the country's resources is found in Article XII, Sec. 2, which provides:

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the

[1] David Harrison Jr. et al., 'Using Emissions Trading to Combat Climate Change: Programs and Key Issues' (2008) 38(6) Environmental Law Reporter News & Analysis 10367

> exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant. x x x"

Under Philippine jurisprudence, the Supreme Court has long upheld the ability of the government to impose environmental restrictions. In *Oposa v. Factoran,*[2] the Supreme Court, recognizing the principle of *intergenerational equity*, established that the government has a duty to protect the environment for both current and future generations.

Power of the Government to Establish a Trading System

The establishment of a carbon credit trading system is likewise a valid exercise of police power. Under Article XII, Section 1 of the Constitution:

> Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.
> The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that **make full of efficient use of human and natural resources, and which are competitive in both domestic and foreign markets**. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.
> In the pursuit of these goals, all sectors of the economy and all region s of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership. (emphasis supplied)

The foregoing supports the establishment of an ETS by aligning environmental and economic objectives. It emphasizes industrialization and economic growth that is both competitive and sustainable. An ETS aligns with this by incentivizing industries to adopt cleaner, more efficient technologies. Furthermore, it encourages private enterprises and collective organizations to broaden their ownership base. An ETS creates opportunities for private entities, cooperatives, and local communities to participate in the green economy.

[2] G.R. No. 101083 July 30, 1993.

It is important to note that in other jurisdictions, carbon credits are considered commodities rather than securities. This is an important distinction because if carbon credits were to be considered a security rather than a commodity, it would fall under the scope of the Securities Regulation Code, which means that participants would need to comply with disclosure, reporting, and other legal obligations under the Securities Regulation Code. It would also mean that it would be the Securities and Exchange Commission ("SEC") that would have regulatory oversight. There is a broad definition of a "security" if certain conditions are met, that is if the security consist of shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character.[3] If, for instance, the carbon credit represents a certificate of participation in a profit-sharing agreement or involves fractional ownership in an environmental project, it could be considered a "security." It is thus important, in drafting the definition of a carbon credit in the eventual regulatory instrument, to ensure that it could not be interpreted as security. This is especially important if the regulation of the emissions trading system will be assigned to the Department of Environment and Natural Resources.

Commitments under International Law

The Constitution explicitly recognizes international law as part of the Philippine legal system. Article II, Section 2 states: "The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land,** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (emphasis supplied)" As such, international treaties that the Philippines have signed and ratified form part of the law of the land.

In relation to climate change, the Philippines has obligations under the following treaties: the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement. Under the UNFCCC and the Kyoto Protocol, the Philippines, as a developing country and a Non-Annex I Party, does not have binding greenhouse gas ("GHG") reduction targets. The UNFCCC recognizes the principle of *common but differentiated responsibilities and respective capabilities* ("CBDR"), acknowledging that developed countries (Annex I Parties) bear greater responsibility for reducing emissions due to their historical contributions to climate change. While the Kyoto Protocol imposed binding emission reduction targets only on Annex I countries, the Philippines' obligation as a Non-Annex I country focuses on reporting and transparency rather than mandatory GHG reductions. The Philippines is required to periodically submit National Communications and Biennial Update Reports, which include information on its GHG emissions, mitigation measures, and adaptation strategies. The country is also encouraged to implement mitigation actions voluntarily, aligned with sustainable development goals, though these actions are not legally binding under either the UNFCCC or the Kyoto Protocol.

[3] Section 3.1 of the Securities Regulation Code ("SRC")

On the other hand, under the Paris Agreement, all State Parties, regardless of their level of development, are committed to taking action to limit global temperature rise to well below 2°C above pre-industrial levels, with efforts to limit the increase to 1.5°C. The central mechanism for achieving this goal is through Nationally Determined Contributions ("NDCs"), which are the commitments that each country sets for GHG emissions. Unlike previous agreements like the Kyoto Protocol, where only developed countries had binding reduction targets, the Paris Agreement requires all countries to participate by submitting and updating their NDCs every five years.

Under the Paris Agreement, the Philippines submitted its NDC in 2021 ("PH NDC 2021"), committing to a 75% reduction in greenhouse gas (GHG) emissions by 2030, with 2.71% as unconditional and the remaining 72.29% contingent on international support in the form of finance, technology, and capacity-building. The PH NDC 2021 provides that "the benefits of market and non-market mechanisms under Article 6 of the Paris Agreement shall continue to be explored, consistent with national circumstances and sustainable development aspirations."

Climate Change Act

Republic Act No. 9729 or the Climate Change Act that provides the policy framework of the government in dealing with the challenge of climate change. Under the National Framework Strategy on Climate Change,[4] mitigation opportunities shall be optimized toward sustainable development and mitigation actions shall be pursued as a function of adaptation. The National Framework Strategy on Climate Change provides that while it is true that the Philippines contributes only a small fraction to GHG emissions, the country has committed to implementing mitigation strategies as part of the global effort to curb emissions.

Clean Air Act

Under Republic Act No. 8749 or the *Philippine Clean Air Act of 1999,* the State declared a policy of pursuing a policy of balancing development and environmental protection. To achieve this end, the State encourages cooperation and self-regulation among citizens and industries through the application of market-based instruments.[5]

2. Complementary and Countervailing Policies

[4] Climate Change Commission, National Framework Strategy on Climate Change 2010-2022.
[5] Republic Act No. 8749, s 3.

Development of the Renewable Energy Industry

The state has adopted a policy of accelerating development of renewable energy resources. In this regard, Republic Act No. 8513 or the Renewable Energy Act has provided numerous incentives to the renewable energy industry such as the Feed-in-Tariff ("FIT"), Renewable Portfolio Standard ("RPS"), the Green Energy Option ("GEOP") as well as tax incentives.[6] An ETS complements the efforts of the state to develop the renewable energy industry insofar as carbon credits can be generated from renewable energy projects.

A policy consideration, however, for the state is to ascertain whether all types of renewable energy will be considered as a valid source of carbon credits. Another policy consideration is for the state to review whether the current incentives should remain if renewable energy projects will be considered as a source of tradeable carbon credits and can generate income from this activity. The Department of Finance, should consider, for instance, whether tax incentives will extend to income generated from the sale and trade of carbon credits.

Energy Efficiency and Conservation

Under the Energy Efficiency and Conservation Act or Republic Act No. 11285, the government institutionalized a policy on energy efficiency and conservation, which includes the adoption of a market-driven approach to energy efficiency, conservation, sufficiency, and sustainability. Under Chapter VI of the Energy Efficiency and Conservation Act, certain establishments are obliged to integrate energy management system policies. These are required to set up programs to develop and design measures that promote energy efficiency, conservation, and sufficiency; set up annual targets, plans, and methods of measurements and verification for the implementation of energy efficiency and conservation projects; and keep records on monthly energy consumption data and other energy-related data. Initially, these establishments, called Designated Establishments are:

> (a) Type 1 designated establishments are those with an annual energy consumption of 500,000 kilowatt-hours (kWh) to 4,000,000 kWh for the previous year; and
> (b) Type 2 designated establishments are those with an annual energy consumption of more than 4,000,000 kWh for the previous year.

Establishments with an annual energy consumption of at least 100,000 kWh but less than 500,000 kWh are required to submit an annual energy consumption report to the DOE and

[6] By way of example, the renewable energy industry enjoys a zero percent (0%) tax rate. Section 108 (B) (7) of the National Internal Revenue Code provides that the sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

integrate an energy management system policy into then-business operations. Energy efficiency projects shall be entitled to fiscal and non-fiscal incentives.

A policy consideration is whether energy-efficient projects shall be considered a valid source of carbon credits. Another policy consideration is for the state to review whether the incentives will extend to income generated from the sale and trade of carbon credits generated from energy-efficient projects.

Institutionalization of the Philippine Greenhouse Gas Inventory Management and Reporting System

Executive Order No. 174 (series of 2014) established the Philippine Greenhouse Gas Inventory Management and Reporting System ("PGHGIMRS"). The overall lead agency under Executive Order No. 174 is the Climate Change Commission. There will need to be coordination between the Climate Change Commission and the Department of Environment and Natural Resources ("DENR") to determine how the ETS will work with the PGHGIMRS.

Reducing Emissions from Deforestation and Forest Degradation (REDD+)

REDD+ is a global initiative under the United Nations Framework Convention on Climate Change (UNFCCC) that aims to mitigate climate change by reducing greenhouse gas emissions from deforestation and forest degradation in developing countries. In 2010, the Philippines was one of the first countries to develop a National REDD+ Strategy ("PNRPS"), which provides a framework for managing REDD+ activities. The DENR has supported REDD+ projects and has integrated them into its forest management strategies. The DENR has supported REDD+ projects and has integrated them into its forest management strategies.

3. Regime Overlap: Issue to Consider in Countervailing and Complementary Policies

While the development of the Renewable Energy industry and Energy Efficiency and Conservation support the overarching goal of the reduction of greenhouse gas emissions, there is a risk of regime overlap as regards existing mechanisms. The following are existing mechanisms that should be considered in the design of an ETS:

- **Renewable Energy Certificates**

Renewable Energy Certificates or RECs are certificates that may be traded in the RE Market in compliance with the RPS. The RE Market is a submarket under the Wholesale Electricity Spot Market ("WESM") to facilitate the compliance of mandated participants with their RPS requirements.

- **Green Energy Option (GEOP) Connection Agreements**

  Section 9 of ERC Resolution No. 8, series of 2021, a GEOP end-user or any person or entity that sources 100% of its electricity requirement for renewable energy resources shall enter into a connection agreement with an authorized RE Supplier.

- **REDD+ Framework**

  While the Philippines has a comprehensive policy and institutional framework on natural resources management a dedicated national legal framework for REDD+ has yet to be established. Instead, the PNRPS has sections on governance; resource use, allocation and management; and measurement, reporting verification ("MRV"). There are various proposals in the PNRPS such as the establishment of national and sub-national institutional arrangements and benefit-sharing schemes with local government units and communities.

Some of the issues to consider are the following:

- *Whether RECs and GEOP Connection Agreements shall be considered as carbon credits under the ETS*, and if so, whether they may be traded in the ETS.

- *Additionality and double counting*. If RECs and GEOP Connection Agreements are to be integrated in an ETS, it is necessary to ensure that credits represent real, measurable, and additional emission reductions that would not have occurred without the project. There is a risk of double counting or inflating emission reductions. Double counting occurs when the same emissions reduction or removal is counted more than once toward fulfilling climate goals or commitments. This undermines the integrity of carbon markets by inflating the perceived amount of emissions reductions, leading to misleading climate claims and hindering actual progress in lowering global greenhouse gas levels.

  The same issue exists as regards REDD+ projects. Additionality in REDD+ projects ensures that emissions reductions are new and would not have occurred without the project, but challenges like establishing accurate baselines and preventing leakage complicate its verification. Both issues threaten the credibility of REDD+ projects, requiring robust monitoring and clear rules to maintain integrity in carbon markets.

Because of the risk of undermining the integrity of carbon markets, there is a need to ensure that processes are established to avoid double-counting, and to ensure that the requirement of additionality is complied with.

- *Diminished economic effectiveness of additional policies in the same sector*. From an economic perspective, it has been posited that imposing cap-and-trade systems in sectors that already have policies enacted to reduce emissions (such as RPS) can work against the goal of reducing emissions.[7] The interaction of these different policies may possibly undermine allowance prices. Emission reductions achieved through these supplementary programs are likely to be offset by corresponding increases in emissions in other areas, assuming the cap remains binding. Consequently, the primary impact of these additional policies is a reduction in allowance prices within the cap-and-trade system, coupled with an increase in the overall economic cost of achieving emission reductions.[8] An economic analysis of the interaction of these different policies is beyond the scope of this report but should be considered by policy makers.

4. Sectoral Issues

A significant policy consideration for the Philippines is to determine which sectors to include in an ETS. [9]

1. Agriculture and Food Security

Article XII, Section 1 of the Constitution provides that the State shall The State shall promote industrialization and full employment based on sound agricultural development. The Philippine Development Plan 2023 – 2028 emphasizes the importance of agriculture and food security.

In some jurisdictions, such as the New Zealand Emissions Trading Scheme,[10] the agriculture sector is covered by ETS program and biological emissions from agriculture, including methane from livestock and nitrous oxide from soil management are regulated. A similar mechanism whereby emissions from agricultural activities would be capped and permits

[7] Gilbert E. Metcalf, 'Carbon Taxes in Theory and Practice' (2021) *Annual Review of Resource Economics* 245, 251.
[8] Ibid.
[9] The European Union ETS ("EU-ETS"), by way of comparison, covers large installations in the sectors of power generation, refining, iron and steel, cement, glass, lime, bricks, ceramics, pulp and paper, as well as other combustion activities with a rated thermal input of 20 megawatts. It does not cover households, agriculture or road transport.
[10] Ministry of the Environment of New Zealand <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/ets/coverage-of-the-nz-ets/>

are required to be obtained may work to reduce agricultural output and have run-on effects on food security.

2. Transport

Under the National Transport Policy 2017, the state recognized the important role of transportation as an enabler and driver of socioeconomic development towards achieving inclusive and sustainable growth, and attaining the national development goals and objectives. Furthermore, the National Transport Policy 2017 embodied a vision of a safe, secure, reliable, efficient, integrated, intermodal, affordable, cost-effective, environmentally sustainable, and people-oriented national transport system that ensures improved quality of life of the people. Should an emission cap apply to the transportation sector, the impact thereof should be considered as regards the goal of providing cost-effective transportation options.

Potential Legal Challenges to an Emissions Trading System

1. Due Process and Taking

An ETS might face challenges under the constitutional protection against deprivation of property without due process of law. Article III, Section 9 of the Philippine Constitution provides, “Private property shall not be taken for public use without just compensation.” Stakeholders may argue that setting emissions caps constitutes a regulatory taking without just compensation.

2. Deterrent to Power Generation

In programs that have been implemented elsewhere, allowances have been allocated initially to covered sources free of charge, based on emissions during some historical period before the program's commencement.[11] As such, participants should have available allowances or credits to sell. It would be unclear, however, how allowances would be allocated to new entities or as regards the expansion or establishment of new plants. This could raise the argument that the ETS is a deterrent towards the establishment or development of industries. Power generation, for example, is long-standing issue in the Philippines.

[11] David Harrison Jr. et al., 'Using Emissions Trading to Combat Climate Change: Programs and Key Issues' (2008) 38(6) Environmental Law Reporter News & Analysis 10367

3. Social Justice Considerations

The Philippine Constitution contains social justice provisions under Article XII. Specifically, Sections 1 and 2 provide:

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.
>
> Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

While it can be argued that an ETS advances social justice by creating economic opportunities and incentivizing environmental protection through emission reductions, critics may contend that it could also lead to higher energy prices, disproportionately affecting low-income households and exacerbating economic inequality. Moreover, the imposition of a cap on power generation might hinder the expansion of electrification in underserved rural areas, potentially delaying access to basic services and development in these regions.

III. Carbon Taxes

Carbon taxes impose a fixed price on a unit of GHG emissions.[12] A tax is levied on fossil fuels in accordance with their carbon content, or on other goods in accordance with the emissions produced in production processes. The World Bank defines a carbon tax as: "a tax that places a price on GHG emissions or that uses a metric directly based on carbon that is, price per tCO_2e)."[13]

Legal Framework Governing the Imposition of Carbon Taxes

[12] World Bank Group, *Carbon Tax Guide: A Handbook for Policy Makers* (2017)
[13] Ibid.

1. Enabling and Synergistic Policies

The power of taxation is one of the inherent powers of the state, allowing the government to collect taxes from individuals and entities to fund public services and promote the general welfare. In *Commissioner of Internal Revenue v. Algue,*[14] the Supreme Court stated:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved."

Article VI, Section 28 of the 1987 Philippine Constitution recognizes the power of taxation, viz: "The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation." This provision mandates that taxes must be applied uniformly and equitably and that the tax system should ideally be progressive, where the tax burden increases with the taxpayer's ability to pay.

In the case of *Tio v. Videogram Regulatory Board*, the Supreme Court ruled on the government's power to impose taxes to regulate behavior. The case involved Presidential Decree No. 1987, which imposed a tax on the sale, lease, and distribution of videograms. The Court held that taxation may be made to implement the state's police power. Taxation is also a tool for regulation.[15]

An example of taxes for the conservation of the environment in the Philippines is the Environment User Fees System (EUFS) implemented by the Laguna Lake Development Authority (LLDA).[16] Following the "Polluters Pay Principle," the EUFS is paid for the amount of pollution discharged into the tributary rivers within the Laguna de Bay Region. The EUFS is an industrial wastewater effluent fee program intended to create economic incentives to reduce discharges and to raise revenues for environmental activities by local governments.

2. Countervailing Policies

[14] G.R. No. L-28896, February 17, 1988

[15] In this decision, the Supreme Court recognized that taxes can be imposed not only to raise revenue but also to regulate certain activities. The imposition of taxes was seen as a way to regulate the video rental and sale industry, which the government believed could negatively affect public morality and the movie industry.

[16] See Laguna Lake Development Authority, *Environmental Users Fee System (EUFS)* <https://llda.gov.ph/environmental-users-fee-system-eufs/>

TRAIN Law

The Tax Reform for Acceleration and Inclusion (TRAIN) Law was enacted in July 2017. Under the TRAIN Law, the following was declared as the policy of the state:

(a) To enhance the progressivity of the tax system through the rationalization of the Philippine internal revenue tax system, thereby promoting sustainable and inclusive economic growth;
(b) To provide as much as possible, an equitable relief to a greater number of taxpayers and their families in order to improve disposable levels of income and increase economic activity; and
(c) To ensure that the government is able to provide for the needs of those under its jurisdiction and care through the provision of better infrastructure, health, education, jobs and social protection for the people.

Section 43 of the TRAIN Law[17] amended Section 148 of the National Internal Revenue Code (NIRC), and imposed a greater excise tax on petroleum products. The following table shows the excise tax rates on petroleum products in pesos per liter or kilogram:

TABLE I. EXCISE TAX RATE ON PETROLEUM PRODUCTS, (IN PESOS PER LITER OR KILOGRAM) 2018-2020

Product Type	Effectivity of RA 10963			
	Jan. 1, 2018	Jan. 1, 2019	Jan. 1, 2020	Increase in Excise Tax
Lubricating oils and greases (L)	8.0	9.0	10.0	2.0
Processed gas (L or kg)				
Waxes and petrolatum (kg)				
Denatured alcohol (L)				
Asphalt (kg)				
Naphtha, regular gasoline, pyrolysis gasoline and other similar products of distillation (L)	7.0	9.0	10.0	3.0
Unleaded premium gasoline (L)				
Kerosene(L)	3.0	4.0	5.0	2.0
Aviation turbo jet fuel, aviation gas (L)	4.0	4.0	4.0	-
Kerosene when used as aviation fuel (L)				
Diesel fuel oil, and on similar fuel oils having more or less the same generating power	2.5	4.5	6.0	3.5
Liquefied petroleum gas used for motive power (kg)				
Bunker fuel oil, and on similar oils having more or less the same generating power (L)				
Petroleum coke (MT)				
Liquefied petroleum gas (kg)	1.0	2.0	3.0	2.0

[17] Republic Act No. 10963

The TRAIN Law also increased the excise tax on mineral products such as imported coal (effective 2020, PhP150 per metric ton) and indigenous petroleum (6% of the fair international market price).

In accordance with the Section 2 of the TRAIN Law or the first policy declaration, the TRAIN Law is intended to rationalize Philippine internal revenue tax system. The intention of the law was to simplify the country's tax system to make it more efficient, equitable, and easier to administer. Additional taxes in the form of carbon taxes will necessitate further amendments to the NIRC. A consideration for policy makers is whether, as regards petroleum products and mineral products, carbon taxes will be imposed in lieu of excise taxes or whether they will be imposed in addition to excise taxes.

In terms of implementation, Chapter VIII of the NIRC contains the administrative provisions regulating to the business of persons dealing in articles subject to excise tax. The carbon tax system will have to consider how it will interact with these provisions. For instance, Section 155 requires manufacturers and/or importers to provide counting or metering devices to determine volume of production and importation. A carbon tax system will need to require covered entities to provide a way to record or measure greenhouse gas emissions.

Electrification and Affordability

Under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (“EPIRA”), the declared policy of the state are, among others, to ensure and accelerate the total electrification of the country; to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market.[18] Studies show that a carbon tax may have significant implications for electricity pricing and market behavior.[19]

In the Philippines, the impact may be particularly consequential as energy poverty remains a significant issue. In 2020, approximately 1.6 million households in the Philippines lacked access to electricity, largely due to the high electricity costs, which were approximately $0.20 per kilowatt-hour—among the highest in the ASEAN region.[20] Higher energy costs due to carbon taxes affect state policy to ensure affordability and reasonableness in energy prices.

---

[18] Republic Act No. 9316, Section 2.

[19] Jin Boon Wong and Qin Zhang, ‘Impact of Carbon Tax on Electricity Prices and Behavior’ (2022) 44 *Finance Research Letters* 102098.

[20] Lopez N.S.A., Tayag C.R.C., Gue I.H.V., 2023, Energy Poverty and Carbon Emissions: The State of Luzon, Philippines, Chemical Engineering Transactions, 103, 157-162

Potential Legal Challenges to Carbon Taxes

1. Argument that Carbon Taxes are Regressive

Article VI, Section 28 of the Constitution provides that, "The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation." Existing literature on the regressive or progressive nature of carbon taxes yield varying results and can depend on the specific design of the carbon tax and on the existence of mitigating measures. However, an argument may be made that there is sufficient evidence that carbon taxes are regressive,[21] and therefore violate the constitutional requirement that there be a progressive system of taxation in the country.

Taxes are also challenged before courts on the basis of the Equal Protection Clause, that is that they are discriminatory or impose an unequal burden on certain sectors or individuals; and the Due Process clause, or an argument that a tax is unfair or arbitrary, violating the constitutional right to due process. Depending on the design of the carbon tax, the scope, any exemptions, and the specific language of the provisions, these arguments may be brought up against it.

2. Social Justice Considerations

As mentioned above, taxes may be imposed as a form of police power to regulate behavior. The implementation of carbon taxes on power generation would serve to disincentivize power generation. With the Philippines experiencing an energy crisis,[22] a challenge to carbon taxes may be mounted on the right to human dignity, and the reduction of social and economic inequalities.

Another critical aspect to consider is the broader distributional impact of carbon taxes, particularly how these taxes affect various socio-economic groups. Existing literature point to varying results. Studies on Mexico[23] and Indonesia,[24] for example, conclude that there

[21] See e.g., Jules Linden, Cathal O'Donoghue & Denisa M. Sologon, 'The many faces of carbon tax regressivity—Why carbon taxes are not always regressive for the same reason' (2024) 192 *Energy Policy* 114210; Julius Andersson & Giles Atkinson, 'The distributional effects of a carbon tax: The role of income inequality' (2020) Centre for Climate Change Economics and Policy Working Paper No. 378; Aaqib Ahmad Bhat, 'Are Carbon Taxes Regressive in India? Evidence from NSSO Data' (2020) 67 (1) *The Indian Economic Journal.*

[22] Alvin Elchico, 'Power Situation Now a Calamity Says DOE', ABS-CBN News (25 April 2024).

[23] Fidel Gonzalez, 'Distributional Effects of Carbon Taxes: The Case of Mexico' (2012) 34 (6) *Energy Economics* 2102.

[24] Arief A. Yusuf & Budy P. Resosudermo, 'On the distributional impact of a carbon tax in developing countries: the case of Indonesia' (2014) 17 *Environmental Economics and Policy Studies* 131.

are less distributional impacts that expected. However, a study on British Columbia and Quebec argue that women may bear a disproportionate burden of the increased prices created by carbon taxes, and that policies designed to mitigate the impact of carbon taxes on low-income households do not address income disparities between women and men.[25]

The Philippine Constitution contains social justice provisions under Article XII, Sections 1 and 2.[26] While it can be argued that carbon taxes advances social justice by protecting the environment through expected emission reductions, critics may contend that it could also lead to higher energy prices, disproportionately affecting low-income households and exacerbating economic inequality.

IV. Conclusion

The evaluation of the legal and policy framework of the Philippines reveals that the existing laws and policies are capable of supporting the introduction of a carbon pricing instrument, whether through an emissions trading system or a carbon tax. The existing policies, as found specifically in the Constitution, statutes, and jurisprudence, show sufficient alignment with the foundational principles of carbon pricing mechanisms and the overarching goal of environmental protection. However, careful attention must be paid to integrating these instruments within the current legal landscape to ensure coherence and avoid conflicts such as potential legal challenges before the courts. Policymakers will need to take a balanced approach to mitigate potential challenges, including regime overlap, administrative complexity, and fiscal impacts. Overall, the country is positioned to explore these options, but further detailed planning and stakeholder engagement are necessary to move forward successfully.

[25] Nathalie J. Chalifour, 'A Feminist Perspective on Carbon Taxes' (2010) 22(1) Canadian Journal of Women and Law 169.
[26] Quoted in Part II of this Report.