



Engaging the State and International Financial Institutions: The NGO Campaign Against Water Privatization in the Philippines

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Introduction

Since the 1970s, Philippine social movements have been at the forefront in challenging the development projects of international financial institutions (IFIs). These groups accuse the International Monetary Fund (IMF) and the World Bank (WB) of financing and implementing projects which favored big business at the expense of the marginalized sectors. The controversial case of the World Bank-funded Chico River Dam electrification project during the martial law period, which was meant to attract multinational corporations in the Cordillera region, threatened the dislocation of indigenous communities from their ancestral lands.¹

This was only one of the many instances where IMF/WB projects were accused of marginalizing further the intended stakeholders. Furthermore, social movements aver that the process by which IMF/WB policies and programs were implemented are devoid of any form of participation from its target-communities. Thus, these were characterized by the absence of transparency and accountability and resulted in socially adverse consequences. During the period of authoritarian rule, it was

1 Facing widespread and sustained protests from affected communities and allies from various sectors as well as the outbreak of an armed communist-led insurgency in the area, the World Bank later abandoned the Chico dam project.

difficult to challenge the projects of these IFIs as they were protected by the cloak of martial law. More often than not, protests were met with military repression.

The post-martial law period, however, offered a new political dispensation for engagement or confrontation. There was now democratic space and openness under the new political dispensation. Street demonstrations and other protest actions were complemented with dialogues not only with government but also officials of international financial institutions (IFIs). Social movement personalities have also themselves been recruited to prominent government positions.² A number of them have also chosen the electoral path and now find themselves as members of the House of Representatives.³

At the global level, IFIs such as the World Bank and the IMF have been pressured to form their own dialogue venues with non-governmental organizations (NGOs) leading to the establishment of “civil society centers” with “civil society analysts” in their own institutions (Howell and Pearce 2001: 91).⁴ It is no longer unusual for NGOs to attend IFI meetings and vice-versa. With the current situation, both at the local and global levels, it would seem, therefore, that engaging the state and the IFIs is a much easier task for Philippine social movements. The question, however, is whether this is really the case.

This article will argue that despite the seemingly more open democratic space for engagement and confrontation as compared to the martial law period, there are still a series of obstacles which confront

2 An example of this is Hcracio “Boy” Morales, former head of the National Democratic Front (NDF) of the Communist Party of the Philippines who served as the Secretary of Agrarian Reform of the Estrada Administration.

3 These include the Philippine House of Representative party-list members of Bayan Muna and Akbayan who are identified with the Philippine Left.

4 As noted, IFIs such as the World Bank have given importance to NGOs in donor agenda by establishing within their institution “civil society units” and “civil society departments” as well as institutions devoted wholly to NGOs. These specialized departments seek to promote working with civil society in other parts of their organization. It also attempts to “set up projects and programs to strengthen civil society” (Howell and Pearce 2001: 91).

Philippine social movements in engaging the state and IFIs. This will be discussed within the context of the Philippine NGOs advocacy vis-à-vis water privatization which is a major program being promoted by the World Bank and the Asian Development Bank during the post-martial law period.⁵

The first part of the paper will discuss the general critique which NGOs have concerning IFI policies concerning privatization. The second part will discuss the role of the state and the IFIs in the privatization of the water sector and the critique of the NGOs concerning this. The third part will examine the strategies pursued by the NGOs in their advocacy campaign against water privatization and assess the extent to which they have been successful. This paper will hopefully contribute to the literature in analyzing the democratization process in the country as seen in the experience of NGO engagement of the state and IFIs.

The Ideological Divide

A major bone of contention which continues to exist between social movements and the IFIs is the latter's propagation of the neo-liberal ideology with emphasis on the market, privatization and liberalization as the panacea to development. This has mainly resulted from the failure of state-led economies of collapsed capitalist and socialist authoritarian states. Thus, such a disillusionment with the role of the state "as an agent of accumulation, development and economic redistribution" since the 1970s has resulted into the emergence of neo-liberalism as the solution which will create the condition whereby 'wealth' will '*trickle down*' to the rest of society (Thomas 1997: 7, 14).

5 This study will focus on the role of NGOs which are regarded as major actors in social movements. Social movements in general are viewed as collective enterprises to establish a new order of life. They have their inception in a condition of unrest, and derive their motive power on one hand from dissatisfaction with the current form of life and on the other, from wishes and hopes for a new scheme or system of living (Blumer 1995:60). Non-governmental organizations (NGOs) as key players in social movements are defined as nonprofit civil society organizations that do grassroots support and advocacy work. They are intermediary organizations in contrast to membership groups with relatively defined social constitutions. They, therefore, do not directly represent the grassroots constituencies they attempt to serve (Fox and Brown 1998: 21)

The result is the phenomenon of accelerated globalization which is perceived to breed a dominant model of development based on “massive capital investments, expatriate expert advice and the exploitation and domination of nature” (Thomas 1997: 14). Such a model has been accused of exacerbating inequalities not only within nations but among nations. As noted by the Meltzer Report, eighty per cent of the World Bank resources have gone to a few countries that are among the richer economies. The IMF, on the other hand, the report stated, has promoted economic stagnation instead of promoting growth (Bello 2000: 10).

Globalization has made it possible to carry the neo-liberal ideology which has witnessed the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO) and regional institutions increasing the depth and scope of their intervention in domestic matters. As noted, the IMF “has introduced more extensive economic conditionalities with its system of ‘enhanced surveillance’”, while the World Trade Organization (WTO), “has pressed the frontier of trade liberalization by becoming ever more intrusive into the historic domain of domestic politics (Biersterker 2000: 155).

NGOs have challenged this dominant construction of development (Howell and Pearce 2001: 65). One argument for them is that globalization which is spearheading such a development thrust is

compounding inequalities by privileging the private over the public sphere and by marginalizing the actual as well as the potential import of the commons. Inequalities are also widening as some classes and actors benefit while others are marginalized. Contrary to liberal claims, 20 years of liberalization of the world economy has not led to the general trickle-down they have predicted, either in absolute or in relative terms (Wilkin 1997: 15).

NGOs who advocate this view are referred to as grassroots movement and change-oriented NGOs as opposed to NGOs belonging to the mainstream of civil society. The latter are said to highlight the tension

between civil society, of which the NGOs are part of, and the state on the one hand and the state and the market on the other. For these NGOs, the relationship between the market and civil society, however, is implicitly viewed as “benign, harmonious and complementary (Howell and Pearce, 2001: 64). This view is opposed by the former type of NGOs who point to the long-running tension between civil society and the state (Bello 2003; Malaluan 2003; De la Cruz 2003; Fuentesfina, 2003; Fajardo 2003).

NGOs which have carried the advocacy campaign against the privatization of the water sector in the Philippines belong to the category of the change-oriented NGOs. These are also the NGOs which found solidarity with 800 other grassroots organizations from over 75 countries which gathered in Seattle on November 30-December 3, 1999 on the occasion of the WTO annual meeting to denounce “growing corporate greed.” They also accused the WTO of “contributing to the concentration of wealth, increasing poverty and fostering an unsustainable pattern of production and consumption” (Tabb 2002: 191). Such a global situation can be seen in the local experiences of the demonstrators as seen in the Philippine experience whereby change-oriented NGOs confront the adoption of the neo-liberal ideology in the privatization of the water sector by the state and the IFIs, most notably the World Bank and the Asian Development Bank (ADB).

The Role of the State and IFIs in Water Privatization

The privatization of the water sector would not have been possible without the active involvement of the Philippine government. It was pointed out that the state created the policy environment for privatization. Since 1994, as noted, the government, with donor support, instituted a series of measures to develop a coherent policy and financing framework aimed at (Corral 2003: 1)

(a) rationalizing the Philippine water sector, (b) promoting private sector participation, and (c) improving water and sanitation service delivery

to low income communities in urban areas and, more recently, in secondary towns and cities.

These national sector policy changes have led to significant organizational changes within the water supply and sanitation sectors. The water resources sector includes irrigation,⁶ drainage, flood control, water supply, hydropower, fishery, and navigation (Corral 2003: 1)

The state played a major role in the privatization of the water sectors through the drafting of legislation towards a framework of integrated water resource management (which necessarily includes private sector participation). One result was the National Water Crisis Act promulgated in June 1995. This vested then Philippine President Fidel V. Ramos with special powers to improve management of water resources generally and address the ‘water crisis’ faced by Metro Manila specifically. Such special powers included “the privatization of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis” (Sec. 7 of Republic Act 8041 or the National Water Crisis Act of 1995). In particular, the National Water Crisis Act provided for the privatization or restructuring of the MWSS utility as with the Local Water Utilities Administration (LUWWA) (Perez-Corral 2003).

The privatization push from the IFIs. It is, however, indisputable that the strong push for water privatization came from the IFIs, such as the World Bank and the ADB, which argued that the Metropolitan Waterworks and Sewerage System (MWSS), Manila’s government-run urban water supply and sanitation system, has done a poor job. The IFIs pointed out that the private sector will be more efficient in this aspect and since it is “de-politicized”, it is deemed as lessening the possibility of corruption in its services. Furthermore, the World Bank and the ADB argued that privatization will also decrease the fiscal burden on the national government which subsidizes MWSS operations (Corral 2003: 12).

6 Irrigation accounts for over eighty percent of total water demand in the country.

In particular, the urban water supply and sanitation sector was said to have (a) inadequate coverage; (b) unreliable services; (c) inefficient management of water utilities; (d) unsustainable service provisioning, especially in small towns; and (e) low institutional and technical capacity in LGU-managed water utilities to run the water utilities as commercial enterprises (Corral 2003: 12).

This, therefore, paved the way for the privatization of the MWSS. As pointed out by Violeta Perez-Corral, former Coordinator of the Manila-based NGO Forum on the ADB, IFIs considered this development as one of the most successful privatizations of a water utility service in the world. The only precedent to this is the 1992 privatization of Aguas Argentina in Buenos Aires. The privatization of the MWSS is also considered as the first large-scale water supply privatization in Asia. Under a concession agreement, two private sector companies have 25 years to rehabilitate and operate the water system, reduce physical losses, check illegal usage and expand coverage.

The Lopez-controlled Maynilad won the 'west zone' concession, with French partner Suez (now Ondeo). Ayala-controlled Manila Water, on the other hand, won the east zone', with UK's United Utilities, US-based Bechtel and Mitsubishi Corporation of Japan as foreign partners. Maynilad and Manila Water submitted winning bids of PhP4.96/cu m and PhP2.32/cu m, respectively (the pre-privatization rate of MWSS was PhP8.78/cu m.) An MWSS Regulatory Office (RO) was created as a provision of the concession agreement between the Philippine government and Maynilad/Manila Water (Perez-Corral 2003).

Upon privatization, water consumers were promised not only lower water rates but other benefits which included the following (Corral 2003: 13):

- 1) 100% water coverage within 10 years;
- 2) No real increase in water rates within first 10 years;
- 3) US\$7.5 billion in new investments over 25 years;
- 4) Uninterrupted, 24 hours per day water service that meet

- Department of Health standards provided within 3 years to all connected customers;
- 5) Address the needs of the unconnected populace, roughly 30 million who have to buy water at sometimes more than ten times the price;
 - 6) Institute a wastewater program with 80 percent coverage within 25 years; and
 - 7) Relieve government of US\$7.5 billion worth of new infrastructure investments.

Both the World Bank and the ADB extended large amounts of financial assistance to achieve this promise as both have been in the forefront of the privatization efforts in the Philippines. The World Bank, for example,

is attributed for sparking private sector interest in the privatization of the MWSS. With various Bank loans, two additional water privatization models have been tried out in the Philippines. One is the Subic Bay joint venture involving a private operator and a public sector development agency currently managing and investing in the water utility. The other is the first ever long-term lease contract between a private operator and the government of Magdalena (a small town in Laguna province) (Perez-Corral 2001:1)

The World Bank's private sector arm, International Finance Corporation (IFC), also provided direct financing and technical assistance (TA) to private projects in the MWSS in 1997. MWSS also benefited with fees-based advisory services from the IFC. In January 2003, the IFC also announced approval of \$30-50 million loan to Ayala-owned Manila Water Company, one of the two MWSS concessionaires (Corral 2003: 11).

As for the ADB, it further intensified the assistance it has been extending in developing the country's water supply and sanitation sector. Since 1973, the Bank has financed 13 water supply projects and a sewerage

project amounting to US\$546 million and provided 13 technical assistance grants worth \$5.1 million. Over the past 10 years, the ADB has poured several loans amounting to roughly US\$426 million to improve the water supply and distribution of the MWSS. For the other water districts nationwide, ADB loaned a total of US\$131 million. Like the World Bank, the ADB has provided technical advisory grants to support the MWSS privatization as was seen in 1995. After the privatization of the MWSS, ADB provided a capacity-building technical assistance grant in 2000 to strengthen the capacities of the newly created regulatory office (Corral 2003: 6).

Support from the private sector. Both the World Bank and the ADB have also emphasised the need for private sector participation (PSP) in the water sector. For the ADB, it believes that PSP can provide much needed additional investments, management expertise and client-oriented' services through which service delivery and coverage would improve. To facilitate PSP, the Bank provided technical assistance to the national government to develop a water sector PSP framework and a set of operational guidelines for accessing national government guarantees; both activities were concluded in 1999. Most Bank policy work in the area of PSP had been completed, and the only major remaining work was reorganizing the regulatory framework for water utilities (Perez-Corral 2003).⁷

Support from transnational corporations. The privatization picture will not be complete without considering the role of transnational corporations (TNCs) as the PSP component of the program. TNCs come at a time when governments are perceived to be backing away from their regulatory responsibilities paving the way for giant transnational companies in the water, food, and energy businesses among others (Barlow 2001a:

7 The World Bank has identified the following key issues that need to be addressed (Corral 2000: 3): (a) PSP in several infrastructure sectors remain limited. (b) The regulatory and policy framework will need to be clarified. (c) Eligibility, terms and pricing rules for government guarantees are not clearly specified. (d) The project selection process should be more transparent. (e) Difficulties in delineating agency responsibilities – central vs. local, and, (f) Local agencies lack the institutional capacity to identify, promote and negotiate PPI projects.

69). As noted above, MWSS privatization was made possible by the involvement of transnational companies such as Maynilad's French partner Suez (now Ondeo) and the United Kingdom's United Utilities, the US-based Bechtel and Mitsubishi Corporation of Japan as the foreign partners for Manila Water. Ondeo, Bechtel and United Utilities form part of an elite corps of water multinationals that now control roughly 5 percent of water utilities worldwide (Perez-Corral 2003).

Critique of Water Privatization

Philippine NGOs have generally been critical of water privatization for various reasons. A very fundamental one is the ideological view of water which NGOs believe is a social good, that is, water is a basic necessity for the maintenance of life itself, and every citizen, whether rich or poor has a fundamental right to water. They believe that this right should not be subject to the profit-oriented motives of the private sector. (Barlow, 2003: 5). Such a stance is contrary to the view that water is an economic good and therefore, is a tradable commodity as viewed by IFIs such as the World Bank, the IMF and the ADB (Corral 2003: 12, 31).

In practice, one witnesses the imposition of the latter's ideological stance as IFIs, such as the World Bank and the ADB use their clout to impose privatization as a condition of loans and debt relief, financing water transnationals in preference to efficient public enterprises, as well as selling water utilities to reduce national debt. The NGOs have viewed such actions as distorting the choices available by their policies by imposing water and in the process interfering with the democratization process in the country (Barlow 2001: 71).

The absence of transparency and accountability. NGOs have also objected to the manner in which water privatization was undertaken in the Philippines. They argued that a fundamental principle for a water-secure future is that the public must be consulted and engaged as an equal partner with governments in establishing water policy (Barlow 2001a:6). Such is the case in the Philippine situation whereby one witnesses

the persistent deliberate exclusion of the public from participation on matters regarding water privatization. The water privatization experience, for example, reveals that NGOs have generally been locked out of crucial negotiations between the government and the private concessionaires particularly when it was trying to reach a compromise on certain policies. The public was neither informed nor consulted about this (IBON Facts and Figures 2003b: 13).

Inefficient management. Aggravating such a situation is the inefficient management of the privatization of water. In the case of Maynilad, for example,

it promised to spend P6.8 billion for infrastructure upgrades from 1997 to 2001. But it has actually spent only less than 50 percent of the said amount. Maynilad officials claim that money intended for infrastructure gadgets were diverted to paying the MWSS loans, which ballooned due to massive currency devaluation in 1997. However, a look at its actual concession fee payments during the said period shows that Maynilad paid P10.9 billion, only P600 million higher than what was assumed in its business plan (IBON Facts and Figures 2003: 7).

Lack of government regulation. A reason for this, it is pointed out, is the question of the capacity of the government to regulate the private sector. Within six months of the privatization, Ayala and Lopez petitioned for 112 percent and 15 percent increase in water base rates, respectively (Perez-Corral 2003a: 52). This was despite the stipulation that these companies were not supposed to raise water rates.

The class bias. The issue of “privileging the private over the public sphere” and thus creating compounding inequalities resonates in the experience of the effects of privatization of the water sector in the Philippines. NGOs, for example, pointed out that based on its track record, “privatization is almost always accompanied by lay-offs” (Barlow 2001: 70). This is the same case as in the Philippines whereby “an immediate adverse consequence of privatization was the retention of only 200 of a

total 5,400 employees after the MWSS was privatized. Furthermore, some 3,000 employees were displaced or were pressured to avail of early retirement packages” (Corral 2003: 13).

NGOs have also criticized water privatization in the Philippines as an elite monopoly. The bid for the MWSS privatization was won by two of the more illustrious clans in the Philippines, that is, the Lopezes and the Ayalas, with their multinational partners, the French firm Lyonnaise des Eaux (LdE) for Ayala, and the British firm Northeast Waters and US-based Bechtel Overseas Corp. for Lopez (Perez-Corral 2003a:43). With the take-over of the Lopezes over Maynilad, one columnist viewed this as “the issue of expansion of old oligarchs into strategic public utilities, rise of new and predatory cartels, ‘growth of bigness in business organizations deeply penetrated by foreign capital’, and the disenfranchisement of small and medium enterprises” (Doronila 1997). These families, for example, already control vital industries such as in the light, mass transportation, real estate, telecommunication (Perez-Corral 2003a: 51-52).

Class bias in the water privatization process is also seen in the lobbying to influence government decisions. It was noted that

even in the rare instances that they are given a seat at the table, non-governmental organizations (NGOs) and environmental groups are typically ignored. Corporations which have heavily funded political campaigns are often given sweetheart contracts for water resources. Sometimes, corporate lobby groups actually draft the working of agreements and treaties that governments then adopt. This practice has created a crisis of legitimacy for governments everywhere (Barlow 2001: 6).⁸

8 As noted, one MWSS official admitted that the amendments made to the Concession Agreement of October 2001 between Maynilad and the Philippine government were written by the Maynilad lawyers. These amendments allowed the private concessionaires to implement automatic recovery mechanisms such as the accelerated extraordinary price adjustment (AEPA), the special transitory mechanism (STM) and the foreign currency devaluation adjustment (FCDA) (IBON Facts and Figures 2003: 6).

Furthermore, NGOs point out that ADB promotes a contentious policy that water will be reallocated through “*markets of transferable water rights*” and to “*high-value uses of water*”. Such a policy, NGOs point out, takes notes of the agriculture sector’s steadily decreasing contribution to growth, implying that agriculture is not a “high-value” use for water. This reinforces the current shift of limited water resources from agriculture to industry and cities, thereby making poor farmers poorer and threatening further food insecurity (Perez-Corral 2003).

NGOs have also pointed out that the automatic price adjustment given to the private sector breeds social inequity because the privatized utility has the power to pass on the costs of financial difficulties to the consumers while monopolizing all the benefits to itself when the economy recovers (Balce 2001:20).

Arguments against the private sector. Aside from the ideological bias against the private sector which NGOs deem are out for profit at the expense of the public good, NGOs also point out that the argument that the private sector will bring in their own capital is disproven by the reality. This they note is evident in the private water concessionaire’s request for government guarantees to facilitate the release of their loans. (Fajardo n.d.: 9). An example shown is Maynilad’s assumed implementation of two ADB-funded MWSS projects, that is, the Angat Water Supply Optimization project and the Manila South Water Distribution project.

NGOS further note that at least half of the financing requirements needed by the MWSS private concessionaires was raised from public funds (ADB) in a clear case of the private ‘crowding out’ public investments; Maynilad only had to dole out 40 percent of its financing needs out of its own pockets (Perez-Corral 2000: 9). Furthermore, the bulk of capital needed for the maintenance and operation of MWSS will come from the cash flow generated by income from water distribution and sanitation (Fajardo n.d.: 9).

Assessing the Strategies of Engagement

Over the past six years, citizens' groups critical of the MWSS privatization have undertaken several actions in engaging the state and the IFIs with regard to their concern over the privatization of the water sector. Foremost of the critical groups working on the water issue is the Freedom from Debt Coalition (FDC)⁹, a founder and long-time member of the NGO Working Group on ADB (now NGO Forum on ADB). Other groups also highly critical of the MWSS privatization include the Asian Labor Network on IFIs (ALNI-Philippines) and the Bantay Tubig network¹⁰

These local networks are supported by regional and international networks which also continuously monitor the impact of privatization in the Philippines among other countries and share information and interventions vis-à-vis IFIs, such as the ADB (Corral 2003). A Philippine Working Group on the ADB (PWG) has also recently been formed to carry on issues such as water privatization.¹¹ The PWG is a consortium of groups working on issues related to the ADB. In general, it seeks to urge the ADB and its officials, country representatives and delegates "to stop adopting and implementing flawed policies, and to take responsibility for the failure of many of its loan programs" (Philippine Working Group on the ADB 2003:1).

Among the NGOs' major objectives are the following: 1) to keep the MWSS Regulatory Office more transparent and accountable in its task of regulating the private concessionaires to promote the public interest; 2) highlight the evidence-based failure of the water privatization in Manila; and, 3) demand accountability from IFIs like the ADB and the WB who

9 FDC is composed of a network of NGOs, e.g., Philippine Rural Reconstruction Movement (PRRM) and the Legal Resource Center and political blocs, such as BISIG, a socialist group.

10 Among its members are the FDC, AKBAYAN CIBAC Party-list, Focus on the Global South Philippines, Institute for Popular Democracy, and the Tambuyog Development Center.

11 Its members are: Freedom from Debt Coalition (FDC); FOCUS on the Global South-Philippine Programme; Legal Rights and Resources Center-Kasama sa Kalikasan (LRC-KSK); Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC); Philippine Rural Reconstruction Movement (PRRM); Tambuyog Development Center; Southeast Asia Research Institute on Community Education (SEARICE); and Action for Economic Reforms (AER).

should bear much of the culpability for the failures and high social costs of the MWSS privatization specifically and all other neo-liberal policies attached to loan conditionalities (Corral 2003). More recent campaigns focused on the issue of renegotiation of the concession agreement and consequent impacts on the price of water... and in the process rewarding the inefficient private concessionaire (Maynilad) despite dismal performance and rising water price (Tabios et.al. 2001: 12).

Campaign Strategies

NGOs in general sought to deepen their understanding and analysis of the privatization through action-oriented policy research. Such concerns also came together with the need to educate the larger public of the demerits of the privatization. The NGOs' research on water privatization would generally be disseminated through popular education activities with several community-based organizations.

For the Freedom from Debt Coalition (FDC), for example, such an effort was part of its plan to develop specific advocacy points on the water issue at the grassroots level (Tabios et.al. 2001: 112-13). Another form of dissemination would be through roundtable discussions such as those organized in 1996 by the Asian NGO Coalition (ANGOC) and FDC, both members of the NGO Forum on the ADB, on the MWSS privatization (Perez-Corral 2003).

In terms of getting the attention of the public in general and the government and IFIs, in particular, NGOs pursued various strategies. One was organized mass actions together with global social movement activists also battling with their own governments on the issue of water commodification. An example was during the ADB annual governors' meeting in 2003 held in Manila where a demonstration was held to denounce privatization of the water industry among others. Media was also used as a vital form of engagement. An example was when FDC through media-mobilization activities opposed the rates increase and exposed attempts in the MWSS Regulatory Office (MWSS RO) to ram

Maynilad's petition for an AutoCERA, i.e., a rate increase, which was supposed to be taken up by the MWSS Board. NGOs also made use of press conferences as a form of engagement. FDC, for example, helped organize a press conference that exposed the crisis among the regulators and the violations on the concessionaire contracts with MWSS in 2001 (Tabios et.al. 2001: 9-10, 12).

NGOs also pursued direct initiatives to engage the private concessionaires. FDC, for example, discussed with Maynilad's French partner, Lyonnaise des Eaux in early June, 2001 about democratizing ownership of Maynilad. FDC, in particular expressed the proposal to convert to equity contribution any rate increase exacted from consumers as a solution to Maynilad's severe liquidity problem (Tabios 2001: 11). The NGOs also directly engaged the IFIs through the Philippine Working Group on the ADB. In October 1997, for example, *MWSS: Anatomy of a Privatization Deal* was presented by ANGOC at the 1st World Bank-NGO Dialogue on Privatization, 20-21 October 1997, organized by Friends of the Earth-US with the World Bank in Washington D.C. A representative from FoE-US was earlier in Manila in 1996 to attend the regular consultation organized by the NGO Working Group on ADB. (Perez-Corral 2003).

Engagements at the local level also took place as when, in May 1998, FDC and other groups went to 'battle' with the private concessionaires. Their battleground was the first-ever series of public hearings conducted by the MWSS RO over petitions to hike the rate of water, barely a year into the privatization. The concessionaires cited foreign exchange losses and El Nino (Tabios et.al. 2001: 12).

These efforts have brought about incremental successes which have given optimism to NGOs to push on with their advocacy work. In April-May 1998, for example, because of FDC's interventions, the two concessionaires were not granted the increase they had applied for. Manila Water had to bring its petition before an international arbitration panel (Tabios 2001: 8). Because of the pressure created through media-lobby

and mobilization, the MWSS Board also passed a resolution advising the MWSS RO to coordinate with National Anti-Poverty Commission (NAPC) to listen to what consumers and interest groups have to say about water increases (Tabios 2001: 9).

Some Cabinet officials also talked with FDC officers on several occasions and offered to transmit the coalition's position and counterproposals to the Executive. Private concessionaires, like Maynilad President Rafael M. Alunan III, were also pressured to meet with the NGOs regarding their opposition to the automatic currency exchange rate adjustment (auto-CERA) which invariably translates into an increase in water rates. No less than President Gloria Macapagal Arroyo also ordered the Memorandum of Concession (MoC) between the MWSS and Maynilad to be revoked only one week after its signing. She then created a technical working group composed of members of the government's Executive branch to look into the issue (Tabios 2001: 11).

Victories Which Came 'Wittingly' and 'Unwittingly'

NGO criticisms as well as strategies of advocacy against water privatization were given a boost as well as vindicated when in a survey conducted by the MWSS RO and the World Bank in 2000¹² revealed that 67 percent of the 10,000 household respondents think that water services did not improve or became worse since privatization (IBON Facts and Figures 2003a:13).

This perception may be due to the following realities of water privatization. One is the rising price of water. When the government approved a Foreign Currency Differential Adjustment in the water rate in October 2001, and thereby amending the terms of the original concession agreement, water prices immediately went up. As of October 2003, basic water rates for Manila Water and Maynilad are PhP19.50/cu m and PhP

12 This was the so-called Public Assessment of Water Services (PAWS) Project.

24.32/cu m, respectively, or eight- and five-fold increases from their 1997 winning bids (Corral 2003). A reason for this it is pointed out is due to the “underspending” by private concessionaires to address such an issue (IBON Facts and Figures 2003b: 9).

MWSS regulators have also disputed the claims of Maynilad and Manila Water that it has improved coverage of new water connections. MWSS claims that both companies have exaggerated their figures because of how the companies define a ‘water connection’ and how they calculate the number of persons in an average household (Perez-Corral 2003). Aggravating this is the continuing poor water service as in the case of interrupted water services and poor coverage of water sanitation services. For the water sanitation services which include the emptying of domestic septic tanks and subsequent sludge disposal at regular intervals of five to seven years, Manila Water committed to provide sanitation coverage of as high as 83 percent (in Pasig) but the best it could provide was sanitation coverage of only 3 percent (in Quezon City), while in other areas, its highest coverage was 1 percent (IBON Facts and Figures 2003b: 11).

A reason for all of this is that the MWSS was privatized in the absence of an efficient regulatory process that should ensure compliance of water companies with wastewater standards. For instance, private concessionaires regularly test wastewater coming from their areas (IBON Facts and Figures 2003: 11). Furthermore, the MWSS RO could not even compel the private concessionaires to pay obligatory concession fees, as when Maynilad suspended its monthly payments to MWSS starting March 2001.¹³ (Perez-Corral 2003).

Plunder by the private sector. Related to the weakness of the MWSS RO is the corruption which occurred in this agency whereby one witnessed the Lopez-owned Maynilad allying itself with the RO’s Chief Regulator to push for an amendment to the contract that would allow Maynilad to increase tariff rates through the auto-CERA mechanism. The

13 Even when Maynilad was given the rate increase it sought in October 2001, it did not resume payment of concession fees.

NGOs argued that Auto-CERA has no basis in the concession agreement. The chief regulator, because of strong public pressure, was later on replaced. Before the regulator's replacement, however, President Gloria Macapagal Arroyo in the end had acceded and bailed out the Lopezes by amending the concession agreement¹⁴ to enable Maynilad to increase water tariffs. A citizens' group filed charges of corruption, and the incident became a subject of Congressional inquiry (Corral 2003: 15).

The NGOs, however, were given some hope in the MWSS RO under a new leadership. This was when the MWSS RO's 2002 audit disallowed some PhP8 billion (US\$160 million) of Maynilad's expenditures as the regulators deemed these as "inefficiently and imprudently incurred". An example of these were the "very expensive procurement contracts and 'sweetheart' deals with affiliate companies of the Lopezes and Ondeo, its French foreign partners, as well as the purchase of brand new luxury cars (Corral 2003: 15). The verdict on the Maynilad by the MWSS Board of Trustees and the MWSS Regulatory Office is that Maynilad is badly managed.

In response, Maynilad unilaterally stopped paying concession fees to MWSS. The concession fees are supposed to service the debt of MWSS inherited by Maynilad. Part of the bail-out given by government to Maynilad is an extension of the payment of these fees up to the end of 2002. By December 2002, MWSS had been sending demand letters to Maynilad asking the company to pay its concession fees. The demand letters were ignored. Thus, less than five years after privatising MWSS, Maynilad and government have parted ways because the former has been unable to put in the money it promised to pour into the concession. Worse, it has not been able to pay its concession fees for more than two years now (Fajardo n.d.: 2).

Blaming government for its own failure to deliver water services Maynilad sought the return of at least US\$303 million. To secure this

14 The amendment in October 2001 allowed Maynilad, and later Manila Water, to recover foreign exchange losses incurred in 1997-2000 within 16 months, instead of over the remaining life concession. It also institutionalized auto-CERA, later renamed Foreign Currency Differential Adjustment (FCDA)

amount, the company initiated the arbitration case in December 2002, claiming that the MWSS had failed to fulfil certain agreements made after the original concession agreement was amended in October 2001. It is now claiming 19 billion pesos in 'unrecovered' capital expenditures. The arbitration hearings, the first of two to settle major and minor disputes between Maynilad and the MWSS, will determine the culpability of either party. A second set of hearings will set compensation levels ("Maynilad Arbitration Case Begins" 2003).

The MWSS RO, in return, charged the Maynilad before the Paris-based International Court of Arbitration (ICA) of overcharging its customers in the west zone in Manila. On November 7, Maynilad lost its case when the ICA ordered Maynilad to honor its 25-year concession agreement with state-run MWSS and to pay its arrears (Perez-Corral 2003a).

Challenges to confront. Despite the above "success", NGOs refuse to be complacent with their advocacy work. Their campaign against water privatization has opened their eyes to the obstacles which continue to confront them. These include the ADB's and the World Bank's continuous support for privatization. The ADB, for example, has generally been silent with regards to the Maynilad problems. The World Bank, meanwhile, is still busily promoting loans to attract PSP in not only urban but also in the more nonviable rural water supply sector (Corral 2003: 15).

A more urgent challenge for the NGOs is to pressure President Gloria Macapagal Arroyo not to enter into any deals with the politically powerful Lopez family of Maynilad. NGOs believe that the President might succumb to this because of the 2004 national elections where she is running for president. She is also eyeing as her running partner for vice-president Senator Noli de Castro who is a media personality at the Lopez-owned ABS-CBN. As pointed out, the NGOs will have to show the President that their voice is more crucial than the Lopez family specially when it comes to her chances in the 2004 national elections (Bantay Tubig Network 2003).

Another reality that confronts the NGOs is that consumer groups and interested individuals were also blocked off the hearings on Maynilad's arbitration case against the MWSS. As pointed out by the Bantay Tubig Network, "the entire regulatory and arbitration set-up was to blame for the absence of transparency and consumer representation in dispute-settlement processes related to water issues" (Esguerra 2003).

Conclusion

The democratization process in the Philippines brings with it the challenges of intervening in decision-making processes that address fundamental development issues in society. Privatization of the water industry is viewed by international financial institutions (IFIs) such as the World Bank and the ADB as a necessary structural economic reform to address poverty in the country. For NGOs, however, this is not the case. They see that privatization will further result in more inequalities in society as it is to be spearheaded by private companies that are out for profit. Furthermore, the NGOs see the commercialization and commodification of a public good like water will only lead to the detriment of the have-nots.

In a democracy, one can very well expect divergent views. This was unlike during the martial law period where only one view was permitted and the rest were violently repressed. The issue in a democracy, however, is the access of people to be heard and to be listened to. In the case of the Philippine experience on water privatization, this was sorely lacking. There was not only the lack of accountability and transparency but also the absence of public participation in the manner in which the water sector was privatized.

Those whose voices prevailed were the politically-connected and economically endowed. Not only did they win the contracts together with the transnational corporations who served as their partners but they also sought to revise it further to gain more profits for themselves. This did not

prove difficult because in a society which is politically and economically skewed, the powerful will have their way as evident in their lobbying power to influence government decisions.

Not only was there an absence of a level playing field, government decisions were also greatly influenced by powerful external forces, i.e., the IFIs, a situation reminiscent of the martial law period. IFIs like the World Bank and the ADB formed a formidable alliance with the government and the water corporations to force the privatization process in the country. The IFIs' actions constituted a form of foreign intervention in the democratic process as they made the privatization of the water sector a condition for the granting of additional loans to the Philippine government. Thus, it is in such situations that the contradictions and tensions of capitalism produce an unequalizing and exclusionary effect on the greater mass of society (Howell and Pearce 2001: 65).

In contrast with the martial law period, the NGOs now had the democratic space to engage and even to confront their adversaries. Using various forms of strategies, they were able to raise the public consciousness concerning the effects of water privatization. By and large they were proven correct as water prices increased and the Maynilad was deemed by the MWSS Regulator Office a failure consequently leading to a court case which the water firm lost. It is in this particular situation that institution-building, such as credible regulatory body, is important. There is also an international arbitration council (IAC) which has the credibility to arbitrate such a dispute. It is in such a situation, therefore, where one finds a positive relationship between economics and political liberalization.

But the challenges which NGOs confront also point out that there is still much to be done concerning structural economic reforms and political democracy especially in a society still characterized by a wide gap between the rich and the poor. It is the widening of the "democratic space" which NGOs are pushing for. As experience has shown, the popular struggle for development cannot be separated from democracy (Wilkin 1997: 41).

References

- Balce, Joffre. "People-Powered Economic and Financial Reforms: Co-privatization" *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 2001): 20-35.
- BANTAY TUBIG Network. "Maynilad Knows its Priorities, Gloria Arroyo Must Be Reminded That These Are Not Hers". Document. 2003.
- Barlow, Maude. "Protecting Water: Ten Principles". *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 2001): 69-82.
- Barlow, Maude. "The Water Privateers". *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 2001): 3-6.
- Bello, Walden. "Fast-track Capitalism, Geoeconomic Competition, and the Sustainable Development Challenge in East Asia." *Globalization and the South*. Eds. Caroline Thomas and Peter Wilkin. London: MacMillan Press Ltd., 1997.
- Biersteker, Thomas J. "Globalization as a Mode of Thinking in Major Institutional Actors." *The Political Economy of Globalization*. Ed. Ngaire Woods. London: MacMillan Press Ltd., 2000.
- Blumer, Herbert. "Social Movements" *Social Movements Critiques, Concepts, Case-Studies*. Ed. Stanford M. Lyman. London: MacMillan Press Ltd., 1995.
- Corral, Luis. "IFIs and Privatization in the Philippine Power and Water Sectors". Asian Labor Network on International Financial Institutions (IFIs) (ALNI), unpublished, Sept. 2003.
- Doronila, Amando. Cited in Violeta Perez-Corral, "MWSS, Women and Private Water", *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 1997): 40-68.
- Esguerra, Jude. Cited in Violeta Perez-Corral, "International Arbitration Panel Rules On Maynilad-MWSS Dispute." 13 Nov. 2003.

- Fajardo, Jolette. n.d. "The mess that is Maynilad: Legal wrangling at the expense of consumers and taxpayers". Document from the Freedom from Debt Coalition-Water Team (Manila, Philippines).
- Fox, Jonathan A. and L. David Brown. *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements*. Cambridge, Massachusetts and London, England: The MIT Press, 1998. "Introduction".
- Howell, Jude and Pearce, Jenny. *Civil Society and Development: A Critical Exploration*. U.S.A. & U.K.: Lynne Rienner Publications Inc., 2001.
- IBON Facts and Figures. "Maynilad and MWSS: Basic Contradictions Behind a Failed Union" Special Release 26. 7 (15 April 2003): 1-8.
- IBON Facts and Figures. "Take Over Maynilad, Reverse Privatization" Special Release 26. 7 (15 April 2003): 13-16.
- IBON Facts and Figures. "MWSS Privatization: A General Failure", " Special Release 26. 7 (15 April 2003): 9-13.
- "Maynilad Arbitration Case Begins". 9 Aug. 2003. Press release.
- Perez-Corral, Violeta. "MDB Program/Project Loans in Philippine Water Sector". Document prepared for Freedom from Debt Coalition, August 2000.
- Perez-Corral, Violeta. "Monitoring the MWSS Privatization: Water Rates", *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 2001): 31-35.
- Perez-Corral, Violeta. "NGO Campaign on Philippine Water Privatization". Unpublished article submitted to the research project on "Philippine NGO Engagement of the Asian Development Bank: Focus on the Privatization of the Energy and Water Sectors". Oct. 2003.
- Perez-Corral, Violeta. "International Arbitration Panel Rules On Maynilad-MWSS Dispute." 13 Nov. 2003.

- Philippine Working Group on the ADB. "Project Affectees and Consumers Join Protest Against ADB Meeting in Manila." Press Release. 30 June 2003.
- Tabb, William. *The Amoral Elephant: Globalization and the Struggle for Social Justice in the Twenty-first Century*. New York: Monthly Review Press, 2001.
- Tabios, Malou, Rhoda Viajar and Jolette Fajardo. "Breaking New Ground: The Water Privatization Campaign". *PAID! Official Publication of the Freedom from Debt Coalition* 11. 1-2 (Nov. 2001): 7-19.
- Thomas, Caroline. "Globalization and the South". *Globalization and the South*. Eds. Caroline Thomas and Peter Wilkin. London: MacMillan Press Ltd., 1997.
- Wilkin, Peter. "New Myths for the South: Globalization and the Conflict between Private Power and Freedom." *Globalization and the South*. Eds. Caroline Thomas and Peter Wilkin. London: MacMillan Press Ltd., 1997.

Interviews

- Bello, Walden. 2003. Director, Focus on the Global South. Quezon City, July 2003.
- De la Cruz, Maris. Coordinator, Power Team, Freedom form Debt Coalition, Quezon City, June 2003.
- Fajardo, Jolette. Program Staff, Water Campaign, Freedom from Debt Coalition, Quezon City, July 2003.
- Fuentesfina, Dina. Coordinator, Debt/Fiscal Monitoring Multilateral Institutional Schemes, Quezon City, July 2003.
- Malaluan, Nepomuceno A. Senior Trustee and Policy Analyst, Action for Economic Reforms, Quezon City, June 2003.