

Climate change and water governance-new opportunities

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The impacts of climate change are with us and ever increasing disaster events, almost an annual feature need addressing especially with respect to water which serves as the principal vehicle of conveyance. An attempt at formulation of a policy and law led through a donor initiative in early 2000 aborted due to a public hue and cry and lack of political support, unfortunately saw the baby being thrown with the bathwater. A policy in limbo and no enabling law with business as usual has been the result with little initiative to at least begin a dialogue for change. However, the environment of a moratorium on dams and diversions, inter basin transfers, in fact on all water infrastructure and full cost recovery as an inevitable that existed at the time and conditioned the earlier proposed policy, is no longer valid and the urgency of responding to climate change impacts without delay has overtaken the many preempts that likely cause veritable hiccups in developing a responsive water policy that would have public and political acceptance. It appears that there is renewed interest in restarting the policy process which is timely. However there seems to be two separate initiatives by two separate arms of the state which can only be counterproductive resulting in further confusion.



Sri Lanka has over 51 Acts and over 40 Agencies dealing with water, often resulting in duplication, confusion and inaction - fertile grounds for corruption. Ad hoc policies based on sectoral needs such as drinking water and non-controversial issues such as rain water harvesting have been set in place. Thus, the main operational framework for water sector operations remains within the ambit of sub sector laws and regulations. Unfortunately the prescriptive model of a donor driven exercise prevailed and we seemed have merely followed the Philippine model (ADB home ground) where the sector was first driven by the infrastructure institutions, the National Irrigation Administration (NIA) / Ministry of Public Works when dams were not bad word, shifting to NEDA the National Economic Development Agency when full cost recovery etc was the priority, as we did with our own efforts with the Ministry of Finance being the principal driver of the policy process in Sri Lanka. With failure to address the many issues in the Philippines the policy direction transferred to be determined by DENA the Department of Environment and Natural Resources which has been seen as inhibiting the development process due to the usual protectionist perspective at all costs by environment agencies. Exactly the unfortunate *de facto* scenario in Sri Lanka, where in the absence of a clear policy direction on water resources and a failure of water agencies to come up with acceptable criteria and processes over overall control and regulation of the sector, is by default exercised by the Environment Ministry and CEA. Unfortunately in both situations it is the development agencies themselves so preoccupied with somewhat tunneled downstream development focus and happy with a no rules situation that are to blame. With climate change requiring urgent water security responses this situation cannot bode well for supply augmentation.

Historically and legally the institutions and laws relating to land administration have as a prerogative determined the use and control of water resources. A rights regime that is land based though accommodating appropriative rights and decision making rights to water has been the basis of administration. Concomitant addressing of such issues are needed in any way forward in the water sector.

Nevertheless, some positive developments in ground water regulation have taken place, including some comprehensive basin studies undertaken in a few basins and a more integrated effort to assess and map basin water resources currently being undertaken under the Climate Improvement Resilience Project (CRIP) of the Ministry of Irrigation and Water Resources where 10 major basins are underway. Even in closed system sector such as water supply the NWSDB has ventured into safety planning giving due recognition to sources and source areas to ensure water security.



An important initiative by the land sector in 2014 on developing the National Policy on Protection and Conservation of Water Sources with participation of other sectors has been formulated and can have major impact if rigorously implemented with the required resources, backstopping and political commitment. Some positive movement is also seen in the water sector operations

such as amendments to the Irrigation Ordinance and Flood Protection Act which could reinforce efforts in adaptation and mitigation.

This can provide positive input into overall basin water use but synergies will likely come only if coupled with an integrated catchment and basin allocation and management mechanisms.

These developments reinforce any forward movement in the water sector and climate change can and will help drive much needed policy and institutional changes. Time is indeed ripe for action.

Development of a Comprehensive Water Resources Management Policy and Law.

It may be appropriate to understand exactly what went wrong in the aborted water policy process to ensure that mistakes of omission and commission are not repeated. Lack of clear understanding of the context, a prescriptive mode adopted due to exigencies of catering to donor interests, articulation of some untested institutional arrangements that even envisaged oversight of typical activities that were already under the purview of even local authorities to ensure full command and control backstopped by law obviously met with the inevitable.

The policy process in earnest started circa 1990 from within the water sector under the USAID project-Irrigation Policy Support Activity (IMPISA) followed by in 1993 with the USAID/ADB study on Comprehensive Water Resources Management (Mosley) by the Ministry of Finance and Planning and then followed by the now infamous ADB/FAO initiatives from 1996 that in reality contributed significantly to this logjam. Predictably ADB supported concepts driven by the usual donor prescriptive perspective and from the Philippine experience; a Water Act, Council, Apex Body et al, set up to be executed by the Ministry of Finance as by now institutional changes worked through the water ministries were considered ineffective and the financial/economic aspects covering investments were of primary concern to donors such as ADB/WB etc.

While there was wide acceptance of the need for such a policy and law, a series of misadventures due to poor planning assumptions both with respect to developing the policy and law has led to this impasse allowing the *status quo* to continue. Sri Lanka with its historical and long standing focus on irrigated agriculture (using over 80% of developed water resources) has resulted in very strong irrigation based institutions that command a prerogative in its use and management. These power domains were reinforced by political imperatives that for very logical reasons at the time provided for free infrastructure support and services in irrigation. An obvious nexus developed between the politicians on one hand seeking to secure such investment and services to promote their own visibility and enabling the agencies to feel secure, notwithstanding management and operational inefficiencies and failures, due to this

mutual dependency. Surveys had shown that farmers were willing to at least meet reasonable O&M costs as they could then demand efficient and reliable services; however these were aggressively countered as measures to drive the poor farmers to penury. To balance this somewhat, farmer institutions set up 3 decades ago have to an extent been able to influence management and politicians by virtue of mobilized association and federation, though sometimes falling prey to being pawns of politicians who by and large feel threatened and discourage independent organizations.

Other major causes were of attempting to have a policy for all time without first articulating the principles under which water in Sri Lanka will be allocated and governed. If the principles are clear and unambiguous and some codification of accepted norms, practices and rights etc defined, then policies could be designed on emerging needs within that framework.

From the writers perspective process strategizing is as important as form and content especially given that unlike the earlier period, communication has far expanded and social media avail intense interaction, therefore selling a packaged and finished product could be fraught with danger. The public and other stakeholders will have to be carried along all the way from the start.

- a) As a start there would be needed to develop and establish clear principles of allocation and governance with perhaps codification of practices, rules, norms, rights etc. This will give the framework for future policy development and can be agreed on without controversy.
- b) Decide and agree on the conceptual model. If an Apex Body is envisaged, whether it will be Governance model or a Management/Operations model as proposed last time. The term National Water Authority was used and developed into a command and control model that would have inevitably led to atrophy of the existing technical institutions with staff flows seeking better prospects and addition of another transaction layer, administration hierarchy and costs to the already overloaded water sector. On the other hand a National Water Commission or Secretariat connotes a more decentralized/delegated mode that may serve the purpose within existing resources without empire building and be a better option and could operate with a technical unit with implementation outsourced to the existing agencies. Any backstopping law would be an enabling one.
- c) There would need to be provision for settlement of disputes perhaps a Water Tribunal. Water courts have been established in many countries and existed for centuries in some countries.
- d) It seems prudent where possible to leave issues such as cost recovery, penalties, enforcement, even rights to be taken under the existing legislation, limiting it to policy issues especially of allocation and governance. Often these provide ammunition and serve as a red herring providing detractors to have much needed policy directions aborted.
- e) One of the major difficulties in the water sector has been the issue of data with respect to acquisition, access, availability, integration and quality. It is clear that with the climate change scenario decision support requires immediate and accurate data. Data that should be in the public domain is mostly unfortunately not accessible with agencies still quite unwilling to share this resource freely as yet.
- f) From past and present experience there is a tendency to view with suspicion any donor driven policy exercise. Considering that this is one especially is viewed with past suspicion it should be wholly within the scope of local resources to support such an initiative. It would be sold as home grown product and be acceptable to the many detractors who view all foreign support as detrimental to national interests.

Concomitant with the policy process there seem some operational gaps that need addressing to ensure that the implementation processes and arms cover the whole gamut of water sector operations. For instance there is no responsible authority for rivers and river and river resources management.

The Irrigation Department provides data gathering flood forecasting etc but needs a stronger role on river management and river training as part of its mandate. The concept of River Basin Management (RBM)/River Basin Organizations (RBO) too seem to be also on top of the water agenda. However movement needs caution as seen from other country experience especially for a small country such as Sri Lanka with most rivers originating from the central hills with only the Northern Province as an exception. While inventorying, planning of use and allocation of water resources on hydrological basis of a basin is logical and rational, a fully-fledged management model of River Basin Management (RBM) and River Basin Organization (RBO) though attractive as a concept do not exist as rivers bisect basins and usual political, social and cultural issues and local power domains that exist will likely not allow for it. Command and Control models mostly focused on infrastructure management and services such as Tennessee Valley Authority -TVA have and Mahaveli Authority of Sri Lanka - MASL exist (NARBO the Network of River Basin Organizations lists 28 such RBO). It is accepted that these Command and Control models cannot transform or transit easily to Ecosystem models that would be more appropriate in the climate change scenario and post infrastructure development phase. Though TVA on which RVDB and MASL were modelled have decommissioned some of its dams it has been unable to transform in to a eco system model. In Sri Lanka too the RVDB merely transited to an administrative/revenue unit from the earlier infrastructure management identity without linked source area / upper basin plan and eventually MASL too likely once the full development is over unless these are integrated under a firm policy.

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