

Economic Regulation of Water Supply in the Philippines

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Adora Navarro
Senior Research Fellow, PIDS
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- **Overview of the water supply sector**
- **Why we need a unified regulatory framework**
- **Some recommendations**

Preliminaries (some definitions)



- **Economic regulation**

- setting of prices or conditions on entry of firms into an industry

- **Social regulation**

- correction of externalities; includes environmental controls and health and safety regulations

- **Levels of service of water systems in the Philippines**

Level 1 water system – stand-alone water points (e.g., handpumps, shallow wells, rainwater collectors)

Level 2 water system – communal faucet system; piped water from a communal water point (e.g., borewell, spring system)

Level 3 water system – extensive distribution network of piped water connecting individual households

Overview of the water supply sector

Access levels and market shares



Access to formal levels of service: 79%				No access: 21%
Level 3: 44%			Level 2: 10%	Level 1: 25%
Private wells	Tankered/ vended water	Piped supply		
SSIPs and/or self-provision by households				
WDs: 14%	POs: 10%	LGUs/CBOs: 20%	LGUs/CBOs: 35%	
Complementary services provided by SSIPs and/or self-provision				

CBO = community-based organization; LGU = local government unit;
 PO = private operator; SSIP = small-scale independent provider;
 WD = local water district.

Population with access to improved drinking water, 2000-2011 (in %) *



Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Brunei Darrusalam	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Cambodia	31.0	-	-	-	-	51.2	-	54.5	55.0	48.7	48.2	50.5
Indonesia	38.0	-	-	-	-	48.0	-	-	-	-	44.0	-
Lao PDR	52.0	-	-	-	-	70.0	-	-	-	-	82.0	-
Malaysia	92.0	92.7	93.2	93.7	93.2	94.0	95.2	90.5	90.9	93.0	94.2	94.4
Myanmar	71.5	-		78.8						82.3		-
Philippines	78.7	-	79.7	79.1	77.9		80.6	81.5	81.4		82.5	82.7
Singapore	100.0	-				100.0					100.0	
Thailand	94.0	-	98.9		99.3	92.0	99.1	99.0		99.4	99.1	99.5
Vietnam	-	-	77.1		80.2		88.6		91.4		89.3	

Source: 2012 ASEAN Community Progress Monitoring System (ACPMS)

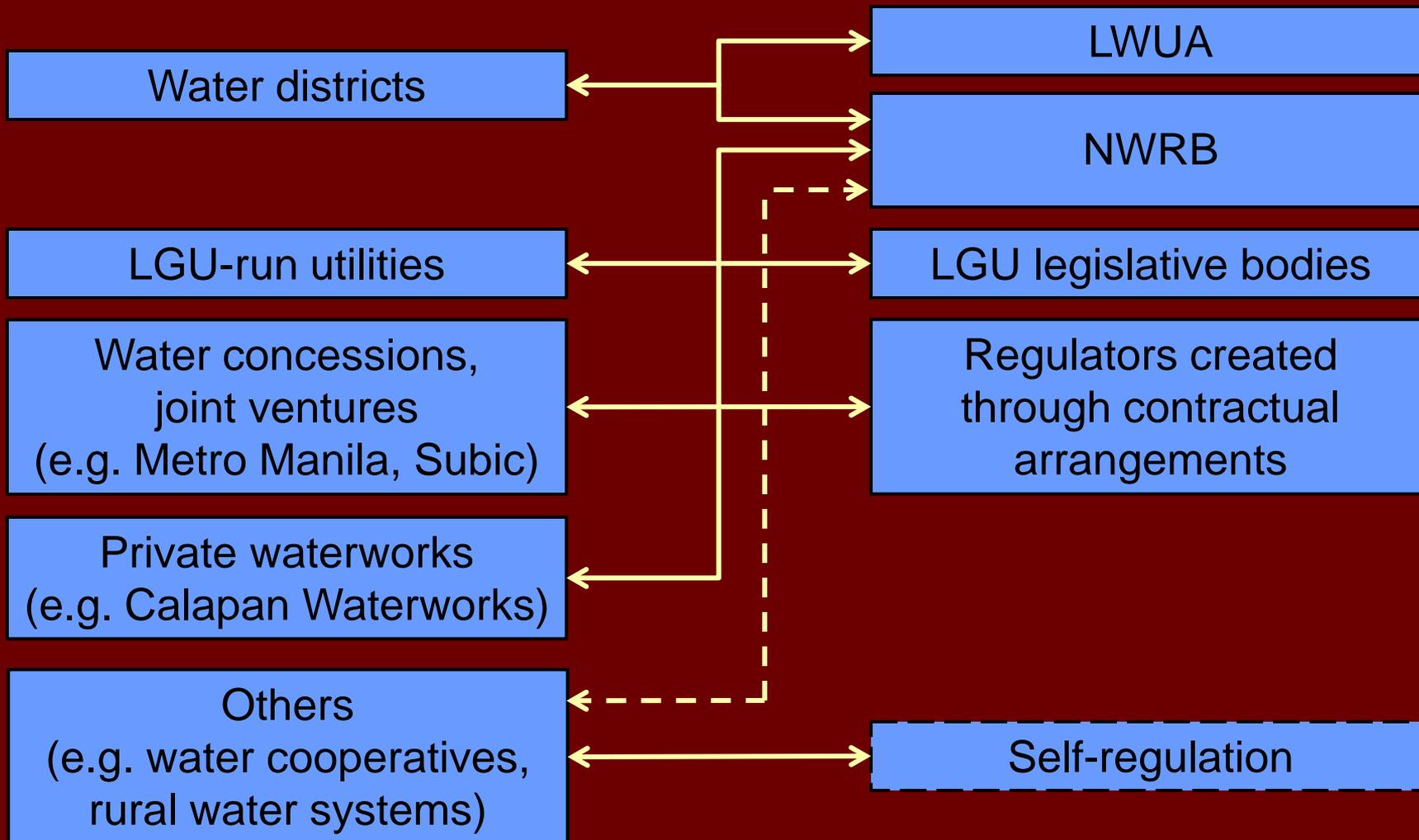
Note: Compiled from NSOs' submitted data and ASEAN Statistical Report on MDGs.

* Data for Indonesia and the Philippines are based on the proportion of households with access.

Regulatory landscape

SERVICE PROVIDERS

REGULATORS



Why we need a unified regulatory framework

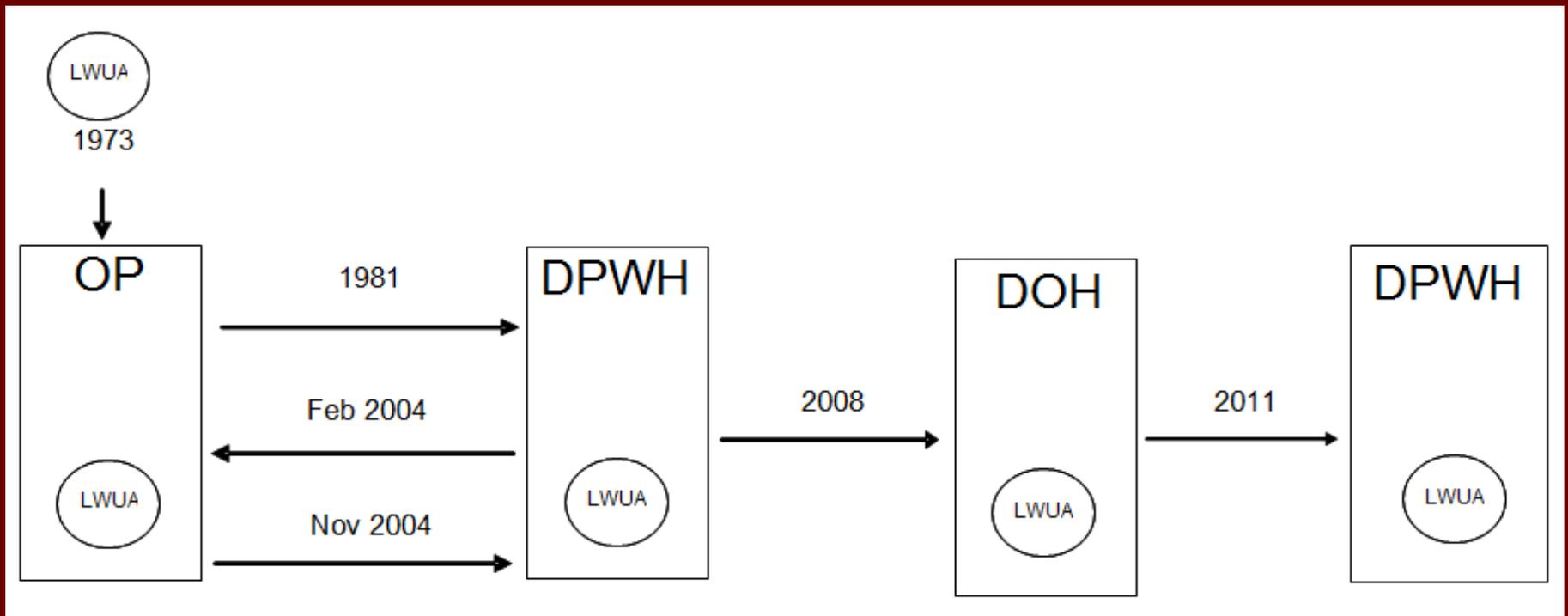
Fragmentation in the regulatory setup



- **EO 123 s. 2002 transferred the economic regulation of water districts to NWRB, but NWRB has no full capacity to take on the task**
- **Regulation by LGU legislative bodies (Sanggunian Panlalawigan/ Pambayan/ Panlungsod) can lead to a politicized process in tariff setting and investment decisions, not full cost-recovery, and water enterprises that are not ring-fenced relative to other LGU activities**
- **Assisting self-regulated entities is difficult given that information on their performance is not even captured**

Fragmentation in the regulatory setup

The provision of water supply is extensively done through the water district model, but the effectiveness of LWUA to assist water districts is hampered by the need to set its financial affairs and institutional setup in order.



- **There is a growing application of public-private partnerships (PPPs) in water supply (concessions, joint ventures) but the lack of standardized approach to “regulation by contract” in numerous PPP contracts can lead to complexities and regulatory capture**
 - Example: passing of corporate income tax to consumers in Metro Manila water concessions
 - contrary to finance and accounting principles in utility regulation
 - however, what is unprincipled or unreasonable is not necessarily illegal; the MWSS allowed it in the contract
 - Note: the Supreme Court itself referred to textbook examples and principles of utility regulation laid down by academics when it decided the Meralco case in 2002

- **Given the fragmentation of responsibilities, performance obligations in terms of levels of service and expansion of coverage to serve the areas without access to safe drinking water are not adequately enforced**

- **Does the Philippines need a unified national regulatory framework? In what form should it be?**
 - Yes; an independent regulator that shall cover all water service providers, regardless of whether the service provider is public or private

Senate Bill 1585 - 16th Congress



- **Proposes** (among others):
 - Water Regulatory Commission
 - licensing system for providers of piped water supply and sewerage services; licenses do not grant exclusivity in service areas
 - consolidation of providers in the same service area
- **But...**
 - license duration is at the discretion of the Commission
 - Note: a license is also a contract and predictability in the contracting period is necessary
 - no strategy for the consolidation of providers
 - Note: The Supreme Court ruled that a WD is a GOCC; but unlike in regular GOCCs, “equity holders” are not defined

- ***Regulation and Development, Jean-Jacques Laffont (2005)***
 - exposes the difficulty of applying many theoretical models of regulation to the developing country context
 - four key institutional limitations: limited regulatory capacity, limited accountability, limited commitment, and limited fiscal efficiency
- **Experiences in other countries**
 - Latin America - decentralization; private sector participation in financing and operating services
 - Malaysia:
 - passed two laws in 2006: (i) creation of a National Water Services Commission, a regulator; and (ii) Water Services Industry Act, legal framework for the regulation of the water and sewerage industry
 - separation of responsibilities between asset owners and operators; consolidation and centralization of water assets to the federal government; state water service operators will lease the assets

Some recommendations

- **Enact a national regulatory framework for water supply and sewerage services**
- **Aside from characterizing an independent regulator, the law must address the restructuring of the industry (e.g., how water districts can be restructured so that they can perform as stock corporations) and include performance obligations (e.g., service coverage expansion and non-revenue water reduction)**
- **Make the legislative framework clear so that wrangling over territorial jurisdictions in exercising regulatory functions will not ensue (Note: The charter of eco-zones allow them to regulate utilities within their jurisdiction)**

- **For the meantime, use the PPP law (RA 7718) and the current institutional arrangements (however constrained they may be) as guide for concessions and related PPPs**
- **In future PPPs, rather than tinker with ways to pass on charges to consumers in ways that are contrary to financial and accounting principles, check if the allowed rate of return is enough to attract private sector participation**
- **Have fewer contracting models for PPP arrangements because having too many models will introduce complexities in a sector that is weakly regulated**
- **Ensure that the codification of regulations and tracking of performance obligations are regularly done and efficient and that public participation in monitoring accountability is allowed through adequate access to information**

Thank you!

Philippine Institute for Development Studies
106 Amorsolo St., Makati City, Philippines
www.pids.gov.ph

(632) 893-9575 to 77 local 3012
anavarro@mail.pids.gov.ph