



PTIONS FOR IMPROVING THE GOVERNANCE SYSTEMS OF FORESHORE LANDS IN THE CENTRAL VISAYAS, PHILIPPINES

by Ben S. Malayang III, Ph.D.

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ACRONYMS

AO	-	Administrative Order
DENR	-	Department of Environment and Natural Resources
EcoGov	-	The Philippine Environmental Governance Project
LGU	-	Local Government Unit
RDC	-	Regional Development Council
TWG	-	Technical Working Group
USAID-	-	United States Agency for International Development

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Dr. Ben S. Malayang III

INTRODUCTION

Some efforts have been exerted in the past year by the Department of Environment and Natural Resources (DENR) –United States Agency for International Development (USAID) Philippine Environmental Governance (EcoGov) Project, to assist the DENR Regional Office in the Central Visayas develop strategies to address governance issues over foreshore lands in the region.

The efforts were intended to improve the administration of foreshore lands and to harmonize government actions and stakeholders' interests on them within the region. However, because the region is among the four most insular areas in the country (the other being Regions 6, 8, 4B, and Autonomous Region in Muslim Mindanao), there was the added objective by the project to generate in these efforts the basis for evolving a national policy on foreshore lands in the country.

This is a strategic objective of the project in light of the extensive coastline of the Philippines, where over 60% of local government units (LGUs) have coastal areas.

The current picture on foreshore lands administration in Region 7 (and, too, the Philippines in general) is one of a mess of inconsistent policies, and a mish-mash of competing and disharmonized interests on them. But the efforts of EcoGov and DENR Region 7 have at this time sorted out the extent of the mess and mish-mash, the culprit regulations and interests, and what might be done to improve the situation.

A series of technical workshops and processes were conducted and now the Regional Technical Working Group (TWG) is ready to issue guidelines that might lead to an improved harmony of government actions and stakeholders' interests on foreshore lands in the region.

The readied guidelines cover definitions and delineation of foreshore lands; titling and alternative tenure arrangements; allowable land use; conflict prevention, mitigation and resolution; delineation of regulatory responsibilities and accountability centers among government agencies and LGUs; participation of civil society, industry and other stakeholders in government decisions on foreshore lands; permitting systems; fees; oversights; transitory regulations; and development planning.

[See EcoGov Region 7 Office Reports and the Proceedings of the TWG Workshops conducted in Bohol and Cebu on Foreshore Lands Administration in Region 7.]

OPTIONS TO MOVE FORWARD

There appears to be at least *two* (2) options for moving this process forward: (1) the “DENR-Alone” option, and (2) the “DENR-With-Others” option.

THE “DENR-ALONE” OPTION

This is the option that the EcoGov Regional TWG on Foreshore Lands had considered when it last met. The option is for DENR Region 7 to issue a Regional Administrative Order (AO) stipulating the guidelines developed by the TWG.

The contemplation in this option is that definitions, procedures and agency/LGU responsibilities and authorities over delineations, surveys, tenure, land use, permitting, fees, enforcement and related regulatory functions, shall be laid out, clarified or otherwise affirmed as *per existing laws and regulations*, to minimize if not altogether eliminate confusion over them, or on which agencies and government units are to enforce, or take the lead in enforcing, or in discharging certain functions under, the different laws attending foreshore lands.

It is assumed that with the AO, official accountabilities will be sharpened and more precisely ascribed to different agencies and units, so that public confusion over foreshore regulations might be minimized and public demands for action on persistent foreshore use issues will be correspondingly get more directed at the appropriate agencies and units.

Desirable Features. This option offers one desirable feature of being well within only one agency, DENR, to execute. It can be a simple and straightforward affair to draft the AO, have it approved by higher DENR authority, then disseminate it to other agencies, local governments, and the general public in Region 7. Possible complications may arise from other agencies seeking to further clarify the provisions of the AO, but it they would be for only DENR to do something about in its own AO. The other desirable feature is that should the guidelines or any of its elements prove untenable or undoable, it is again for only one agency, DENR, to rectify, recall or amend the AO. Too, the AO generates entitlements which stakeholders might use to demand for action from other agencies and government units (e.g., on tenure and permits, or on the protection of settlements from dismantling *sans* prescribed preconditions and procedures for doing so).

Undesirable Feature. This option for the most part does not provide for a higher resolution of the issues attending foreshore lands in Central Visayas, other than simply clarifying the role of other agencies and government units *under existing laws and regulations*. The option does not involve actually developing deeper institutional commitments to regulate foreshore lands. Where the issues become too politically and socially complex or unpalatable, concerned agencies may just choose not to behave under the DENR-specified guidelines, ignore them, or pass on the problem to other agencies and government units. DENR Region 7 would, in this case, be hard put to enforcing its regulations on the other agencies and units in the region. The latter may just conveniently cite their own regulations to escape from doing the unpalatable (e.g., tearing down illegal structures and settlements). Certainly, the created entitlements can be used by affected stakeholders to force issues and to demand action from hesitant agencies and government units. But this will raise the transaction costs of deriving services that stakeholders may instead recourse to circumventing the guidelines. This could end up maintaining (if not even aggravating) the mess and mish-mash of foreshore issues in the region.

THE “DENR-WITH-OTHERS” OPTION

This option involves DENR Region 7 developing a Joint Regional AO with other agencies in the region stipulating the guidelines drafted by the Foreshore Lands TWG. The process would involve the following steps to be taken:

1. DENR Region 7 will identify and collaborate with key technical colleagues in other agencies in the region, to get their concurrence and support for the guidelines; this is a “selling” exercise;
2. After getting the “buy-in” of key technical staff in other agencies, the DENR, with the staff of the other agency, will “sell” the idea of a Joint AO to the regional head of that agency;
3. After developing an inter-agency consensus on a Joint AO, the DENR, with the regional heads of the other agencies, will present its draft to the Regional Development Council (RDC), at which point the DENR and the other agencies will collectively “sell” the idea to the RDC; presenting the draft to the RDC will also serve to put on public notice and scrutiny the draft itself; the object of this exercise, however, is to solicit a wider public and LGU “buy-in” on the guidelines.
4. Following steps 1 to 3, the DENR prepares the final draft for joint issuance by all concerned national agencies in the region, with, more desirably, an endorsement of the Joint AO by the RDC and its LGU, civil society, industry and other members.
5. In the event that there is no wide “buy-in” on the idea of a Joint AO, the DENR may opt to take the “DENR-Alone” option, but this time, because it is informed of the concerns of the other agencies, place into the guidelines add-ons and modifications that address the concerns.

One key feature in this process is the development of wider “buy-ins” on the guidelines. The desired effect is for the other agencies and government units to commit to them, and to their roles indicated there. Also, the process involves vetting the guidelines by a wider public so that they can be strengthened from what inputs are generated from other agencies, government units and stakeholders.

Getting the commitment of other agencies, government units and stakeholders is crucial to ensuring that the guidelines are institutionalized in the region (or embedded in the routine conduct of business of the agencies, government units and stakeholders in the region), more than merely issued as regulations on paper.

Desirable Features. This option offers the desirable feature of being transparent and participatory, both in terms of process and product. It builds up a constituency of champions among the agencies and government units involved in regulating foreshore lands, and so has the high potential of becoming effective. The process allows for wide assessment of the guidelines by different agencies and stakeholders *before* they are issued and so ensures that the resulting regulatory issuance would be robust than if it were produced by only one agency. The process allows for progressive vetting of the guidelines before they are finalized as a body of regulations. This would be especially crucial considering the multifaceted, multi-agency nature of the issues to be addressed.

Undesirable Feature. Its main drawback is that the process gets too involved in terms of the agencies and stakeholders that need to be brought into its development loop. It would require a lot of legwork, “selling” and meetings by DENR with other agencies, government units and

stakeholders. This can tax the DENR system to a point in which it would be placed on the backburners of the agency in terms of priority.

RECOMMENDATION

EcoGov could take the tack of engaging the TWG to discuss and decide on which option to take, and then draw up plans to assist it pursue the option; that is, if EcoGov would still pursue this matter in the next phase.

I believe it should, that is, pursue the matter. Much of coastal environments and pressures on coastal fisheries coming from foreshore sources could be attended to and addressed if foreshore land use were rationalized.

This, I believe, is still the best way to go.