

FOREST MANAGEMENT UNDER THE PROPOSED FEDERAL GOVERNMENT SYSTEM

Antonio P. Contreras
Department of Political Science
De La Salle University Manila

OUTLINE OF PRESENTATION

- ▶ What is being proposed?
- ▶ How to interpret this in the context of forest governance?
- ▶ Two forest governance scenarios
- ▶ What we know from the literature?
- ▶ What the forest governance sector should do to prepare?
- ▶ What do to in relation to the process of crafting a Sustainable Forest Management Act?

What is being proposed?

- ▶ There are two official drafts
 - ▶ The draft prepared by the Consultative Committee formed by President Duterte
 - ▶ The draft prepared by the House of Representatives, through the Committee of Representative Vicente Veloso
- ▶ Main similarity
 - ▶ Presidential with bicameral legislature
 - ▶ Federal with two levels of government - federal and federated regions
- ▶ Main difference
 - ▶ The Con-Com draft already specifies the federated regions
 - ▶ The Veloso draft specifies the process for regions to become federated, with the approval of the Federal Congress

Specific to forest governance

- ▶ The enumeration of the powers that is exclusively allocated for the federal government and the federated regions is the same for both the Con-Com and the Veloso Committee
- ▶ For the purpose of this paper, we will use the Con-Com draft for reference

Exclusive powers of the federal government ...

- ▶ Defense, security of land, sea and air territory
- ▶ Foreign affairs
- ▶ International trade
- ▶ Citizenship, immigration and naturalization
- ▶ Monetary policy and federal fiscal policy, banking, currency
- ▶ Elections
- ▶ Inter-regional infrastructure and public utilities, including telecommunications and broadband networks
- ▶ Federal crimes and justice system
- ▶ Civil, family, property and commercial laws, except as may be provided for in the Constitution
- ▶ Customs and tariffs

... Exclusive powers of the federal government

- ▶ Postal service
- ▶ Intellectual property
- ▶ Regulation and licensing of professions
- ▶ Law and order
- ▶ Prosecution of graft and corruption cases
- ▶ Competition and competition regulation bodies
- ▶ Promotion and protection of human rights
- ▶ National socio-economic planning
- ▶ Science and technology
- ▶ Social security benefits
- ▶ Time regulation, standards of weights and measures

Exclusive powers of the federated regions ...

- ▶ Infrastructure, public utilities and public works
- ▶ Socio-economic development planning
- ▶ Parks and recreation
- ▶ Financial administration and management
- ▶ Business permits and licensing
- ▶ Tourism, investment and trade development
- ▶ Economic zones
- ▶ Creation of sources of revenue
- ▶ Local government units
- ▶ Municipal waters

... Exclusive powers of the federated regions

- ▶ Culture and language development
- ▶ Land use and housing
- ▶ Sports development
- ▶ Indigenous people's rights and welfare
- ▶ Justice system

Types of powers

- ▶ Exclusive powers refer to those powers that are given to the exclusion of other political authorities.
- ▶ Shared powers refer to those that are not given exclusively to either the Federal or the Federated Regions, and can be exercised jointly or separately. In case of dispute of conflict, the proposed Constitution stipulates that federal power shall prevail.
- ▶ Reserved powers of the Federal Government refer to those powers that are not exclusively granted to the Federal Government or to the Federated Regions, nor shared by them and are not prohibited by the Constitution.

How to interpret this in the context of forest governance?

- ▶ Outright verba legis reading - forestry is a shared power, since it is not part of the enumerated exclusive powers of the federal government and the federated regions
- ▶ However, a functional analysis reveals that there are certain aspects of forest governance that are listed as exclusive powers of each level of government

Aspects of forest governance listed as exclusive to federated regions

- ▶ Socio-economic development planning - related to CBFM
- ▶ Parks and recreation - related to protected forest areas
- ▶ Business permits and licensing - related to the granting of permits and licenses for forest-based economic activities
- ▶ Tourism - related to eco-tourism within forest lands under FLAGT
- ▶ Economic zones - related to investments within forest lands
- ▶ Creation of sources of revenue - related to forest fees and charges
- ▶ Land use - related to forest land classification and tenure system
- ▶ Indigenous people's rights and welfare - related to IPs within forest areas that are not declared under IPRA as ancestral domains.

Aspects of forest governance which may be considered as exclusive powers of the Federal Government

- ▶ Exclusive power over law and order
- ▶ Hence, when forest-related crimes are considered as federal offenses

Two forest governance scenarios

- ▶ That forestry is a shared power between the Federal Government and the Federated Regions (Scenario 1)
- ▶ That forestry is an exclusive power of the Federated Regions (Scenario 2)

Scenario 1: Forest governance as being shared between Federal Government and Federated Regions

- ▶ Forest protection and law enforcement becomes a responsibility of the Federal Government
 - ▶ FMB is reorganized into Federal Forest Protection Bureau which can then be housed in the Federal Environment Department
 - ▶ Or, the same, but housed under the Federal Department of Justice to increase its investigative and police powers
- ▶ Forest governance is placed in the Federated Regions which can be under a Regional Department of Environment and Natural Resources
- ▶ There is a need to enact a basic forest governance law in each of the federated regions. They are also allowed to enact punitive protection laws, provided that these do not run in conflict with the Federal laws.

Scenario 2: Forest governance as exclusive powers of Regions

- ▶ Even the enactment and implementation of forest protection and conservation laws will be done at the Regional Level.
- ▶ There is no more need for a Federal forest governance mechanism with line functions.
- ▶ A federal office may still exist but only performing staff functions, and which may be housed in a Federal Environment Department, or under another relevant Department.
- ▶ All forest governance mechanisms will now be exclusive powers of the Federated Regions.
- ▶ There is no federal forest governance code, as this will now all be enacted at the level of the Federated Regions.

Comparison of Scenarios 1 and 2 ...

| | Scenario 1 | Scenario 2 |
|----------------------------------|---|--|
| Forest Governance | Shared power of Federal Government and Federated Regional Governments | Exclusive power of Federated Regions |
| Powers of the Federal Government | Enforcement of prosecution of forest laws and regulations | No line function, only staff (monitoring, data base curating) |
| Powers of the Federated Regions | All other functions related to forest governance | All functions related to forest governance, including enforcement of forest laws and regulations |
| | | |

Comparison of Scenarios 1 and 2 ...

| | Scenario 1 | Scenario 2 |
|-----------------------|--|--|
| Federal Forest Agency | Functioning as enforcer and prosecutor; can be a bureau under a Federal Environment Department or under other Departments related to the administration of justice and the enforcement of laws | Functioning as a coordinating unit under a larger Department such as a Federal Environment Department or other Departments |

Comparison of Scenarios 1 and 2 ...

| | Scenario 1 | Scenario 2 |
|------------------------|--|---|
| Regional Forest Agency | Performing line and staff function related to forest governance, except enforcement and prosecution of federal forest-related crimes, but including enforcement and prosecution of violation of regional forest laws | Performing all line and staff function related to forest governance |

Comparison of Scenarios 1 and 2 ...

| | Scenario 1 | Scenario 2 |
|---------------------------------------|---|------------------------------|
| Federal Forestry Code | Focuses on federal crimes in relation to forest protection | None |
| Regional Forestry Codes | Focuses on regional forest governance | Focuses on forest governance |
| Enactment of Federal Laws on Forestry | Only as applied to the amendment or revision of the Federal Forestry Code, and the enactment of federal forestry crimes | None |

Comparison of Scenarios 1 and 2 ...

| | Scenario 1 | Scenario 2 |
|--|---|--|
| Enactment of Regional Laws on Forestry | On all matters relating to forest governance, except on matters that pertain to federal forest-related crimes, but can amend or revise the regional forestry code, and the enactment of regional forestry crimes as long as these do not conflict with federal laws | On all matters relating to forest governance and the enactment of regional forestry crimes |

... Comparison of Scenarios 1 and 2

| | Scenario 1 | Scenario 2 |
|--|---|---|
| Impact on existing Forestry Laws | Enact a Federal Forestry Code focusing on forest protection and enforcement; Enact Regional Forestry Codes | Enact Regional Forestry Codes |
| Impact on the Forest Management Bureau | A federal unit focusing on forest protection and law enforcement will be retained; all the rest will be devolved to the Federated Regions | A small planning/monitoring unit will be retained at the Federal Level; but all other functions will be devolved to the Federated Regions |

Impact on the Forestry Profession and on Forest Education and Forest Research

- ▶ Licensing of professions, including forestry, remains a Federal function
- ▶ This will have some implication on the Forestry curriculum
- ▶ However, higher education is not listed as exclusive power of the Federal Government, hence forestry higher education can be interpreted as shared powers
- ▶ Hence, it is likely that some educational institutions will be treated as Federal HEIs while others as Regional HEIs.
 - ▶ It is likely that the Federal Commission on Higher Education (FCHED) will develop a standard under which this may be implemented.
 - ▶ More likely, Universities with Campuses located in two or more regions may become Federal Universities (UP and MSU, for example) while those within only one region may become Regional Universities.
- ▶ Science and technology are listed as exclusive to the Federal Government. ERDB and FPRDI will remain as federal agencies.

What do we know from the literature? (Gregersen, et. al.)

- ▶ Forest governance need not be confined to one agency; need for inter-agency cooperation
- ▶ Federal control of forest governance tend to be associated with weak governance institutions; while state or regional control tend to be associated with stronger governance institutions
- ▶ However, in most cases, forest administration agencies, both at the federal and state/provincial level, have relatively minor roles vis-à-vis other agencies of government.
- ▶ Hence, it is clear that it is not necessary to have a separate agency for forest management and governance. This can be subsumed as a unit under a larger department both at the Federal and Regional levels

Conditions that enable success (Gregersen, et. al.)

- ▶ Appropriate sharing of decision-making authority and responsibilities for forest management between different levels of government. This includes effective financing arrangements and revenue sharing mechanisms for different levels.
- ▶ Effective enforcement of accountability at all levels of government.
- ▶ Appropriate and effective linkages with other sectors and non-forestry agencies (including public-private sector links)

Other factors that enable success (Gregersen, et. al.)

- ▶ Knowledge/technical capacity to set appropriate management objectives for the forest responsibilities under their jurisdiction, to design the actions needed to meet those objectives, to know how, when and where to implement the actions, and where to go to get expert advice and information.
- ▶ Resources to do what needs to be done, which include human and financial resources and mechanisms
- ▶ Rights and authority to make decisions in the management of the forests under their jurisdiction, given acknowledged goals and objectives
- ▶ Motivation to manage in a transparent, noncorrupt, equitable fashion
- ▶ Accountability mechanisms that ensure that sub-national governments (as well as the central government) will have their major decisions constantly scrutinized by the public, by official oversight mechanisms, advocacy organizations, financing entities and so on

What the forest governance sector should do to prepare?

- ▶ Assess our present performance, identify the gaps and weaknesses, formulate steps to address these and implement within a workable timeframe
- ▶ Part of the assessment is also the identification of the following
 - ▶ The skills and capacities of the available staff both in the central office and in the regions, and a deployment plan, including the hiring of new personnel, in case a shift to Federalism ensues in either scenarios
 - ▶ An inventory of available forest resources and forest-related activities, including production and protection, land tenure arrangements, and the input requirements as well as the expected revenues
 - ▶ An inventory of the existing partnership with other government agencies as well as with the private sector and civil society

What do to in relation to the process of crafting a Sustainable Forest Management Act?

- ▶ Considering the likelihood of a shift to a federal system of government sometime in the future, it is now wise for us to craft the SFMA that would be ready for the shift, and would ensure a smoother transition.
- ▶ The following are the possible provisions/steps that should be included in the draft/taken
 - ▶ Provisions to strengthen the line capacities related to forest governance in the regions, that will be matched by a gradual transfer of decisions away from the Central Office to the Regions
 - ▶ The Forestry Management Bureau need to re-deploy its assets and resources towards the regional levels. A proposal to convert FMB to a line bureau is not necessarily incompatible with this, provided that the conversion should not lead to a centralized bureau, but to one where key functions and decisions are now transferred to the Regional Offices

What do to in relation to the process of crafting a Sustainable Forest Management Act?

- Delineate clearly developmental functions as well as the regulatory functions that are related to bureaucratic procedures (i.e. issuance of permits and licenses, approval of management plans. etc.) separate from those that entails the application of the police powers of the state that will lead to apprehension, arrest and prosecution. This is in preparation for Scenario 1 where there is a possible federalization of forest protection as a police power distinct and separate from forest regulation as part of the functions at the level of the federated regions.

Thank you!