

A Method to Identify and Evaluate the Legal and Institutional Framework for the Management of Water and Land in Asia

The Outcome of a Study in Southeast Asia and the People's Republic of China

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This report outlines the approach taken to identify and evaluate the features of the legal and institutional framework for the management of water and land of three countries in Southeast Asia and of the People's Republic of China. It describes the method used to achieve this, outlines some of the key findings and raises some important challenges for the future.

Achieving sustainable use of water and land resources is a major challenge for the world in the twenty-first century. Despite the emerging recognition of their central role in human survival, land and water ecosystems are being degraded at an alarming rate. Of significant concern is the sustainable production of food, maintenance of livelihoods of rural land users and improving the quality and biodiversity of natural resources. An enabling environment for farmers and agencies to adopt management practices that reduce land and water degradation and improve food security is crucial. It is important to create a legal framework to define what activities are allowed in a particular area and who is responsible for them and for the state of the resources. This report is based on a study carried out in the region for IWMI in 2002, to review the capacity of the legal and institutional system of the People's Republic of Bangladesh, Lao People's Democratic Republic (Lao PDR), the Republic of the Philippines and the People's Republic of China to manage water- and land-use issues. An issue is an expressed point or area of concern, which may include reference to the knowledge and action needed to achieve sustainable management of water and land or it may be a matter that requires further investigation to determine or justify a particular course of action. This report identifies the capacity of relevant international, regional and national legislation to manage water- and land-use issues and raises opportunities for reform and capacity building in the legal and institutional system in the region. It highlights the relationships and

interdependence between the three principal levels of legislative instruments applicable in the region: the international environmental law, regional environmental law and national environmental law. The main outcome of the study is a legal and institutional framework that summarizes the capacity of the relevant international, regional and national legislation and institutional environment to manage water and land. Central to this is a number of key terms

- The first is the general concept of a legal and institutional framework, which is a process to provide law and policymakers with the practical information and guidance to understand, or to develop or strengthen the legal and institutional capacity for a specific environmental-management issue. A framework can be applicable at either the international, regional or national level or a combination of these levels
- The second is a legal and institutional system, which is the organizational and operational regime together with a legal and institutional framework used to manage water and land. It comprises the organizations and their administrative and legislative structures
- The third is the legal and institutional elements, which are essential to appear within a legal and institutional system for the effective management of water and land issues. An "essential element" is a basic, essential component part of a legal and institutional system. It is a principle, rule or

direction of conduct that may be used in its existing form or modified to perform the role of a legal mechanism (which is a direct statutory or administrative function), or as a legal principle (a rule of conduct) in legislation. Elements can also be used singularly, or in combination with other legal mechanisms or principles, to enable or invoke some form of legally based action to achieve the sustainable use of water and land. Seventeen basic "essential elements" are outlined in the report and they were derived through an evaluation of legal and ecological principles, which are aimed at achieving a desired level or standard of performance in sustainable water and land management. They were used in the study to evaluate existing laws and legal instruments and determine their capacity to meet the sustainable use of water and land.

- The fourth is the capacity of a legal and institutional framework for water and land management, which is measured by the capability of a legislative and institutional system to achieve sustainable use of water and land. The capacity is determined by the number and type of essential legal and institutional elements present in an existing law or legal instrument in a format that enables water- and land-management issues to be identified, along with the legal, administrative and technical capability in the particular instrument to take some form of effective action.

The principal features of the method described in this report include its ability to:

- Determine the legal and practical capability of a legal and institutional system to accomplish sustainable water and land management.
- Determine the capacity of multilateral and regional environmental law instruments within a particular geographic region, and determine the capacity of individual laws and other legislative instruments (decrees, codes, regulations, etc.) within a particular country or between two or more countries.
- Be applied as a comparative environmental law tool to highlight the capacity of various instruments within a particular level (international, regional, national), or between different levels.
- Identify strengths, weaknesses, omissions or duplication within a legal and institutional system and to use this information as a basis for recommending legal and institutional reform.

Observations from the study indicate that the relevant international environmental law has a reasonable capability to recognize water- and land-management

issues of the region. However, no single international environmental-law instrument adequately caters to both water- and land-management issues but this role is diversely spread across a range of international laws. Moreover, the regional environmental-law instruments were found to have an inadequate number of essential elements considered necessary for an effective capacity in water and land management at that level. At the national level, the legal and institutional profile for Lao PDR indicates a reasonable capacity to manage water and land issues. The legal and institutional system for water and land management in China is quite complex but there are distinct areas of weaknesses in the water- and soil-conservation law regime, with considerable overlap and duplication between a number of principal environmental laws with water- and land-management responsibilities.

In the wider sense, a framework of the type described in this report can provide planners, legislative drafters and policymakers with a source book of contextual information and examples to draw upon to tailor a legal and institutional approach for a particular nation or region. At the international level, the development of a specific instrument for water management would benefit all regions of the world, not just Asia, while the development of a regional instrument for Asia along the lines of some existing European water instruments could have substantial benefits. More specifically, at the national level, the study identified some key issues that could warrant further attention and improvement including an expansion in the basic human needs and rights to water and land and an improvement in the clarity and explanation of resource rights and land-use and land-user rights. Culturally, the region is very diverse, and many ethnic and minority groups and socially disadvantaged people are not specifically recognized by the law in regard to agricultural land use. In some instances, there is a general coincidence between the location of a particular ethnic group and the occurrence of severe water and land degradation. More attention could be paid to the law to ensure security of water and land resources and mechanisms to increase institutional capacity to deal with water- and land-management issues of disadvantaged groups.

Considerable ground has been made to date with the development and application of the legal and institutional methodology described in this report. However, it is essential that it continues to be applied to other legal and institutional systems in the Asian region to ensure its rigor as an effective comparative environmental-law tool for the review and understanding of water and land management and the environment in general.