Will the formulation of more laws provide solutions to the looming water crisis in the country?

This was one of the major points of discussion made during a recent Policy Forum on Water Resource Management held in Makati City. Said forum was sponsored and organized under the auspices of a joint research project on water management conducted by the Sustainable Agriculture and Natural Resource Management Collaborative Research Support Program for Southeast Asia (SANREM-CRSP/SEA), University of the Philippines at Los Baños (UPLB), Philippine Institute for Development Studies (PIDS) and the Philippine Council for Agriculture, Forestry and Natural Resources Research and Development (PCARRD).

This paper outlines the recommended policy agenda for water governance in the Philippines based on the various papers written under the project.

Three main themes emerged from the papers despite differences in their approaches and focus.

One the papers are unanimous in declaring that there is a water crisis. This is already a given and has been amply supported by empirical data both at the national and local levels.

Two, the water crisis, which is caused by a conjuncture of natural and anthropogenic events and rooted on destructive land-use practices, is aggravated by a flawed governance system characterized by a soft state. While none of the authors actually mentioned the term, it can be safely deduced that the Philippines is unable to fully implement its laws in water governance, which is a key characteristic of a soft state. The flawed governance system is further aggravated by a flawed science-governance interface. This is particularly seen in the failure of the present legal and policy environment relevant to water governance to work within the parameters of an ecosystem approach wherein the planning unit is landscape-based, or more specifically, focused on the watershed. Furthermore, resource valuation does not take into account market-based mechanisms that will truly reflect the scarcity value of water resources.

And three, while there is a need to strengthen national laws in order to address the water crisis, the need to empower local government

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1 According to Gunnar Myrdal, a soft state is characterized by a situation wherein laws are formulated in imprecise terms. This leads to a situation wherein a considerable degree of discretionary power is given to government officials who often cooperate or connive with powerful individuals and interest groups whom they are supposed to supervise and control in the first place. Thus, the government easily yields to powerful lobbies and interests and becomes incapable of implementing appropriate laws and policies. Interests may even go beyond powerful groups external to government and may also include bureaucratic organizations with large stakes on certain matters (Asian Drama: An Inquiry into the Poverty of Nations. Harmondsworth: Penguin, 1968).
Two issues ago, three articles on water management from a joint research project among four major institutions were featured. This issue continues to give updates and relevant information on the topic by featuring, as main story, one of the project papers that discusses whether there is a need to legislate a specific policy agenda for water governance in the country.

The author, Dr. Antonio Contreras of the De la Salle University-Manila, assesses the present set-up of water governance in the country as well as the existing environment at the local and national levels that will either facilitate or slow down development in water management.

Contreras recommends at the end that given the existing water crisis, both the local and national governments can do much to respond to the issue by creating a supportive environment among local government units (LGUs) that share certain water resources. Empowerment plays an important role at the local level.

At the national level, however, he cautions that the creation of another body will only add confusion and burden to a bureaucratic set-up that is already saddled with an endless flow of problems.

Accompanying Contreras’ article is a shortened version of Dr. Ben Malayang III’s model for water resource governance that emphasizes the inclusion of legitimacy, trust and credibility as key elements. Such abstract concepts may be supported by a very concrete environment made possible by interactions between public and private institutions.
Water policy...from page 1

units (LGUs) and communities is clearly recognized.

One of the forum papers proposes a model for water governance in the country based on certain criteria that call for wide participation of various parties, including communities (see related article on page 4).

The key problematic

The main problems in water governance are (a) the failure to implement the laws and the presence of corruption—the problem of a soft state—and (b) the absence of mechanisms to operationalize an ecosystems approach and a market-based valuation technique in water resource governance.

In outlining the legislative and policy implications of the major findings of the policy forum papers mentioned earlier, some questions need to be asked: Are the present laws adequate? Do we need to legislate new laws? If yes, what should be their focus?

Furthermore, will the formulation of more laws provide solutions? Is the present legal and policy environment already sufficient?

At present, the following laws provide the legal framework for water governance in the country:

- The 1987 Constitution which mandates that all water resources belong to the State,
- Presidential Decree (PD) 1067 in 1976 or The Water Code of the Philippines,
- Republic Act (RA) 8041 in 1995 or The Water Crisis Act, and
- Executive Order (EO) 364 in 1996, which created the Presidential Task Force on Water Resources Development and Management.

In response to the questions earlier raised, this paper argues that while it is recognized that state failure in effectively implementing laws is a problem, adding new laws will not strengthen the implementing capacity of the state. A soft state is not a legal problem but a structural problem. Adding new laws that might not be effectively implemented at all could even compound the problem.

Moreover, a critical analysis of lawmaking would lead one to fairly conclude that most laws, with the exception of a few, are heavily biased toward control mechanisms. Most of the provisions in the laws are either expressed as regulatory in nature or as centralized, singular-unitary systems of command and control, both of which are inherent in state simplification processes. In view of these, the laws usually fall short in providing a developmental or advocacy mechanism to support local initiatives in governance.

The intention to empower local communities is a pervasive message in most of the forum papers. As such, the formulation of new laws to strengthen and rationalize the governance structures and mechanisms for water governance in the Philippines should be guarded against compromising local initiatives. This is because the complexity of governance arrangements at the local level, which is compounded by the varying bio- and geophysical limitations of the archipelago, requires a legal framework that is less centralized and singular.

Meanwhile, the absence of mechanisms to operationalize market-based instruments as well as an ecosystems approach in resource valuation, as noted in the project papers, is evident in the Water Code’s failure to consider a watershed approach or operationalize market-based resource valuation systems. In fact, there is a whole range of laws and policies that focus on watershed management, such as:

- PD 705 as amended by PD 1559 - Revised Forestry Code, which provided for mechanisms in managing critical watersheds in relation to downstream infrastructure development;
- Letter of Instruction (LOI) 917 in 1979, which declared critical watershed and watershed reservations as wilderness areas;
- EO 192 in 1987, which mandated the Department of Environment and Natural Resources (DENR) as the primary agency responsible for forest and watershed management;
- RA 7586 in 1992, which extended the coverage...
A model for water resource governance for the Philippines

by Ben S. Malayang III

This is an attempt to apply a model of forest governance on water resource governance based on a previous work on adaptive collaborative management (ACM) and forest governance of the Centre for International Forestry Research (CIFOR).

The model draws from three assumptions on resource governance: (a) it is a complex body of decisions and actions; (2) these decisions and actions are multilevel, and multithematic; and (3) those that become policies and define the scope, substance and direction of governance, are those which result from agreements and compromises among the most powerful institutions addressing or being concerned with the resource.

Water resource governance is no more than the body of decisions and actions directed at, or which affect, the conditions and uses of water. These are formed or undertaken by groups and institutions from either the public (i.e., governmental) or nonpublic (i.e., civil society, private businesses, research and academic institutions, or local communities) sectors that are concerned with or mandated to address water issues.

There are at least four levels of water governance: global, national, subnational and local. They cover various concerns (or themes) of water resources such as development, protection, utilization, commerce and trade, and regulations. The decisions and actions that tend to dictate how water resources are developed, protected, managed or used across a social or political landscape are likely to be those preferred, or which have been agreed upon, through consensus or compromises, by water institutions that have the most power in a particular landscape to sway human conduct toward a certain behavior.

Power is presented in this model as being a construction of a water institution’s public legitimacy, trust and credibility. Water institutions gain power when they have widespread public confidence on (a) their mandates (whether resulting from law or from custom) to address or be concerned with water resources, (b) their ability to promote public rather than individual or elite interests on water, and (c) their technical and organizational capabilities to address water issues and problems.

Thus, water policies are creations of power; the water institutions that have the more power will dominate water policies. In turn, water policies will tend to be more stable and precise if they are composed of water decisions and actions adapted by a wide array of institutions. That is, the probability that water policies will change is lower if these are the product of agreements of a large number of water institutions. Furthermore, there will be a lesser chance of any water institution moving to a dominant position of being able to control decisions and actions over water.

Based on other studies, this model posits that legitimacy, trust and credibility are perhaps dependent on how water institutions conduct themselves.

Mainly, legitimacy may be either boosted or diminished by transparency or by how a water institution makes its efforts to pursue its mandate clear to its publics and constituency. The more the constituency is regularly and fully involved of the water institution’s activities, the more likely that they will put their confidence on the water agency for what it seeks to do for them.

Trust, on the other hand, is a function of accountability. A water institution is more likely to be deemed trustworthy if it

Recommendations for a policy agenda

Bearing in mind the previously mentioned caveats regarding the need for additional legislation, this paper hereupon recommends a policy agenda that focuses on certain legislative actions, which may be considered at both the national and local levels.

Legislative action at the national level

Legislative action at the national level is needed only insofar as the
Health Sector Reform Agenda: The key to a healthy Philippines

The health of Filipinos has significantly improved over the last 50 years. Yet, there still remain many challenges that the health sector needs to address so that the citizens could realize more health gains.

For instance, infant and maternal mortality rates in the Philippines has remained high in the last decade compared to those of other ASEAN countries. The threat from infectious diseases and the burden of degenerative conditions have also been rising. On top of these, emerging health problems brought about by environmental and work-related factors also remain unattended.

There is also the large variation in health status across population groups, income classes and geographic areas. Those who live in rural and isolated communities receive less and lower quality health services. Even in places where medical facilities are present, people are still unable to receive appropriate care because services are unaffordable. Undoubtedly, rising medical costs are putting appropriate care beyond the reach of ordinary people. For the poorest of the poor, this means dying without even seeing a doctor.

To address these problems, the Department of Health (DOH) developed the Health Sector Reform Agenda (HSRA). The agenda describes the policies, public investments, and organizational changes needed to improve the way health care is delivered, regulated and financed in the country.

Specifically, the HSRA seeks to undertake the following:

- **Provide fiscal autonomy to government hospitals.** The conversion of government hospitals into corporate entities will promote fiscal autonomy as it will allow them to collect socialized user fees. This move will take a great chunk off the DOH’s yearly appropriation for hospital operations. Thereupon, the DOH could use these savings to finance preventive public health programs. However, there is a need to enhance the capacities of government hospitals such as their diagnostic equipment, and laboratory and medical staff to effectively exercise fiscal autonomy. Such investment must be cognizant of the complimentary capacity provided by public-private networks. Most importantly, safety measures should be carefully put into place to protect the interest of the indigents such as by enrolling them in the National Health Insurance Program.

- **Secure funding for priority public health programs.** Budget on a multiyear basis must be provided to...
eliminate or significantly reduce the incidence of infectious diseases. The government should also allocate funds to effectively address emerging health concerns and to advance health promotion and prevention programs. At the same time, the management capacity and infrastructure of public health programs must be upgraded to ensure that these investments are effectively utilized. Capacity-building is likewise required for these programs to provide technical leadership over local health systems.

Promote the development of local health systems and ensure their effective performance. Local government units (LGUs) must enter into cooperative and cost-sharing arrangements with one another to improve local health services. Funds must be secured to upgrade local health facilities and build local human resource capacities. For a more effective performance, participation of the private sector and volunteer groups must also be tapped. Lastly, appropriate mechanisms for sustainability and the continued delivery of quality care must be developed and institutionalized.

Strengthen the capacities of health regulatory agencies. The capacities of the Bureau of Food and Drug (BFAD), Bureau of Health Devices and Technology (BHD), Bureau of Health Facilities and Services (BHF), and Bureau of Quarantine and International Health Surveillance (BQIH) must be strengthened to ensure the safety, quality, accessibility and affordability of health services and products. Public investments must be made to upgrade the facilities and manpower capability of these agencies, particularly in standards development, technology assessment and enforcement. To achieve all these, amendments to the laws governing the mandates of these agencies are called for.

Expand the coverage of the National Health Insurance Program (NHIP). Social health insurance must be expanded to widen its reach. Health insurance benefits must be improved to make the program more attractive to members. As membership expands and benefit spending increases, appropriate mechanisms to ensure quality and cost effective services must be developed and introduced. Capacities and new administrative structures must also be developed to allow the Philippine Health Insurance Corporation (PhilHealth) to effectively service more members and manage increased benefit spending.

These five reform areas are highly interdependent, complementary and therefore should be implemented as a package. Health financing reforms through NHIP expansion will make hospital autonomy viable and will ensure that the poor remains protected. Hospital reforms in turn will free up resources for investments in public health program and health regulation at the national and local levels. Effective public health programs and local health systems will relieve the NHIP from paying for hospitalizations that should otherwise have been prevented or better handled at primary care facilities.

Implementation of the HSRA demands public investments as well as policy and organizational changes. The HSRA will require public investments estimated to amount to P112 billion within a five-year period. It will also require effective implementation of existing laws and policies like the National Health Insurance Act, the National Drug Policy and the Local Government Code. The organizational changes needed include the continuing reengineering of the DOH and PhilHealth and the formation of interlocal health zones.

Ultimately, therefore, the HSRA aims to: (a) improve the health status of the people through greater and more effective coverage of national and local public health programs; (b) increase access to health services especially by the poor; and (c) reduce financial burden on individual families. It shall be the catalyst that will bring the country toward the realization of a shared vision of health for all Filipinos.
provision of a national-level body to oversee the integration of all efforts based on existing laws is concerned. This may entail the revision of the Water Code Act to strengthen the integration of the roles of national agencies such as the NWRB and the Presidential Task Force on Water Resources Development.

There are two options available regarding this action. One is to create a water body either in the form of a Water Commission similar to the National Commission on Indigenous Peoples (NCIP) or the National Commission on the Role of Filipino Women (NCRFW) or in the form of a National Water Resources Authority. And the other option is to lodge the function of overseeing all matters related to water governance in the Department of Environment and Natural Resources (DENR).

These options present an issue that needs to be resolved in the context of institutional economy and capacity. Creating another agency, if not properly done, would just add to the already bloated bureaucracy. On the other hand, the DENR is already saddled with too many functions.

Either way, there has to be a balance between the regulatory and advocacy functions. The latter should enhance the strong capacity-building program of LGUs and other local players to be able to operationalize an ecosystems approach and a market-based mechanism. Moreover, it is important to allow the strong involvement of civil society actors in water governance.

It is worthy to note that there have already been bills filed at the Philippine legislature regarding some of these concerns. For instance, an earlier bill filed by Siiquior Representative Orlando Fua provides for an education and information function to a proposed National Water Resources Authority and engages a strong commitment from local stakeholders and marginalized sectors, including women. It is, however, most unfortunate that this bill has not gained significant progress in the legislative process.

Another bill pending in Congress is the Clean Water Act authored by Bukidnon Representative J.R. Nereus Acosta in the Lower House and by Senator Juan Flaver in the Senate. This bill recognizes the participation of LGUs in the management and improvement of water quality in their jurisdictions. It also provides for citizen action in pursuing suits against violators of the Act’s provisions as well as the conduct of information and education campaign. This bill, however, does not propose for the creation of a new water body and instead assigns the lead function to DENR. And while it is noteworthy that the bill already refers to market-based instruments, still, the proposal of one of the forum papers to include a provision of the bill emphasizing the importance and need to use a watershed-based approach in water management will provide legal support to a scientific basis for water resource management.

Conclusion
The whole point of this paper is to remind decisionmakers that there should be legislative restraint as well as legislative activism in the form of legislative economy and reform. This entails shifting the focus from regulation to advocacy, taking stock of existing laws, and establishing a lean but mean legal environment that allows for initiatives at the local level.

Uniformity and the presence of a super water body may be convenient but the existence of a pluralism of modes of water governance in the country will enable local stakeholders (LGUs, civil society) to evolve appropriate mechanisms that conform with local social, political, economic and ecological realities. Thus, any legislation should contain a progressive element of furthering the spirit of devolution by providing for the implementation of the principle of subsidiarity in water governance. This calls for a deliberate transfer of power from national to local water bodies and certainly necessitates the creation of an enabling legal and policy environment that would capacitate and support local initiatives.
In pursuit of health reform and in line with the Arroyo government’s thrust to improve access to and delivery of social services to the poor and marginalized sector, the Department of Health (DOH) has pursued the implementation of the Health Sector Reform Agenda (HSRA).

The HSRA is the Department’s framework of its major strategies, organization and policy changes, and public investments to improve the country’s hospital systems, public health programs, local health systems, health regulatory systems and health financing systems.

Under this framework, two major initiatives are already being implemented, namely, Pharma 50 and Plan 500. Pharma 50, a collaborative effort of the DOH and the Department of Trade and Industry (DTI), resulted in the reduction of prices of drugs commonly used by the poor by half. Plan 500, meanwhile, which was implemented through the Philippine Health Insurance Corp. (PhilHealth), has expanded the coverage of health insurance to 500,000 urban poor families.

The overall reform process, however, which covers a comprehensive agenda such as the HSRA, will take some time to be fully implemented at a national scale. Recognizing this, the DOH set up convergence sites where the five reform areas under the HSRA would be initially implemented as a package (see separate article on the HSRA). The convergence sites were chosen on the basis of the following criteria: (a) strong interest and commitments from the local executives and (b) local initiatives on health that are reflective of responsive and dynamic health systems. The number of sites was defined by the capacity of the DOH and PhilHealth to provide enabling resources.

The first batch of convergence sites are located in Pangasinan, Nueva Vizcaya, Bulacan, Pasay City, Capiz, Negros Oriental, South Cotabato, Misamis Occidental, Palawan, Southern Leyte, Agusan del Sur, Baguio City and Ifugao. Sixty-four more convergence sites were identified for later implementation.

Reforms in Convergence Sites

The reforms being implemented in the selected convergence sites cover various aspects of the five key areas identified in the HSRA. For instance, the hospitals in the convergence sites are now implementing programs to improve management systems and quality of services. They are also pursuing measures to increase generated revenues so as to augment their budgets.

In terms of local health systems development, interlocal health zones (ILHZs) covering all municipalities in the provinces involved were organized. The vitality observed in the 13 convergence sites demonstrates the advantages from inter-LGU collaboration and cost-sharing.

To date, 23 ILHZs have already been organized, of which seven are already functional (five in Negros Occidental and two in Iloilo). To accelerate the propagation of this reform component, a manual on organizing ILHZ was developed as the main tool by the Department’s Bureau of Local Health Development.

For the public health program reforms, the convergence sites integrated the five high impact public health programs in the health benefit package of health passport holders. These are the National Tuberculosis Control Program, Contraceptive Services Program, Integrated Vector Control Program, Women’s Health Program and Child Health Program. In this regard, PhilHealth has accredited 65 rural health units (RHUs) in convergence sites and set up Plan 500 areas in Pasay City, Makati, Valenzuela, San Juan, Capiz, Laguna, Batangas, South Cotabato and Ilocos Norte. The accreditation of RHUs, which are the traditional providers of public health service, marks PhilHealth’s initiative to expand its provider base. It also allows RHUs to avail of capitation arrangement for outpatient services, especially for maternal and reproductive health.

Meanwhile, the convergence sites have shown significant levels of progress in the area of drug management systems reform. All sites have organized and trained therapeutics committees (TCs), which have considerably improved the selection of drugs to be procured by LGU convergence sites. Some of the sites have even developed their own local drug formularies.

Moreover, almost all sites are now implementing innovative drug procurement methods such as bulk or pooled procurement, including that of parallel drug imports. Because of the improved drug selection and procurement systems, some sites have significantly reduced the procurement cost of drugs.

To improve health care financing in convergence sites, the enrolment of the poor under the indigent program of the National Health Insurance Program (NHIP) was also actively pursued.

Reforms outside of the convergence sites

The implementation of the health sector reform is selective outside of the 13 identified convergence sites. Institutional reforms are focused only on critical activities that are sufficient to generate the momentum toward the completion of the HSRA. Individual reforms in specific areas are being implemented through the initiatives of the Centers for Health Development (CHD).

HSRA UPDATE

H SRA: Setting the momentum for health reforms