

# The Privatization of Philippine Water and GATS

## by Maria Teresa D. Pascual

The privatization of water distribution in Metro Manila, Philippines, is an example of the new form of financing aimed at reducing the dependence of the public sector on external funding. Yet the experience of water privatization in the Philippine capital is teaching us that the dependence on debt is not diminished by privatization. Even worse, there is little if any conclusive proof that would bolster the premise of the proponents of the neoliberal Washington consensus model that private is necessarily better than public. However, the push to privatize what are the non tradeable sectors of our economy such as the provision of water—sectors that are the basic responsibility of the state to its citizens—is now enshrined in the General Agreement on Trade in Services. The GATS is an agreement that is little known to many of us citizens and states alike, but has very broad and far reaching consequences on the ability of developing countries to adequately respond to their people's need for things as basic as water.

### Biggest Privatization in Asia—but not the best

In August 1997 the Philippine government entered into separate concession agreements with two groups of companies for the east and west zones of the Metro Manila water district. Touted as the biggest water privatization in Asia, this was initially accompanied by a significant reduction in water tariffs. Metro Manila residents, who had long suffered under a bureaucracy that was hardly service oriented, were not given much choice about this privatization. But given the poor record of the bureaucracy, combined with the promise of cheaper water, understandably there was little public opposition to privatization at the onset.

The participation of the Bretton Woods institutions in the water privatization was spearheaded by the International Finance Corporation—sister organization of the World Bank—which crafted the concession agreement and trained the newly hired members of the Regulatory Office created by the Agreement. After a competitive bidding, the concessions for each of the two zones, east and west, were awarded to joint ventures involving two elite Filipino families and their multinational water partners—French, British and American.

It is important to emphasize that the Regulatory Office is a creation of the Concession Agreement itself. It is not an independent body with an independent mandate and independent funding. In the final analysis it receives its instructions from the board of trustees of the residual water district authority, all of whom are appointed by the President of the Philippines, and serve at the pleasure of the President. Our experience will show that this set up was convenient for the private sector concessionaires, who only needed to work out a deal with the Presidential palace—consumers completely out of the picture—to obtain revisions in the Agreement that would favor them.

## Actual Experience with Privatization of Manila Water

Less than three years into the privatization of water, Metro Manila residents have been waking up to the illusion of privatization. The Asian financial crisis and the drought brought about by the El Niño weather phenomenon became the bases for both concessionaires seeking an extraordinary price adjustment. That was the first shock. When neither concessionaire was awarded the price increase they sought from the Regulatory Office, they went into dispute resolution through an Arbitration Panel following UNCITRAL rules. That was the second shock. This set off a new round of negotiations that would allow the two concessionaires to recover the costs due to the peso devaluation over a shorter accelerated period rather than over the long-term, that is, the remaining life of the 25-year concession. The shocks continue to this day.

The modifications to the contract woke us up to another nightmare: that consumers, not being adequately represented in the Concession Agreement either through the residual water authority or the Regulatory Office, had no place in the negotiations for changes in the Concession Agreement. The modifications had a clear impact on consumers that would result in the adjustment of water tariffs that would be at par with pre-privatization tariffs. Yet consumers were effectively sidestepped in the negotiations.

Nor did it help consumers to see the Regulatory Office become subject to capture by the concessionaires and the board of the residual water district authority. The very weak regulation, very costly arbitration process, combined with little if no accountability of the Board of Trustees of the water authority to the public were discouraging factors that showed privatization was favoring the companies that now enjoyed the monopoly over distribution rights, but not the Metro Manila residents.

The revisions also ran contrary to the spirit of the privatization of the water distribution utility: that the private sector, specifically, the winning bidders, had access to sufficient long-term capital that the government, heavily burdened by debt could no longer afford to borrow.

Furthermore, while the revisions to the Concession Agreement would result in certain price increases, such upward adjustments were not sufficiently tied to explicit performance targets on the part of the concessionaires. So consumers were not even being assured of a quality of service and improvements in service that would accompany the price hikes. Yet tariffs today are higher than pre-privatization levels. And more increases are expected in the months to come.

The concessionaire in the west zone, which involved the joint venture between the Lopez family and the French conglomerate Ondeo, was encountering serious problems in its performance. The group heaped all the blame on the government, yet there was sufficient information to show that poor management played a significant part in the poor performance. In March 2001 the company stopped paying its concession fees to the government, claiming it had insufficient funds to do so. This after it had obtained all the revisions to the contract in its favor. The company continued to collect the higher tariffs from consumers without remitting the

concession fees to the government. The government estimates that the concessionaire owes it five billion Philippine pesos between March 2001 and the end of March 2003.

The failure of the Lopez-Ondeo group to remit concession fees to the government did not diminish the government's debt liability. While the burden of servicing the debts of the water authority was passed on to the concessionaires, the legal liability for the debt remained in the hands of the government. As a result, the residual water authority, rather than borrow money needed to augment the supply of water for Metro Manila, was compelled to borrow money to service its debt when the Lopez-Ondeo group stopped paying their concession fees. The easing of the fiscal burden, another promise of privatization, was thwarted.

The Lopez-Ondeo group has since filed a notice of termination of Concession Agreement, alleging failure of government to do its part under the contract. The government intends to challenge this allegation, and present a case to an Arbitration Panel that will show the deficiencies on the part of the Lopez-Ondeo Group. The case is now under arbitration, which will determine who is at fault. If the government is found to be at fault it will have to pay the Lopez-Ondeo Group an estimated 20 billion pesos for their investments in their concession. If the Lopez-Ondeo Group is found to be at fault the government must pay them about five billion pesos.

In the meantime there are unconfirmed reports that the International Finance Corporation has been approached to step into the Lopez-Ondeo group, and possibly bail it out of its problems. The Bantay Tubig, a coalition of Filipino people's organizations and NGOs, strongly opposes such intervention by the IFC. The IFC has so far refused to confirm or deny its involvement in a possible bailout.

In summary, the experience of Filipinos with the privatization of water distribution in Metro Manila is not a convincing case to support the privatization of water. In fact what is increasingly convincing many of us in Bantay Tubig is that what is needed is a viable public sector alternative to water privatization. The reality is that the consumers, and not the private sector, are providing the capital needed to improve water service and augment water supply. Yet consumers have been eased out of any meaningful and democratic participation in decision-making over the level of tariffs, revisions to contracts, and the like. Nor are consumers in any position to compel better performance in exchange for higher tariffs.

#### Water Privatization and the GATS

So far there has been no commitment by the Philippine government under the GATS with regard to opening up the provision of water, water distribution and the like to foreign service-providers. Yet the reality is that foreign-service providers are already in the Philippines in the Metro Manila water district. The lack of a formal commitment has prompted the EC to file a request with the Philippines to commit the water sector. (It is important to note that the dominant multinationals in water are European, mostly French.)

The EC request includes the following:

>>the elimination of nationality provisions in the hiring of executives and managers, in the acquisition of land, and in the access to domestic credit

>>full commitments by the Philippines for market access and national treatment.

Lifting the nationality requirements in the provision of water would run counter to the Constitution of the Philippines, the basic law of the land. Full commitments by the government for market access and national treatment implies the opening up of the entire water sector throughout the country to foreign service-providers, at a time when our own experience with privatization has been found wanting.

Recommendation to the ECOSOC

The irony is not missed that the issue of water privatization is being discussed during a panel discussion on trade. Water, power, health, education, are among the sectors in our economy that are new areas for private global capital to intervene. Nor is it a mere coincidence that the aggressiveness with which these sectors are being targeted by global capital comes at a time when debt-strapped developing countries like the Philippines are hard pressed to commit funds to these sectors, and are facing increasing pressures to privatize. Privatization, contracts with the private sector and the like are being packaged as new forms of financing for development allegedly, a way out of the debt problem. Yet the experience in the Philippines is showing that new problems are being created, while the problem of indebtedness remains.

Let the Philippine experience with the privatization of water in Metro Manila be a lesson to the rest of the world that a viable public service provider is what is needed for such basic sectors as water, health, education and the like. Privatization has so far been a poor option, and illusory at best. The push to privatize under GATS is being done without due consideration being made on the impact of privatization on consumers and urban poor residents. Let's keep water from WTO/GATS privatization, and let's work together to make a public sector option viable.

This is also a final plea from a citizen whose country has gone through over 30 years of IMF stabilization programs and more than 20 years of World Bank structural adjustment lending. After religiously following the IMF-WB prescriptions, including those on the privatization and restructuring of the power and water sectors, my country cannot even boast of any significant reduction in poverty. I humbly ask the honorable delegates to the United Nations to please assert the primary role of the UN in the discussion on development. Please do not allow the non-accountable non-transparent Bretton Woods institutions to continue to take the lead on matters relating to development. We have suffered enough as a result of it.

Thank You.

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