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**What Makes Privatisation of Water Utilities Fail?
Lessons from the Manila Water Concessions**

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ACRONYMS AND ABBREVIATIONS

AEPA	Accelerated Extraordinary Price Adjustment
ADB	Asian Development Bank
ADR	Appropriate Discount Rate
BOT	Build-Operate-Transfer
BOO	Build-Operate-Own
CERA	Currency Exchange Rate Adjustment
COP	Committee on Privatisation
EPA	Extraordinary Price Adjustment
FCDA	Foreign Currency Differential Adjustment
IBRD	International Bank for Reconstruction and Development
ICIJ	International Consortium for Investigative Journalism
IFC	International Finance Corporation
IFIs	International Financial Institutions
IMF	International Monetary Fund
MWSS	Metropolitan Waterworks and Sewage System
MWSS-RO	Metropolitan Waterworks and Sewage System-Regulatory Office
NERA	National Economic Research Associates
NRW	non-revenue water
PSP	private sector participation
PR	public relations
SAP	Structural Adjustment Program
TOR	Terms of Reference
VAT	Value Added Tax

INTRODUCTION

For 119 years, the water needs of the residents of Metro Manila and its adjacent provinces were provided by the Philippine government. Riddled with debts, the state-owned corporation, the MWSS, could no longer afford to fund infrastructure projects to improve and expand the delivery of water services. In 1997, the Philippine government decided to privatise the Metropolitan Waterworks and Sewerage Service (MWSS) and handed over the task of delivering quality drinking water to 11 million households within the MWSS service area. The MWSS service area was divided into two zones, the East and the West zones, which was awarded to two private companies through a 25-year concession agreement. In 2002, Maynilad unilaterally decided to terminate early its 25-year concession agreement with the government. Maynilad's attempt to terminate the concession triggered a series of legal disputes with the government. Locked in a legal battle which could take years to end and threatened the delivery of water services in the West zone, the government decided to takeover the operations of Maynilad in 2004.

The turnout of water privatisation in the Philippines brought to fore once more the highly contentious issue on whether or not the delivery of water services should be privatised. Advocates of water privatisation maintain that the solution to the problem of limited and depleting water resources is inefficient and wasteful management, allocation and use of water resources. By putting a price on water, citizens will value water and use it judiciously (Barlow & Clarke, 2002; Gutierrez, et.al., 2003; Gutierrez, 2003). On the other side are those who view water as a common good. To them, water is a source of life, which should be made accessible to all and nobody should be given the exclusive right to distribute water and market it as commodity (Barlow & Clarke, 2002; Gutierrez, et.al, 2003; Gutierrez, 2003).

Most developing countries are plagued with the problems of ballooning budget deficit and huge public sector debt. Saddled with these financial problems, governments of developing countries most often have to do a balancing act between servicing their financial obligations and meeting the basic needs of its populations. In the end, it is usually the latter which suffers. The heightening incidence of developing

countries' difficulties develop to provide public services, especially efficient water and sanitation services, to its predominantly poor population prompted governments to turn to International Financial Institutions (IFIs) such as the World Bank (WB) and the International Monetary Fund (IMF) to help them out of their distress. The IFIs' diagnosed that most of the problems encountered by developing countries were caused by structural problems. Such problems required structural reforms or what came to be known as the "structural adjustments programs (SAPs)," which the IFIs imposed as a condition for loans and grant packages offered. The IFIs would claim that the SAPs, such as fiscal austerity, privatisation and market liberalisation, were imposed as loan conditions to ensure that the borrowing countries did the right thing with the billions of dollars borrowed (Stiglitz, 2002). In the case of privatising water and sanitation, the WB has come up with various toolkits and guidelines to assist government in designing and implementing private sector participation (PSP) in water services. The WB believes that as long as governments follow these prescriptions, such as ensuring the adequacy of the broader legal and institutional environment governing the concession's design, award and operations, and getting the concession contract right, water concessions will work.

The principle forwarded by the IFIs spurred a number of arguments against water privatisation which Gutierrez (2003) has grouped into three:

1. The argument of the first group is best summarized by Joseph Stiglitz with his qualified opposition to privatisation.¹ In his book *Globalization and its Discontents*, Stiglitz criticized the IMF and the WB for assuming that if states strictly adhered to the prescribed privatisation principles, the desired results would necessarily follow. The IFIs were bent on pursuing privatisation rapidly before adequate regulatory or competition frameworks were put in place (Stiglitz: 2002). In so doing, the benefits hoped for do not often materialize. Stiglitz contends that there are some preconditions that should to be taken into account before privatisation could lead to higher economic growth. (Stiglitz, 2002).

¹ Former chief economist of the World Bank (1997 to 2000), chair of the President Clinton's Council of Economic Advisers (1993-1997) and Nobel Prize Winner for Economics.

2. The second group is represented by the Public Service International (PSI)² which advanced the argument that building public sector capacity is the solution to the problems of developing countries. The PSI is pushing for “public-public” option contrary to the “public-private partnerships.”
3. The third group is led by the Blue Planet Project.³ Gutierrez (2003) characterized this group as solely effective in condemning multinationals but weak in coming up with alternatives.

In view of the fact that the delivery of water services in Metro Manila has already been privatised, this research paper will no longer indulge in the debate on whether states should privatise water services. Following the recent takeover by the Philippine government of one of the Manila water concessions, this research will determine what factors contribute to the failure of a water concession. The literature on privatising water systems provides that before a government proceeds to bid out the water utility, it should ensure that there are existing legal bases for privatisation. The conduct of technical, economic and financial analysis of the water sector is also given importance as the information generated from these studies shall be the basis of the bidders' financial proposals. There are a number of arrangements for PSP and governments are urged to carefully consider which option would be appropriate in their local conditions. Governments are also encouraged to consult the stakeholders to gain public acceptability over the project as well as generate other ideas to improve the service.

After setting the broad environment framework for privatisation, governments are thereafter tasked to design a contract. The literature on water concessions dictates a number of factors that should be included in the contract but from among these, authors seemed to ascribe the most importance to the following: performance obligations incentives and risks, and terms of amendment and renegotiations. The contract must be clear and comprehensive as the expectations from the concessionaires' shall be outlined in the contract. It is also important that the

² The PSI is a global federation of union in the public sector. For additional information on their activities, its website is <http://www.world-psi.org/>.

³ The Blue Planet Project is an international effort begun by the Council of Canadians to protect the world's fresh water from the growing threats of trade and privatisation. For additional information on their activities, its website is www.blueplanetproject.net/.

language is unambiguous to avoid numerous interpretations which may lead to contract amendment and renegotiation. The prequalification and bidding stage is assigned much importance because it is at this stage that the companies that would deliver the water services are chosen. The quality of the bidders will dictate on the quality of service to be delivered and government should ensure that only qualified and serious companies participate in the bidding process. Following the contract award, the government should see to it that public interests are protected through a stable and independent regulatory framework.

This paper hypothesizes that as long as governments lay down the broad legal and regulatory framework for water concessions and develop a well-designed contract, water concessions will reap the desired result. This study seeks to impart its contribution to the literature on water concession by exploring how these basic principles influenced the outcome of the MWSS privatisation. In analyzing the events surrounding the privatisation of the MWSS, parallelisms were also drawn from the experiences of other countries that entered into water concession contracts.

The Research Questions

Using the foregoing principles as a framework for analysis, this research addresses the following questions:

1. What is a water concession, and what factors do the literature on water privatisation suggest to make it work as a PSP option?
2. Were these factors present/considered in the Manila water concessions?
3. In view of the government's takeover of one of the concession contracts, is concession as a PSP option for the delivery of water and sanitation services appropriate for the Philippines?
4. What should governments consider when privatising water utilities?

Methodology

This research is a case study on the Manila water concessions which, for the most part, will use the qualitative method. The analysis of the case refers to the framework cited earlier in this chapter as well as on experiences in water privatisation of other

countries. Since the Philippine government's takeover of one of the Manila water concessionaires is a relatively recent event, most data were sourced from both online and published journals and newspapers. Other references used are published and unpublished materials such as books, journals, magazines, newsletters, conference papers, annual reports and government documents. A phone interview and email correspondence with an official of MWSS was also undertaken.

Scope and Limitation

This paper will not cover all aspects of water privatisation as it is too diverse a topic whereby a lot has been written on its various aspects in great detail. This paper will focus on what the leading authors prescribe for an effective/successful water concession and determine whether these have been taken into account in the privatisation of the MWSS. Due to time constraints and limited resources, this paper will not be able to look in detail at all aspects of the operations of the two water concessionaires. The researcher's limited knowledge in econometrics and accounting procedures did not allow a thorough review of both the concessionaires' book of accounts, and other numerical and statistical data.

Organization of the Paper

The remaining part of this study consists of five chapters. The first chapter discusses the factors that make a water concession work which is the framework for analysis of this research. It also briefly looks into the different options for private sector participation (PSP) in the water supply and sanitation sector and how to identify the best options for PSP for different circumstances. The third chapter unfolds the events leading to the privatisation of the State's water utility, the MWSS. This chapter narrates the history of the provision of water utilities in Metro Manila, the privatisation process itself, up to the events which led to the government's takeover of one of the Manila water concession. The fourth and fifth chapter respectively analyses the pre-and post-privatisation factors that affected the functioning of the Maynilad and Manila Water concessions. The last chapter discusses the conclusions and lessons learned from the case study.

CHAPTER 1

WHAT MAKES A WATER CONCESSION WORK

This chapter will briefly look into the state of international water sector and the reasons behind the lagging interest of the private sector in participating in the water sector. This chapter is a review of the literature and the recent experiences of countries that privatised their water sector on the basic principles that states should take cognizance of when privatising their water facilities. These principles shall serve as this study's framework for analysis on the Manila water concessions.

1.1 State of the International Water Sector

Around the world, people are dying from lack of access to safe water and adequate sanitation. As the mortality rate accelerates each year, governments from both the North and South have taken steps to achieve better water and sanitation coverage through privatised water systems. Privatisation was perceived to be the solution towards boosting investment, increasing coverage, improving service efficiency and maintain water quality (Clarke, et.al, 2003).

While the introduction of PSP in other service sectors, such as telecommunications, transport, and energy, has moved at a relatively advanced pace, the same cannot be said for the water and sanitation sector. From 1990 to 1999, around US\$580 billion has been invested in the development of infrastructure with only five percent or around US\$30 billion ploughed into water and sanitation projects (Izaguirre & Rao, 2000 as cited in Haarmeyer & Coy, 2002). For the next ten years, the WB estimates that required investments for developing countries for water projects will be around US\$800 billion (Delmon, 2001). Of the total amount, some US\$100 billion has to come from international financial institutions, US\$200 billion from government financing, and US\$500 billion from the private sector (Delmon, 2001).

Considering the massive capital needs and substantial business opportunities available in the water sector, the water and sanitation sector does not seem to attract

sufficient private investment. For the past twenty years, the role of the multinational companies in the water sector has been lagging behind compared to the seeming enthusiasm of the private sector in other infrastructure sectors, such as telecommunications and energy. To date, multinational water companies account for only five percent of the world market (Gutierrez, et.al, 2003).

1.2 Attributes of the Water Sector

The seeming lack of interest of the private sector to invest in the water business could be explained by the fact that the water sector has distinct characteristics that set it apart from other infrastructure services. Unlike other public service utilities, competition in the water sector does not come naturally and therefore has been described by some as the “last monopoly utility business” (Haarmeyer & Coy, 2002).

Making water from the main source (e.g. dams, lakes, etc.) potable upon delivery to household is a multi-level process involving vast filtration and treatment infrastructure, and extensive pipe distribution network. The immense capital investment necessary and the complicated features of the system itself deter private sector involvement thus limiting the potential for competition in the sector (Clarke, Kosec & Wallsten, 2003). Since these investments are usually sunk, highly specific and non-redeployable, the private sector is less inclined to venture into the business especially in developing countries.

The continuing debate on whether water is an economic good or a common good makes tariff setting a highly contentious issue which exposes the government to political and legal obstacles such as public resistance to government decisions or even lawsuits challenging such decisions. The water sector also possesses various externalities, such as health and environmental factors that expand government regulation beyond pricing alone (Clarke, Kosec & Wallsten, 2003). This subjects the sector to a substantial amount of government interaction, and in countries with weak regulatory frameworks, to a considerable amount of uncertainty and risk (Haarmeyer & Coy, 2002). The limited regulatory and judicial frameworks in most developing

countries make the private sector, prone to government opportunism and expropriation (Haarmeyer & Coy, 2002).

In most developing countries, the dependence on foreign investment to fund privatised water systems usually which makes the sector susceptible to currency fluctuations. The discrepancy between the foreign currency and the domestic currency that consumers pay for their bills exposes investors to the risk that they may not receive back the full value of their investment (Haarmeyer & Coy, 2002). Due to the high level of capital investments, it will be difficult to implement a full cost pricing of water as it can push up water rates at a level that is unacceptable for the consumers (Haarmeyer & Coy, 2002). And thus the private sector runs the risk of not being able to recover their cost.

Since the inception of water privatisation, large volumes of literature have been published to guide countries towards the privatisation route and advise them on how to mitigate such risks. Despite these efforts, there still seems to be a lack of unanimity on what would be the best way to organize the water sector. This lack of unanimity was manifested by the high profile water contract cancellations in Buenos Aires and Tucuman, Argentina; Cochabamba, Bolivia; and Atlanta, U.S.A, and the conflict-ridden water projects in Jakarta, Indonesia; South Africa and the United Kingdom.⁴ Among the most common problems that these countries experienced resulted from flaws in the contract design, weak regulation, corruption, donor pressure to privatise, failure of private operators to comply with the contract, abrupt currency fluctuations, and controversy over drastic price increases. While the past experiences in water privatisation have shown that there is indeed no absolute prototype that would ensure a successful and foolproof water privatisation, it must be realized that lessons are to be learned from these experiences.

⁴ For more information, see Slattery (2000), Reason Public Policy Institute (2003), Jubilee South Asia-Pacific and the Freedom from Debt Coalition (2004), Lobina and Hall (1999), and Public Citizen (2003).

1.3 Setting the Spadework for Privatisation

The first step in privatising water services and sanitation is to organise the legal and regulatory environment that could affect the privatisation contract's design, award, and operation. No government would want to find out later on that they ended up with a deficient contract and endure having their hands tied down with a 25 to 30 year concession contract. Among the factors that should be taken into consideration by a government before it proceeds to bid out the water utility are the following: the legal bases for privatisation; technical, economic and financial analysis of the sector; stakeholder consultations; and the appropriate option for PSP.

1.3.1 Mandate to Privatisise

The government should ensure that legal impediments to privatisation are removed. According to Kerf, et.al (1998), a legal obstacle commonly encountered is the laws and regulations that prohibit the transfer of public services to private hands. In cases where private participation is not proscribed, there are limitations imposed on the extent of participation by foreign investors (Kerf, et.al., 1998). Private companies should be informed of these conditions to avoid a situation wherein contracts have already been awarded and would up being nullified for lack of legal basis. Other legal issues that should be looked into as they could affect the operation of the concession are the laws on expropriation, land ownership, environmental laws, labour laws and business laws.

1.3.2 Technical, Economic and Financial Analysis

The water sector is a highly specialised sector that requires significant technical, economic, and financial expertise when designing the process for its privatisation (World Bank, 1997a). Where governments lack the necessary expertise to undertake these tasks, it would be beneficial to enlist the service of external advisers to do the task. Governments must be explicit on what type and extent of advice they expect from the advisers to avoid ambiguities later on in the process. As in any contract for bidding, governments should also ensure that the selection and awarding of the consultancy

contract must be above board. The government should see to it that the credibility of the bidding process is maintained as the quality of the water services to be delivered gravely depends on the selected companies to operate the water services.

The government should see to it that the technical, economic and financial studies submitted are correct and reliable since these studies will be the basis of the bidders' projections. Technical analysis usually include information on the existing assets, their condition and location and estimated expenditures on water quality, water pressure, water losses, and service coverage. Gutierrez (2003) points out that it is difficult to come up with exact information on water services for the reason that "there typically exists no sufficient inventory of the assets buried under the ground." Thus, information gathering on the existing assets of the water utility can be tedious and costly. Jeffrey Delmon (2001) in his book "Water Projects" suggests that governments should invest resources in collecting these data to ensure an accurate valuation of the project. These data shall serve as the basis for formulating realistic performance targets and methods for measuring performance. The economic and financial analyses, on the other hand, contain the proposed tariff formulas and base tariffs for the transaction documents and its effects on the assets or concession fee, and the financial model for bids and contract negotiations (World Bank, 1997a).

The importance of these studies was given emphasis with the termination of the water privatisation contract in Atlanta, U.S.A. In this case, the quality of the concession system data, which were either unavailable or inaccurate, resulted in the establishment of performance targets that were unrealistic and were therefore unachievable (Slattery, 2003).

1.3.3. Selecting the Most Appropriate PSP Option

There is a wide range of commercial arrangements and contractual structures for PSP in water projects from which the government can choose from. These approaches will not be discussed here comprehensively but will merely be used to provide an overview on how responsibilities, such as asset ownership and capital investment, are distributed between the private company and the government (see Table 1).

Table 1. Allocation of key responsibilities under the main PSP options

Option	Asset ownership	Operations and maintenance	Capital investment	Commercial risk	Duration
Service contract	Public	Public & Private	Public	Public	1-2 years
Management Contract	Public	Private	Public	Public	3-5 years
Lease	Public	Private	Public	Shared	8-15 years
Concession	Public	Private	Private	Private	25-30 years
BOT/BOO	Private & Public	Private	Private	Private	20-30 years
Divestiture	Private or private and Public	Private	Private	Private	Indefinite (may be limited by

In service contracts, the private sector is enlisted to undertake certain functions such as installing meters and repairing pipes or collecting customer payments while the duty of securing investments for the water project remains with the government. Service contracts are ideal for a utility that is “already well-managed and commercially viable,” and are deemed “cost-effective in meeting its special technical needs” (World Bank, 1997b).

Similar with service contracts, management contracts vests the task of securing investment for the water project with the government. Responsibility over the entire operation and maintenance of the project is transferred to the private company, with the government defining the terms of the contracts according to its requirements (World Bank, 1997b). Under this scheme, the greater part of the risks is still borne by the government as it reserves the ultimate right to control and make decisions over the project (Delmon, 2001). Management contract would be an expedient initial step for governments that encounter difficulties in engaging the long-term partnerships with the private sector or attracting sufficient private capital (World Bank, 1997b).

In a lease arrangement, the private company assumes the responsibility of operating and maintaining the assets of the water utility. Under this option, government does not pay the private company any fee as the latter effectively buys the rights to the utility's income stream (World Bank, 1997b; Kerf, et.al., 1998). Leases are ideal in water utilities which do not require new investments but necessitate an improvement of its operations efficiency (World Bank, 1997b). Contracts of this nature, however, are rarely resorted to due to its administrative complexity which is comparable to concessions but most governments are inclined to choose the latter as investment responsibilities under concessions are transferred to the private company (World Bank, 1997b).

A concession transfers to the private company the possession over all existing assets located in the service area and the function of maintaining and operating the water system for a given period (Delmon, 2001; World Bank 1997b). The term "concession" may also refer to other options for private sector involvement in public sector services especially when formalized by a contract (Delmon, 2001). For the purpose of this research, concession shall strictly refer to the type of contract discussed in this chapter. Under a concession arrangement, ownership over the assets is retained by the government with only the rights to use the assets transferred to the private company. During the entire contract period, the private company bears both the operating and investment risks, and thereby assumes the task of improving existing assets and/or providing new capital assets (Delmon, 2001; Kerf, 1998). At the end of the contract, all assets shall be reverted to the government (World Bank, 1997b). This arrangement is best employed where a substantial amount of investment is required to solve problems related to faulty distribution system or poor collections performance (World Bank, 1997b).

Under a BOT/BOO project, the government grants the private company (or the BOT/BOO partner) the right to develop and operate a public sector project. The private company finances, procures the design and construction, and operates the project (Delmon, 2001). At the end of the contract, the private company relinquishes its right over the facility or system to the government. This contractual arrangement

is most applicable in water utilities requiring investments for water supply or wastewater treatment facilities (World Bank, 1997b).

Another option for privatising water projects is divestiture, through a sale of assets/shares or through a management buyout whereby the existing operations and assets are sold to the private sector in a divestiture (RETA 5926). Under this arrangement, the government is solely left with regulatory function (World Bank, 1997b). Rarely resorted to (limited to developed countries such as England, Wales, and the United States), divestiture is best employed where the public water company is technically sound or where local financial institutions are well developed. It is also ideal in situations where the sale of shares or management buyout can result in expected result in improved management, consumer service and profitability (Delmon, 2001).

Most developing countries engage the services of the private sector upon the impression that it can advance the capital investments direly needed by cash-strapped governments (RETA 5926). Among the various PSP options cited on pages 17 to 19, private sector investments for water projects can be financed through concessions, BOT/BOO, or divestiture, which allow the private sector to infuse the necessary capital in water projects. The usual problems encountered by most developing countries in the operation of their water utilities are related to the distribution system and customer services (Delmon, 2001). Of the three, concession arrangement would best respond to these issues. A BOT model would be inappropriate as it is more suited on water treatment facilities, dams, reservoirs and aqueducts (Delmon, 2001), while divestiture is rarely resorted to by governments due to constitutional prohibitions or political motives (World Bank, 1997b).

In choosing the most appropriate PSP option, governments must first compare the advantages and disadvantages of each model and then review its success rate in countries where such option was adopted. Governments must bear in mind, however, that the successful application of a PSP model in one country would not necessarily yield the same level of success in another country. Careful study must be conducted

to determine the applicability of the various PSP models for the water utility to be privatised (Bakker, 2003).

1.3.4. Stakeholder Engagement

To avoid any disruptions to a planned privatisation deal, governments would usually exclude stakeholders or at times, involve them until the late stages. Governments usually view stakeholders as an obstacle to its privatisation goals but by doing so, it loses out on the opportunity to develop a sound partnership with stakeholders in formulating a deal that is appropriate to conditions of the locality and responsive to the needs of the consumers (Gutierrez, et. al., 2003) The consultation rounds would also be a good opportunity to collect additional information, validate and refine the findings of studies conducted on the sector, as well as generate proposals for improving service (PPIAF, 2002).

Stakeholder consultations must be conducted at the earliest stages of the project to ensure that inputs by the stakeholders would be considered before key decisions are made (Gutierrez, et. al., 2003). Stakeholder engagement would furthermore shield the government from unwanted accusations such as striking up secret deals with a private company. The Cochabamba water concession was pursued with little input from the stakeholders, which resulted in a contract which terms are not responsive to the cultural, economic and political situation in the area. When the concessionaire took over the water utility, it immediately increased the water rates and shut down private wells. As a result, household who for a long time received free water would now have to begin paying. These acts of the concessionaire sparked unrest and led to incidences of street riots, which eventually forced the concessionaire to relinquish the water utility (Slattery, 2003).

1.4 Pursuing the Privatisation Process

After having laid the groundwork for privatisation, a government would proceed with the contract design, tendering and awarding of the water privatisation contract. This is a multi-stage process but this chapter will not discuss all the steps in detail. A review of existing literature on water privatisation processes reveals a certain degree

of unanimity on which stages of the process are indispensable and should be given priority and closer attention.⁵ These include the contract design, the prequalification and bidding stage, and the regulatory framework.

1.4.1 Contract Design

A water concession contract contains a multitude of issues that affect the day-to-day operation of water utility. In designing a water contract, framers should look beyond the PSP arrangement chosen and pay particular attention to the performance obligations of the concessionaires and the incentives and risk under which they would operate (Klein, 1998; Delmon, 2001). The terms of the contract should be clear and comprehensive to lessen the probability of contract renegotiation, which may undermine the significance of the initial bidding (Klein, 1998; Clarke, Kosec, & Wallsten, 2003).

- a. *Performance obligations* - In determining the concessionaire's performance obligation, the contract must specify the type and quality of service to be provided, the number of connections and the period/schedule when it should be installed, the location of such installations and the clients to be served (Komives, 1999). Usually, the technical specifications for the service provided are the outcomes, outputs and inputs of the concessionaire. Outcomes are usually difficult to measure as they are usually phrased as general objectives or goals such as to provide universal access to potable drinking water. Instead, concessionaires should specify outputs and inputs as performance indicators (Komives, 1999).

In setting the performance targets, a government must also ensure that the poor are equally serviced. One of the main reasons for privatising water utilities is the lack of adequate access to safe water which is usually concentrated in developing countries. In these countries, those who are unconnected to the existing water system are usually the poor. If the targets of the contract would be couched in general terms wherein the concessionaires would be allowed to

⁵ See Kerf, et.al (1998); Bakker (no year supplied), Clarke, Cosec and Wallsten (2004), Delmon (2001); and Klein (1998).

determine which areas they should service, naturally they would opt to first serve those areas where they would be able to recover their costs. If the concessionaires would be allowed to do so then the primary objective of privatisation to expand water coverage would thus be defeated. It is important that the needs of the poor be addressed as shown in the water contract termination in Cochabamba wherein the poor staged a series of protests, some of which turned violent.

- b. *Incentives and risks* - Incentive systems are comprised of arrangements for cost-sharing, pricing, bonding device and insurance. When performance obligations have or have not been met, there shall be penalty and incentive payments imposed (Klein, 1998). Generally, risks are borne by the party in the best position to evaluate or control them, or the one with the best access to hedging instruments that could diversify the risks or lower its costs (Klein, 1998; Kerf, et.al, 1998). A party who is made to assume the risks should be given the incentives to do so (Kerf, 1998).

When both the concessionaire and customer cannot control or assess a given risk, the cost involved in bearing such risk shall be shouldered by the party who will incur the least cost in bearing such risk. In Michael Klein's (1998) *Bidding for Concessions*, cost-shifting has already gained acceptance although the determination of what is or not under a meaningful degree of control of the concessionaire can be subject to rigorous negotiation. Through risk identification and allocation, strong contractual performance agreements have provided a solid ground in saving costs, improving service and upgrading infrastructure (Haarmeyer and Coy, 2002).

The extent of risk mitigation measures to be adopted by a party is not easy to determine. While exchange rate risks cannot be controlled or assessed by a concessionaire any better than the consumers, it cannot claim ignorance on such occurrence or the possible effects on its operations. The concessionaire is expected to determine up to a point the extent of its exposure to foreign currency fluctuations, in which case, the company should bear the risk itself (Kerf, et.al., 1998). Only exogenous costs should be normally passed on to preserve the

concessionaire's incentive to function efficiently and reduce excessive risk exposure (Kerf, et.al., 1998). See Appendix A for the summary of risks encountered in infrastructure projects, how they arise and how they are allocated.

When concessionaires fail to fulfil their obligations, governments would usually be reluctant to terminate a concessionaire because of its possible implications on the continuity of the service. In such situations, concessionaires should be penalized in case of failure to meet the obligations (Komives, 1999). Without a penalty clause, there would be no motivation for the concessionaires to meet all the targets and they may just opt to focus on fulfilling those obligations which would yield them higher returns. One way of ensuring that private partners fulfil their end of the contract is the issuance of performance bonds. The concessionaire shall issue the performance bond to the government in the form of bond, bank guarantee or other security acceptable to the government. In the event that the concessionaire fails to perform its obligations under the contract, the government shall draw on the bond to cover the amounts of the neglected service obligations. On the part of the concessionaires, they try to bind governments to the contract by requiring them to commit to international arbitration under conventions, which make arbitral award enforceable. They may also ask for special payment or performance guarantees to ensure that counterparts can meet their payment obligations (Gutierrez, 2003). While it is important to mitigate the risks of concessionaires, the government should be cautious in granting fiscal incentives to private water companies. In order to attract foreign investors, states and cities compete against each other to offer the most attractive package of fiscal incentives, such as tax breaks and subsidized lease on properties (Kern, 1990). These incentives, however, only attract and encourage footloose investors. With the available incentives, private companies no longer felt compelled to pour substantial investments on production or infrastructure (Kern, 1990). Thus, when a better opportunity presents itself elsewhere or a crisis hits the country, foreign investors would be more inclined to bring their business elsewhere. It is easier and even cheaper for them to leave since it would not be costly for them to

relocate their business considering that the incentives received lowered the cost of their operations in the area.

An example of a flawed contract could be seen in the United Kingdom where the private water companies did not see the urgency to pour in investments in rehabilitating water and sewer infrastructure. The incentive package offered to private water operators by the Thatcher government already assured them of steady revenues thus, investing in infrastructure would only be a financial burden on the companies (Public Citizen, 2003).

- c. *Terms of amendment and renegotiation* - Government should ensure that the terms and conditions of the water concession contract are couched in a clear and precise language. A contract that is vague and ambiguous makes it susceptible to different interpretations and thus vulnerable to amendments and renegotiations. In extreme cases, renegotiations offer “incentives for opportunistic behaviour since an unexpected contingency will often strengthen the bargaining position of one of the partners while weakening the other” (Gutierrez, 2003). Constant revision of the contract would render the bidding process futile and undermine the original terms of the contract award.

In case of long-term concession contracts, however, even the best-designed ones usually have to be adjusted at some time during their lives due to the inevitable changing circumstances over time. Where amendments and renegotiations cannot be avoided, the conditions under which renegotiation may take place, the principles on which it is based, and the limits on the frequency of renegotiation should be clearly specified to prevent unnecessary and capricious renegotiations (Klein, 1998; World Bank, 1997b). There should also be a penalty clause to deter frivolous renegotiation (World Bank, 1997b). If winning bidders would be given the impression that the terms of the contract are renegotiable, they would be motivated to bid strategically, e.g. submit unrealistic bids, also known as “dive bids” with the intention of renegotiating after they have won. Some critics noted that this “strategic behaviour” was a problem in the bidding for the Buenos Aires water concession (Clarke, Kosec & Wallsten, 2003).

1.4.2 Prequalification and Bidding

Existing literature on the privatisation of water utilities and public infrastructures highlights a wide range of the bidding and award procedures, and the implementation of these processes. In this section, discussion will be focused on the two earlier stages, the prequalification and the bidding. Emphasis is given on these two stages because how they are organized will have a substantial impact on the efficiency and transparency of the water contract (Kerf, 1998).

Water cannot be aligned in the same category as other economic goods because unlike other goods, water is something that man cannot live without. Hence, governments should ensure that the future operator of the water utility possesses the appropriate technical and financial capacity to run the utility. Through a competitive and transparent bidding process, governments will have the opportunity to choose the best proposal from a range of potential investors (Kerf, 1998). To ensure that only the qualified and serious companies participate in the bidding process, the contract must not only provide attractive incentives. As mentioned earlier in this chapter, a water concession contract must also include a clause that would penalize the private company in case it fails to meet the performance standards. In doing so, mediocre companies will be discouraged to submit bids. It is also important that bidders demonstrate the capacity to assume the water utility. A thorough review of the bidder's book of accounts, and past project experiences would reveal the company's technical and managerial capacity to assume projects of the same magnitude.

As mentioned earlier, governments should provide the bidders with tender documents with a clear set of requirements and accurate information on the commercial, financial, and technical aspects of the project. On the basis of these information, bidders will formulate their technical and financial proposals. In the prequalification stage, shortlisted companies are usually around three or four. This number is ideal as the government would have enough number of companies to choose from but not too large that would entail more time and costs for bid evaluation (Kerf, 1998). Moreover, competition makes the process more transparent and therefore credible. In Cochabamba, the government pursued the privatisation of its

water utility despite the fact that only one bidder participated in the bidding process. This marred the credibility of the process and the bidder itself, which was later on proven true when the concessionaire failed to fulfil its service obligations. In Jakarta, corruption and lack of transparency characterized water privatisation with the water contract awarded to former President Suharto's son's company and a Suharto business crony after a long-drawn-out private negotiation (Public Citizen, 2003).

1.4.3 Concession Regulation

As discussed earlier, a clear contract reduces the possibility of renegotiation. Another factor that would make renegotiation less likely to take place is the existence of a regulator (Clarke, Kosec, & Wallsten, 2003). The more detailed and specific the regulatory rules are, the lesser the need for regulatory discretion (Kerf, 1998). The role of the regulator should be ministerial, i.e. to implement existing laws and regulations. If these rules are not clear, regulatory discretion would have to be exercised – and the more discretion, the more susceptible the system is to abuse and corruption.

One of the things that investors would want to be assured before entering into a contract is whether or not his rights under the contract would be observed and implemented. This would be the role of the regulator. In the performance of its functions, the regulator must equally balance the interest of the operator, the users, and the government without yielding to pressures from any of these parties, as well as possess the technical skills required for the job (Kerf, 1998).

Politicians would usually yield to the pressures from consumers, who are also voters, and use the state's regulatory function to further their political goals (Kerf, 1998). To ensure that the regulator maintains an arm's length relationship with the parties involved, the regulatory body must be structured in such a way that would assure its independence from political authorities (Kerf, 1998). In the creation of a regulatory body, the following measures must be considered (Kerf, 1998):

- a. The mandate of the regulatory office must be clearly defined by law to insulate it from political interference.
- b. Officials of the regulatory body shall be appointed according to specific qualifications and for a fixed period to ensure that these officials are qualified and not appointed due to political concessions.
- c. The security of tenure of the officials of the regulatory body shall be protected. Removal from office will be on the basis of restrictively defined cases to insulate them from arbitrary removal resulting from political pressures.
- d. Funding of the regulatory body shall be accessed from independent sources, such as user fees or levies on the regulated industry.

1.5 Enforcing the Contract

Any efforts to institute economic reforms would be futile if the legal and institutional environment of country do not foster reforms. Numerous studies have proven the direct correlation between poor governance and a sluggish domestic economic growth (Gutierrez, 2003; PPIAF, 2002; RETA 5926). In many countries across Africa and Asia, there is an increasing consensus that the prevalence of corruption threatens investor confidence in the regions. Further to the problem are losses in government revenue, lower quality public investment and public services, and reduced private investment. As evidence on the negative impact of governance problems on a state's economic performance escalated, a growing clamour for transparency and good governance towards achieving economic success emerged (Camdessus, 1998). For regulation to be effective, it must exist against the backdrop of stable and coherent rules (Clarke, Kosec & Wallsten, 2003).

The WB's Office for Economic Development says that the success of water reforms "requires sophisticated institutions and good governance," which the Bank admitted are lacking among its country borrowers (Alexander, 2002). Countries who wish to take the privatisation route should ensure that the necessary preconditions are in place for such institutions. Perception of what constitutes good governance varies, but generally there is a seeming unanimity on the following (Brook Cowen, 1999;

Baker, 2003; Clark, Kosec & Wallsten, 2003; Delmon, 2001): accountability of authorities for decisions made, transparency in government transactions, predictability and reliability of laws and stakeholder participation. The success of a water contract ultimately depends on a high level of political commitment (Brook Cowen, 1999). This commitment is manifested when the State resolves to implement laws, make difficult and unpopular decisions and manage to abide by that decision.

More and more countries resort to privatisation to resolve the age old problems of water utilities. As discussed earlier in this chapter, privatisation itself will not automatically eradicate these problems. If water privatisation would be pursued under the same governance and institutional factors that existed prior to privatisation, expect that the same problems that beset the water utility then would still be the same problems now. And while there is no “one-size-fits-all” solution to this problem, there are still some basics to be considered when privatising water utilities - careful preparation, political commitment, and stable regulatory and institutional framework.

CHAPTER 2

THE MANILA WATER CONCESSIONS

Heralded by the WB as the largest water concession in the world, the Government of the Philippines in January 1997 handed over to the private sector the operation and expansion of water and wastewater services in Greater Manila.⁶ The government entered into two 25-year contract agreements with two private concessionaires to deliver quality drinking water to eleven million households in the country's capital region. Along with the privatisation came the promise that service standards will be improved while rehabilitating and expanding the system, increase operating efficiency, as well as minimize the tariff impact on consumers. With the prospects of lower water bills, the future of the consumers with the concessionaires seemed promising.

In marriage, they say that the first seven years is the honeymoon period. In the case of the tripartite marriage between the Philippine government and the two private water concessionaires, each concessionaire already had a face-off with the government before the Appeals Panel for Major Disputes (Appeals Panel)⁷ before the honeymoon period was over.

This chapter will narrate the events that spurred the privatisation of the State's water utility, the MWSS, the privatisation process itself, and its early successes up to the current state of affairs of the privatised utilities.⁸

2.1 The MWSS⁹

Established in 1878, the MWSS is the oldest water system in Asia. The first system constructed on the same year produced a maximum of fifteen million litres per day (mld) for the 300,000 residents of Manila. In 1955, the National Waterworks and

⁶ Greater Manila area comprises of 13 cities and 4 municipalities in Metro Manila, all 14 municipalities in the Province of Rizal, and a city and 5 municipalities in Cavite province.

⁷ Referred to as the Appeals Panel under Article 12 of the Concession Agreement. See Appendix B for the copy of the Manila Water Concession Agreement, which is the same for both concessions.

⁸ See Appendix C for the MWSS Privatisation Timeline.

⁹ Most of the information in this section is culled from the MWSS website, www.mwss.gov.ph.

Sewerage Authority (NAWASA) was created to service the water supply and sewerage needs of the entire country. In 1971, the NAWASA was abolished. A new body was created, the MWSS, which jurisdiction over all waterworks and sewerage systems has been limited to the national capital region, and its adjacent provinces.¹⁰ By 1997, the MWSS was producing an estimated 3000 mld of potable water to an area of competence totalling 1,940 square kilometres (km²) for the 11 million residents of the MWSS service area. Around ten million of its clients reside in urban areas while the remaining live in rural areas (Dumol, 2000). The total population connected to the water distribution network was 7.3 million or 66 percent of the total population living in the MWSS service area. The remaining 3.7 million or 35 percent were served by private/individual deep wells.

As a government corporation, the MWSS possessed fiscal autonomy.¹¹ The corporation was meant to sustain its operations from its revenues but every so often, MWSS would fail to generate sufficient revenue and seek increased subsidies from the Philippine Congress.

2.2 Problematising MWSS

Prior to the privatisation of the MWSS, only 7.3 million of the 11 million residents of the MWSS service area were connected to piped water, with water flowing from their taps at an average of 16 hours a day. Some 61 percent or 1,830 million litres of water pumped into the network was “nonrevenue”¹² due to pilferage, runoffs from old leaky pipes, illegal connections, and defective water meters (Buenaventura, Palattao & Nacpil, 2003). In 1997, the Philippine government’s national debt posted at US\$82.347 billion while MWSS’ own debts amounted US\$800 million (Buenaventura, Palattao & Nacpil, 2004). Thus, the government was not in a sound

¹⁰ See Republic Act No. 6234 for the detailed listing of the cities and municipalities, attached as Appendix D.

¹¹ The budget of regular government agencies passes the scrutiny of Congress, which approves the same though the enactment of the annual General Appropriations Act. Moreover, they are mandated to turn over all their revenues to National Treasury unless otherwise authorized by law. Unlike government corporations which are authorized to formulate their own salary schedule for their employees, salaries personnel in regular government agencies are covered by a uniform salary schedule under the Salary Standardization Law.

¹² Nonrevenue water (NRW), also called as “unaccounted-for-water” is the difference between water delivered to the distribution system and water sold (Yepes, 1995).

financial position to make any further investments to improve the service and physical infrastructure of MWSS.

Corollary to all these, trouble likewise brewed at the home front. The credibility of the MWSS was marred with allegations of corruption and inefficiency (Llorito and Marcon, 2003). MWSS insiders attribute inefficiency of MWSS operations to rigid and complicated government procurement procedures which slowed down the procurement process and delayed project implementation. Further to this is the bloated bureaucracy of the MWSS. With 8,000 employees - 13 employees for every 1,000 connections - the MWSS hired two to five times more than what similar water utilities in the region had (Dumol, 2000:18).¹³ Civil servants enjoy the legal right to security of tenure,¹⁴ which makes hiring and firing subject to rigid government procedures.

Table 3. Pre-Privatised MWSS Operational Highlights (1996-97)

Service Population	11 million
Population served	
i. water supply	7.3 million
ii. sewerage	0.78 million
Total no. of connection	815,000
Average daily water production	3,000 million liters
Average daily non revenue water	61% (1,830 million liters)
No. of treatment plants	3
Total length of pipeline	12,000 km
Average daily water availability	16 hours
Water losses per-capita daily (as of May 1996)	133 liters
Consumption billing efficiency	42.87%

Source: MWSS Regulatory Office

¹³ As against 1.8 in Kuala Lumpur, 2.4 in Singapore, 2.7 in Hong Kong, and 2.3 in Seoul.

¹⁴ Article IV, Section 5 of Presidential Decree No. 807 states that the Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on

2.3 The Push to Privatise

The 14-year dictatorship reign (1972-1986) of then President Ferdinand Marcos was characterized by a highly centralized government, which engaged in a large number of activities. As a result, the government owned and controlled commercial banks, hotels, construction companies and so on. In 1984, efforts to privatise state-owned assets got under way when President Marcos signed a \$300-million loan with the WB for the legislation of new laws for the privatisation of state-owned assets (Bello, 2004).

During the administration of former President Corazon Aquino (1986-92), the policies of limiting government involvement in commercial activities and recognizing the contribution of the private sector towards economic growth were implemented. Aquino created the COP to privatise hundreds of government-owned and controlled corporations. It was also during her administration that the BOT law was enacted under which the first privately-financed BOT power contract financed and built by a Hong Kong corporation.

Unfortunately, the Aquino administration was not able to fully take advantage of the BOT law to address the worsening power crisis which started during her term. When Fidel V. Ramos was elected President in 1992, the country suffered from brownouts lasting from eight to sixteen hours a day. Faced with the power crisis, the Ramos administration (1992-98), through BOT arrangements, turned to the private sector for the installation of electric power plants. This experience of the government on privatisation laid the groundwork for the privatisation of the MWSS. Thus, it can be claimed that the privatisation of MWSS was the brainchild of former President Ramos who was a great believer in PSP in infrastructure development (Dumol, 2000).

Recognizing the primacy of water to human life, as well as to counter the looming water crisis at the time, the Ramos administration realized the need to find alternatives and innovative ways of providing water service, and thus set out to plan and implement programs to support water sector development. In December 1993,

the report on the Philippine Water Supply Sector Reform Study (Water Sector Study) was completed, of which the main recommendation was the privatisation of MWSS.

2.4 Preparing to Privatisise

The Water Sector Study was undertaken under a TOR between the Government of the Philippines and the World Bank, financed by the Government of Japan. Assisted by a team of local and foreign consultants, the government developed policy and implementation options to reform the water sector with the end goal of improving the sector's institutional and structural arrangements. Through a series of sector wide consultations conducted with different stakeholders, broad reform strategies were identified to address the water sector's urgent concerns. The Water Sector Study confirmed the worsening state of the MWSS services. In response thereto, the study recommended the adoption of broader PSP in water supply services, and maintain government regulation on the water sector but only on matters related to health, water tariffs, and service and environmental standards.¹⁵

The Water Reform Study paved the way for the enactment of Republic Act No. 8041, also known as National Water Crisis Act of 1995. This Act empowered the President to privatise the MWSS. In the same year the law was enacted, the privatisation of the MWSS was listed as one of the conditions under the 1995-1997 SAP agreement signed by the Philippine government with the IMF (Bello, 2004).

Encouraged by the seeming success of water privatisation in Buenos Aires, Argentina,¹⁶ the Philippine government decided to replicate the procedure with the MWSS privatisation.¹⁷ The government noted the similarities of the Buenos Aires water and sanitation system with that of Manila in terms of size, coverage and inefficiency. Since the Buenos Aires privatisation, with its magnitude, attracted only a few qualified companies worldwide, the Philippine government expected the same

¹⁵ Content of this section were culled from the Report on the Philippine Water Sector Reform Study funded by the Grants from the Government of Japan and administered by the International Bank for Reconstruction and Development (World Bank).

¹⁶ See Graham-Yooll, 2003 and Brook Cowen for further information on the water privation in Buenos Aires.

for MWSS. To ensure that only the best companies would participate, the privatisation proponents imposed high prequalification standards. While the government hoped to attract the best multinational water companies to operate the privatised MWSS, the Philippine Constitution mandates that majority ownership over all public utilities must be in Filipino hands. However, there was no local firm yet with previous experience in managing water utilities. Thus, interested foreign firms were encouraged to partner with a local firm with the understanding that the consortium would have to be 60 percent Filipino-owned.

The bidding procedure used in Buenos Aires was also adapted. The procedure required bidders to submit both a technical and a financial proposal, the former to be evaluated on a pass-fail basis and only the financial proposals of those who passed this stage would be opened. Similar to Buenos Aires, the government was hopeful that requiring the bidders to submit bids lower than the existing water tariffs would result in the lowering of water rates (Dumol, 2000). In view of the substantial amount of investment needed to improve customer services and the existing water distribution network, the Philippine government deemed that a concession arrangement would be the most appropriate PSP option to be employed. Under a concession arrangement, the concessionaires will be given the right to use all MWSS assets without any consideration for the entire duration of the contract. Upon termination or expiration of the contract, all such assets including those infused by the concessionaires to the water utility shall revert to the MWSS.

Another reference for the MWSS privatisation was that of Paris wherein the water system was divided in two zones: the left and right banks of the Seine River. The Parisian model appealed to the government as it was deemed to promote quasi-competition wherein consumers could compare service quality of the two concessionaires (Dumol, 2000; Llorito & Marcon, 2003). With the endorsement of the government's consultant, the International Finance Corporation (IFC), the MWSS

¹⁷ For a comprehensive account of the privatisation of the MWSS, see Mark Dumol's "The Manila Water Concession: A Key Government Officials Diary of the World's Largest Privatisation" funded and published by the World Bank in July 2000.

service area was split into two zones: the West zone and the East zone.¹⁸ The larger zone is the West zone covering seventeen cities and municipalities in Metro Manila¹⁹ with more than seven million inhabitants. The East zone covers a lesser geographical area of twenty-two cities and municipalities with an estimated four million inhabitants. Along with the privatisation of the MWSS was the transfer of its existing debts, which was divided at a 90:10²⁰ between the West zone and East zone, respectively.

2.5 The Concession Contracts²¹

In January 1997, the government received the financial bids and technical bids from the four prequalified bidders.²² The winning bids were based on the proposed water tariffs, which the government deemed should be lower than the existing tariffs to gain the support of the public and the politicians (Dumol, 2000). The Ayala group's bid for both zones (East: ₱2.32/m³ and West: ₱2.51/m³) was the lowest but the rules only allow one group to operate one concession; otherwise the objective of competition would be defeated. With the hub of its business operation located in the East zone,²³ the Ayala²⁴ group and its partners, incorporated as Manila Water Company (Manila Water),²⁵ opted for the East zone. The West zone concession went to the Lopez group,²⁶ incorporated as Maynilad Water Services Inc. (Maynilad) with its second lowest bid of Ph ₱4.97/m³.

¹⁸ See Appendix E for the map of the service areas.

¹⁹ Including the nation's capital, Manila and the largest portion of Quezon City, the capital region's largest city.

²⁰ Although what appears in the Concession Agreement is 90:10, debt apportioning was actually 80:20 as some of the debts came after financial closure

²¹ Data in this section come from the MWSS website: www.mwss.gov.ph.

²² The four bidders were the consortium of (1) Ayala Corporation, Bechtel, United Water and Mitsubishi; (2) Benpres Holdings and Lyonnaise de Eaux; (3) Aboitiz Equity Ventures and Compagnia Generale de Eaux; and (4) Metro Pacific and Anglian Water International.

²³ Ayala corporation's headquarters is in Makati City, the capital region's central business district.

²⁴ The Ayala family's business empire ranges from real estate, banks, food and beverage, and telecommunications. Of Spanish descent, the Ayalas are not just business moguls but are also active in politics and governance as well, having been prominent figures in the ouster from office of Presidents Ferdinand Marcos and Joseph Estrada (ICIJ, 2003).

²⁵ MWCI won the concession for the East Zone, in partnership with Bechtel. MWCI is affiliated with the Ayala Group of Companies whose business holdings include real estate, commercial/shopping complexes, banking, and telecommunications.

²⁶ From sugar plantations in the 1920s, the Lopez family's business empire throughout the decades that followed was able to diversify its business interests into the transport, broadcasting, communications and public utilities while at the same time establishing themselves not only one of the country's top economic elites but as a formidable political force as well over a span of five generations (McCoy, 1993). Read Alfred V. McCoy (1993)

Table 4. Winning Bids

Concessionaire	Rate Bid/m ³
East Zone: Manila Water Company (MWC) A Filipino firm owned by AYALAs in joint venture with International Water Ltd (IWL) formed by the US-based Bechtel Overseas Corp and UK firm Northeast Water	P2.32
West Zone: Maynilad Water Services Inc (MWSI) A Filipino firm (Benpres) owned by the Lopezes in joint venture with French firm Ondeo (formerly Suez-Lyonnaise Des Eaux)	P4.97

Source: MWSS-RO website

On 21 February 1997, the government signed the concession agreements with the two concessionaires at the Presidential palace. The service obligations of the two concessionaires under the concession agreement (CA) were basically the same, differing only on the targets, which were based on the concessionaires' financial models. Under the CA, the concessionaires' primary service improvement goals are:

- a. Renew the sewerage system in the Concession area; and
- b. Build a new infrastructure to support the expansion of the water and sewerage system, thereby connecting 100% of the urban population of the concession area to potable water and 95% of the urban population to the sewerage system, and treating 100% of the sewage produced.

The CA granted the concessionaires exclusive rights to produce and treat raw water; transport, distribute and market potable water; and collect, transport, treat, dispose and eventually reutilize wastewater. Certain parameters on water and sewerage coverage were also set to measure the performance of the concessionaires according to their service obligation targets, which will be discussed in detail in Chapter 5. The concessionaires also committed to put up an investment of US\$7.5 billion over the 25 year concession period. Both concessionaires were also obligated to tender a Performance Bond as a security for the performance of its obligations

"Rent-seeking and the Philippine State: A History of the Lopez Family, one of the articles in the book "An Anarchy of Families: State and Family in the Philippines" edited by the same author.

(Art.6.9 of the CA). The companies were also required to pay annual concession fees to the MWSS for the servicing of MWSS loans and budget of the MWSS-Regulatory Office (MWSS-RO) (Art. 6.4 of CA).

What was left after privatisation was a residual MWSS and its Board of Trustees (Board) to perform its remaining functions:

- a. Facilitate the exercise by the concessionaire of its functions
- b. Administer and manage retained assets and existing loans
- c. Provide bulk water and development of new water sources
- d. Provide such other services/functions under the Concession Agreement

The CA also created the MWSS-RO which to perform the following functions:

- a. Monitor and/or enforce the Concession Agreement
- b. Ensure appropriate measures are undertaken in case of Concessionaires' non-compliance
- c. Review water supply and sewerage rates and implementation of extra ordinary price adjustment and rate rebasing provisions
- d. Prosecute or defend proceedings before the Appeals Panel

2.6 Early Successes

As a result of the privatisation, the government was partially relieved of its financial burden. Both the concessionaires paid an initial fee of US\$5 million to cover for the fees for the IFC. As part of its concession fees, each company would also pay a yearly fee of ₱50 million for the operating budget of MWSS-RO and another ₱100 million for the MWSS Residual office. The concessionaires were also expected to pour in US\$7.5 billion worth of investments and an anticipated US\$4 billion in income taxes over the 25-year contract (Inocencio & David, 2001).

There was also a substantial reduction in the number of employees by twenty percent, from 5,034 in 1996 to a combined staff of around 3,995 in 2000 for both concessionaires. Staff per 1,000 connections also reduced from thirteen in 1997 to 4.3 for Maynilad and 4.5 for Manila Water by the year 2000, but still higher compared to the water utilities of the Philippines' neighbouring countries.

Aside from the direct individual water connections, both Maynilad and Manila Water employed innovative ways of increasing network coverage. These included the installation of public faucets/standpipes, group taps, and bulk-water supply, most of which were deemed effective in making potable drinking water accessible to unconnected households which were usually located in the slum areas. Shallow and deep wells were also provided in areas that were too far from water lines or where there is not enough water in the main source.

Following are the major service obligations²⁷ that the two concessionaires committed themselves to:

1. 97.1 percent water supply coverage for the West zone (Maynilad) and 94.1 percent for the East zone (Manila Water),²⁸
2. US\$7.5 billion in new investments over twenty-five years;
3. Uninterrupted, twenty-four hours per day water service meeting Health Department standards provided within three years to all connected customers;
4. Reduce non-revenue water reduced from 56 percent to 32 percent over the first ten years.

In August 1997, rates were reduced by 73.6 percent in the East zone (from P8.78 to P2.32) and 43.3 percent in the West zone (from P8.78 to P4.96) (Buenaventura, Palattao & Nacpil, 2004). Despite rate adjustments in January 1999, the basic rates were still relatively lower than the pre-privatisation rates by thirty

²⁷ See Appendix A for complete list of service obligations of the concessionaire under the Concession agreement.

²⁸ Targets are made out of the total population of the service area; the figure excludes users who obtain water from a legal source other than the MWSS system (Article 5.1.1 of the Concession agreement).

percent and sixty-six percent respectively for Manila Water and Maynilad (Inocencio & David, 2001). Moreover, the first three rate increases were automatic increases provided in the contract (see Tables 3.1 and 3.2). By 2004, Maynilad now charges P26.95 per cubic meter ($/m^3$), which is five times its original bid rate of P4.96/ m^3 in 1997. On the other hand, Manila Water's rates increased by almost eight times, from its original bid rate of P2.32/ m^3 in 1997 to P15.65/ m^3 in 2004 (see Tables 5.1 and 5.2).

Table 5.1. Maynilad Rates History

Period	Average All-in Tariff/ m^3
Pre-Privatisation	P8.78
1997-1998 (Bid rate)	P4.96
1999 (1st increase)	P5.80
2000 (2 nd increase)	P6.13
Jan-Oct 2001 (3 rd increase)	P6.58
Oct 2001 Contract Amendment (4 th increase)	P10.79
2002 with FCDA (5 th increase)	P15.46
Rate Rebasing (6 th increase)	P26.95

Source: MWSS Regulatory Office

Table 5.2. Manila Water Rates History

Period	Average All-in Tariff/m ³
Pre-Privatisation	P8.78
1997-1998 (bid rate)	P2.32
1999 (1st increase)	P2.61
2000 (2 nd increase)	P2.76
Jan-March 2001 (3 rd increase)	P2.95
Apr-Nov 2001 (ADR adjustment; 4 th increase)	P3.22
Nov 2001 Contract Amendment (5 th increase)	P4.22
2002 with FCDA (6 th increase)	P6.75
Rate Rebasing (7 th increase)	P14.22
Increase in FCDA (1.25% of basic rate)-25 Aug. 2003 (8 th increase)	P14.96
Increase in FCDA (2.8% of basic rate) - 7 Oct. 2003 (9 th increase)	P15.53
Increase in FCDA (1.58% of basic rate) - 1 Jan. 2004	P15.65

Source: MWSS-Regulatory Office

By 2006, it was expected that 97.1 percent of the total population in the West zone would have been connected to the water supply system by Maynilad, and 94.1 percent of the residents in the East Zone by the Manila Water. Targets for 2001 were pegged at 87.4 percent in the West zone and 77.1 percent in East zone. Table 6 would show that both concessionaires have fallen short of their targets with Maynilad water achieving only 79 percent and Manila Water at 76 percent. It was only by the following year that Manila Water exceeded the 2001 target with an actual connection rate of 82 percent while Maynilad's connection reduced to 78 percent.²⁹

²⁹ The decrease shows that there were disconnections made by Maynilad.

Table 6. Water Service Performance

Service Indicators	Prior to Privatisation (1996-97)	Manila Water			Maynilad			Combined Gains	Gains
		Target 2001	Actual 2001	Actual 2002	Target 2001	Actual 2001	Actual 2002		
Population served based on official # of service connections	7.3 M	4.26M	3.2M	3.4 M	6.7M	5.3M	5.2M	8.6M	1.8% inc.
Official # of H2O service connection	779,380	378,670	352,982	369,699	574,590	577,637	573,194	942,893	21% inc.
Water coverage	67%	77.1%	76%	82%	87.4%	79%	78%	79%	18% inc.
Non-revenue water	61%	16%	48.29%	52.66%	31%	66.25%	68.68%	62%	

Source: MWSS Regulatory Office 2002 Annual Report

Over the life of the contract, the concessionaires were expected to pour in a total of US\$7.5 billion worth of new investments for the next 25 years. For the period 1997-2001, Manila Water pledged to allocate ₱1.7 billion pesos (\$42 million) but was only able to put in Ph₱1.2 billion pesos (\$30 million) worth of investments (ICIJ, 2003). Similarly, Maynilad fell short of its commitment of ₱6.8 billion pesos (\$170 million) for the same period as it only invested ₱3.3 billion pesos (\$82 million) as opposed to its contract bid of (ICIJ, 2003).

The companies also did not meet its NRW targets. Prior to privatisation, NRW was 61 percent, which both concessionaires committed to reduce when they assumed the operation of the utility in 1997. In 2002, Maynilad's NRW reached 68 percent, and far from its target of 31 percent (see Table 7.1). Manila Water's NRW, on the other hand, was reduced to 52.66 percent in 2002, but still, it failed to meet its financial model of 15 percent for the same year (See Table 7.2).

Table 7.1 Maynilad Water Services, Inc. Non-Revenue Water

Year	Financial Model	Actual
1997	57.4%	64.1%
1998	47.9%	60.8%
1999	42%	67.2%
2000	35.6%	65.4%

Table 7.2 Manila Water Company, Inc. Non-Revenue Water

Year	Financial Model	Actual
1997	44%	45.4%
1998	31%	39.2%
1999	22%	39.8%
2000	17%	42.8%
2001	16%	48.3%
2002	15%	52.66%

Source: MWSS Regulatory Office as cited in Buenaventura, et.al, 2004

Another crucial service obligation of the concessionaires was to provide an uninterrupted 24-hour water service that is up to par with existing health standards. When MWSS was privatised, its customers were hoping that they would finally have water running from their taps 24 hours a day. Both Maynilad and Manila Water only managed to make water available from 17 hours prior to privatisation to 21 hours a day, which is still short of the 24-hour target.

Maynilad's neglect of the old and dilapidated water pipes had finally taken its toll in October 2003 when hundreds of Manila residents were taken ill by a gastro-intestinal disease outbreak. The Health Department reported a total of 837 diarrhoea cases and 29 cases of cholera, which resulted to eight deaths following two incidents of outbreaks in at least eight streets in Tondo, Manila (Center of Health Development, 2003). The victims were admitted in five Manila public hospitals from 23 October to 19 November 2003 (Center of Health Development, 2003). Maynilad tried to wash

its hands clean from the incident by blaming illegal water line connections,³⁰ use of booster pumps,³¹ and the practice of buying water from other sources (Mugas, 2003). Laboratory tests on the eater samples done by the local health department at the time of the outbreak would show however that there was an absence of chlorine in the water system in the affected areas (Quismundo, 2003).

2.7 Outcomes through 2004

In December 2000, Maynilad petitioned the government for the imposition of the so called automatic “currency exchange adjustment” (Auto-CERA), which it filed during the Estrada administration.³² The petition was filed once more under the Arroyo administration. In February 2001, President Arroyo rejected the petition and the following month Maynilad stopped paying its concession fees to the MWSS. In October of the same year, the first amendment to the CA was issued. According to the MWSS Board, the amendment was issued because “the existing mechanisms under the concession agreement for recovery of forex losses are not sufficient to address the financial problems of the concessionaires resulting from the Asian financial crisis.” The said amendment authorized Maynilad and Manila Water to impose charges for AEPA,³³ FCDA,³⁴ and the CERA³⁵ (Padilla, 2004). The amendment also rescheduled the first rate rebasing³⁶ period from the tenth year (2007) of the contract to the fifth year (2002).

³⁰ Maynilad President Rafael Alunan explained that “if illegal connections are not properly sealed into the main water source, disease-causing organisms flow freely into the entire water system. Households using booster pumps are also affected by the organisms because the pumps also absorb contaminants on days when water pressure is low” (Mugas, 2003).

³¹ Presidential Decree 56 prohibits the use of booster pumps.

³² Maynilad filed the petition at the height of Estrada’s impeachment trial for corruption charges before the Philippine Senate, which was not able to rule on the matter. Estrada was forced to step down from office in January 2001 following days of street protests clamouring for his resignation.

³³ AEPA is ₱.050 per cu.m. of water consumed. The AEPA, on the other hand, is a fixed rate (₱4.21 per cubic meter for Maynilad and ₱1 per cubic meter for Manila Water) that the concessionaires can collect from Oct. 15, 2001 to Dec. 31, 2002 only.

³⁴ FCDA is equivalent to 49.598 percent of the basic charge which is the actual water consumption of the consumer. The FCDA is a quarterly adjustment as a percentage of the basic charge to reflect the impact of the FOREX starting on Jan. 1, 2002.

³⁵ CERA is ₱1.00 per cu.m of water consumed.

³⁶ Rate rebasing is “a mode of adjusting water and sewerage rate and service expansion targets that is supposed to take place every five years throughout the 25-year life of the concession contracts” (Esguerra,2002:4)

In March 2002, MWSS extended the deadline for the payment of Maynilad's concession fees to 30 June 2003 from November 2002. Later that year, Maynilad filed a notice of early termination of the concession citing six basic reasons for its action which entirely blamed the MWSS. According to Maynilad, the MWSS violated the concession agreement, rate adjustments were not implemented, and the MWSS board resolution on Maynilad's concession fees was ignored. Further, the company alleged that the MWSS was not cooperative, imposed unreasonable demands regarding the concerns of term lenders, and non-compliance with its obligations under the CA.

The matter was submitted for an ad hoc arbitration to the Appeals Panel for Major Dispute (Appeals Panel) as provided under the CA in case of disputes. In November 2003, the Appeals Panel issued an order holding that neither the MWSS nor Maynilad has shown any ground for the termination of the concession, ordered Maynilad to pay the overdue concession fees and directed the parties to resolve the matter through extrajudicial means. A few days after the Appeals Panel rendered its decision, Maynilad filed a petition in a local court seeking debt relief and corporate rehabilitation. The MWSS then attempted to withdraw on Maynilad's performance bond to satisfy the maturing loans of the concessionaire. This prompted another round of legal battle which led to MWSS' elevation of the matter to the Supreme Court.

The government noted that this exchange of lawsuits is not doing the consumers any good. The government could not afford to accept the termination of the concession because it would be more costly for the government to do so. The CA stated that in case of early termination of the contract, the government would have to pay Maynilad an early termination fee estimated at ₱3-5 billion (US\$55-92.59 million).³⁷ Moreover, the government would have to reassume the management of Maynilad. The termination would also mean that the government would have to shoulder Maynilad's existing financial obligations to the MWSS, creditor banks and contractor/suppliers, which amounted to US\$351.05 million. In March 2004, the

³⁷ Based on 2004 exchange rate pegged at P54:US\$1.

government decided to takeover the Maynilad concession through the issuance of Amendment No. 2. The said issuance called for the quasi-organization and restructuring of the company to restore Maynilad's financial viability. The restructuring plan would effect the contribution by Suez and Benpres of their shares in Maynilad to eliminate the capital deficit, the partial draw on the performance bond, and the debt-to-equity conversion. Through a debt-to equity swap, Maynilad's loans to its creditor banks shall be converted into shares of stocks, which would thereby convert the banks from Maynilad's creditor to shareholders. The plans, however, does not guarantee success especially since the creditor banks are questioning the debt-to-equity scheme. According to one of the creditor bank, the East-West Bank, they are not keen in investing in a financially distressed company (Visto, 2004). They also deemed that the scheme may not legally feasible for two reasons: one, the General Banking Act of the Philippines prohibits banks from investing in so-called non-alliance financial undertakings; and two, it may violate constitutional limitation on foreign ownership of public utilities (Visto, 2004). Most of the creditor banks are foreign banks, and once debts are converted to share of stocks, these banks will become part owners of Maynilad. According to the MWSS-RO,³⁸ this new rehabilitation plan is now under discussion with the court-appointed receiver.

The turn out of the Maynilad concession has brought forth criticisms that the government failed to keep its promise that privatisation will improved the delivery of water services at an affordable (Buenaventura, Palattao & Nacpil, 2004; Esguerra, 2003). Manila Water, while as not as controversial as Maynilad, cannot be called as a success. While Manila Water's figures looked better, the critics advanced that it also failed to meet a number of its obligation such as the investment requirement and reduction of NRW. With the threat of another round of water rate increase starting next year by 36 percent and 21 percent for Maynilad and Manila Water, respectively, the future of water consumers at the Greater Manila area remains uncertain.

³⁸ Interview with MWSS official by email on 8 November 2004.

CHAPTER 3

WHAT WENT WRONG: ANALYSIS OF MWSS PRE-PRIVATISATION FACTORS

Throughout the early 1990s, water service within the MWSS service area was characterized by low pressure, illegal water connections and waterborne diseases.³⁹ Coupled with these disease outbreaks was the threat of El Niño which created an atmosphere of crisis. With the prospects for the MWSS clientele seemingly grim, the people were more easily convinced of a private sector role in the operation of the water utility (ICIJ, 2003). This chapter will look into the processes leading to the privatisation of the MWSS and analyse whether the basic principles that make a water concession work highlighted in Chapter 2 of this paper was taken into account throughout these pre-privatisation processes.

3.1 Impetus to Privatise: Water Crisis or Aid Conditionality?

Different countries have different problems and states should not assume that what worked in another country would necessarily yield the same results when applied to their country. It is important that privatization goals and process should be tailored to fit the local conditions of a country. The decisions to privatize should only be made when governments are genuinely convinced of its potential benefits. In most developing countries, water privatization was, however, imposed as conditionality for donor loans and grant packages offered by international financial institutions to promote the structural adjustment programs (SAP) (Gutierrez, et.al, 2003:10). According to Bob Carty (2003) of the International Consortium for Investigative Journalists (ICIJ), sixty percent of the World Bank's SAP loans require borrowing states "to privatize part of the state or part of the water utilities." Lack of ownership over the decision to privatize usually meant that the government is ill-prepared to tackle the challenges of privatization and to assume the new role they are faced with.

³⁹ From a record of 54 cases of cholera in 1991 to 480 in 1995, and a peak of 109,483 cases of diarrhoea-causing infections in 1997.

Privatisation of public services, particularly water utilities, has been noticeably accelerated in the late 1980s in poor and indebted developing countries. In great need of financial assistance, these governments have no choice but to yield to the conditions imposed by the IMF and the WB. This same pressure from IFIs, particularly the IMF, prompted the Argentinian government to privatise the Buenos Aires water utilities (Graham-Yooll, 2003). Before the Buenos Aires privatisation, the Argentinian economy was in “shambles” characterized by a “raging hyperinflation at a rate of five thousand percent a year and the entire public services and utility network was near breakdown” (Graham-Yooll, 2003). The privatisation initially led to increased service coverage. Subsequently, the operator had to increase rates to recoup its losses from the currency crisis. After failing to recoup its losses, the concession was eventually terminated.

As the Buenos Aires case has shown, an unstable macroeconomic environment is far from the ideal situation to launch privatisation. Gutierrez (2003) emphasized that good governance is a prerequisite in developing countries before market-based economies can emerge. Privatisation does not happen overnight and governments should ensure first that the overall policy environment in the country would allow the private sector to thrive (Gutierrez, 2003). According to Dunham, economic policy reforms yield better success in states that are capable of implementing firm decisions but in the long run, for the interest of the people as a whole.

The MWSS privatisation is a product of the so-called conditionality. As pointed out by Bello (2004), one of the leading critics of economic globalization, the Philippine government was a recipient of the World Bank’s SAP loans. While the worsening state of the water sector has been confirmed by Water Sector Study, it must be noted that this study which recommended the privatisation of public water utilities, was administered by the World Bank. The government’s decision to take over the operations of Maynilad’s has intensified anti-privatisation sentiments have intensified even more. This move by the government has given rise to allegations that the government’s move to privatise was not without any hidden agenda.

Similar to the Buenos Aires case, the economic and political conditions of the Philippines prior to the MWSS privatisation was also volatile. This resemblance should have served as a warning on the Philippines' readiness to undertake privatisation. As the analyses in this chapter and the following chapter will show, the Philippine government and the concessionaires turned out to be ill-prepared to deal with the challenges of a privatised water system.

3.2 Addressing the legal impediments

Not all issues may be adequately covered by the water concession contract and it is thus important that existing laws and regulations will be able to address those issues that may impede the expedient operations of the water utility (Kerf, 1998). As pointed out in chapter 2, the most common legal obstacles are the laws that prohibit or impose certain conditions on private ownership and operation of public services and foreign investment in infrastructure sectors.

Before the government proceeded to privatise the MWSS, the Ramos administration assured that the appropriate legal instruments that would facilitate the process were in place. The Philippine Constitution, however, limits the ownership of foreign companies in public utilities to a maximum of forty percent (Slattery, 2003).⁴⁰ In a study conducted by the Reason Public Policy Institute (RPPI)⁴¹ on the privatisation of water utilities in four cities,⁴² which included Manila, the constitutional limitation was identified as one of the reasons for Maynilad's financial problems. Since Maynilad's foreign partner, Ondeo, only owns 40 percent of the

⁴⁰ Section 11, Article XII of the 1987 Philippine Constitution states that "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty *per centum* of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years." "The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines."

⁴¹ The Reason Public Policy Institute is "a division of the Los Angeles-based Reason Foundation, Reason Public Policy Institute is a nonpartisan public-policy think tank promoting choice, competition, and a dynamic market economy as the foundation for human dignity and progress. Reason produces rigorous, peer-reviewed research and directly engages the policy process, seeking strategies that emphasize cooperation, flexibility, local knowledge, and results." <http://www.rppi.org/aboutrppi.html> (15 October 2004)

⁴² What went Wrong? Lessons from Cochabamba, Manila, Buenos Aires and Atlanta by Kathleen Slattery published in: <http://www.rppi.org/apr2003/whatwentwrong.html>

concession, its hands were tied in helping out its local partner out of its financial losses. The 2003 RPPI study further opined that vesting majority ownership in Filipino hands presumes that local firms are technically and financially capable of meeting the challenges connected with a water utility. Dumol, however, thinks the contrary. On hindsight, he believes that the participation of international water companies to participate in the operation of local water systems was not really crucial for the success of the Manila water concessions (ICIJ, 2003). Dumol is of the opinion that the Manila water concessions could have done away without the international water companies as the Filipino firms can be just as good when it comes to managing the day-to-day operations of the water utility (ICIJ, 2003).⁴³ What Dumol failed to consider, however, is the fact that these foreign firms has brought in 40 percent of the capital investment in each of the two consortium.

3.3 Splitting the Service Area

Due to the division of the service area, the government had decided to split up the existing loan of the MWSS between the two concessionaires. In a phone interview with the Administration Manager of the MWSS-RO, the split of the service area was made according to a technical study conducted on the hydraulic design of the water and sewerage system.⁴⁴ By splitting the service area into two zones, the government expected that the regulators would be given more leverage in their negotiation given that the performance of one concessionaire would be measured against the other. It was also expected to serve as a guarantee against service disruptions because if one of the concessionaires would be unable to fulfil its obligation, the other can take over.

While promoting competition was the primary objective for splitting the MWSS service area, previous has shown experience that this is not easily achieved. According to Eric Gutierrez, a former policy officer of WaterAid,⁴⁵ effective

⁴³ The Philippine Chamber of Commerce and Industry is lobbying the government to do away with the restrictions on foreign ownership of public utilities (Slattery, 2003).

⁴⁴ Phone interview with Director Virginia Octa on 15 September 2004.

⁴⁵ WaterAid is an international NGO dedicated exclusively to the provision of safe domestic water, sanitation and hygiene education to the world's poorest people by helping local organisations set up low cost, sustainable projects using appropriate technology that can be managed by the community itself. WaterAid also seeks to influence the

competition between water companies has not been realized in developing countries (2003). He noted that biddings for water concession in developing countries tend to be concentrated in the hands of “big players who have greater economies of scale and better credit-worthiness to access financing for a capital-intensive sector” (Gutierrez, 2003). This was proven true in the case of the Manila in view of the fact that the two winning concessionaires are two top global companies who partnered with major Philippine corporations owned by the richest and well-connected elite families, the Lopezes and the Ayalas.

To establish competition, the point of comparisons must be clearly defined to gauge the performance of one concessionaire against the other. In reality, however, the points of comparison were difficult to establish due to the manifest differences between the two zones, such as the amount of debt assumed, the number of population served, the total area of geographical network coverage, and investment requirements. The striking differences in the operating environment and investment requirements between the two service areas would therefore unsurprisingly translate into varying cost structures for each zone.

The skewed apportioning of the MWSS’ loans was aimed to balance the disparity between the two service areas. According to the IFC, since the West zone already had an extensive network it would require lesser investments for new facilities. The much smaller East zone, on the other hand, necessitated a higher per capita investment since its service area is mostly in the rural areas that would require investments for the construction of new pipe networks and would thus have to charge higher rates. Following this logic, the IFC believed that bidders would be more inclined to bid for the West zone rather than the East. In assigning the lower debt ratio to the East zone, the MWSS privatisation proponents hoped that companies would be attracted to bid for the said zone.

While it is true that the service area covered by the East zone is mostly rural, it was erroneous to presume that it would automatically demand bigger investments.

Table 6 shows that the West zone services more customers than the East zone and since these rural areas are less densely populated, there would be no urgent need to construct new distribution pipe networks. In areas where there are lesser customers to service, the concessionaires could use other ways of increasing network coverage other than building up a new distribution pipe network. As recounted in Chapter 3, the concessionaires provided shallow and deep wells in areas that were too far from water lines or where there is not enough water in the main water distribution source. The following chapter will discuss how the lopsided distribution of debt caused most of Maynilad's problems.

3.3 Technical, economic and financial analysis

The proponents of the MWSS wanted to make sure that the process would be as transparent as possible. Since the government had no prior experience with privatising a public water utility, the IFC was hired to assist in drafting the concession contract, and guide the government all throughout the bidding process. The choice of the IFC was primarily made on the role they played as consultants in the privatisation of the Buenos Aires water utility.⁴⁶

One of the important tasks of the IFC was to prepare the bid documents which would be the basis for the financial models that the bidders would submit to the government. According to Maynilad, the MWSS provided them with faulty information in the bid documents. The bidders were wrongly informed about the length of the pipe network for the West zone which was estimated at 2,500 kilometres. When the concessionaire commenced works on the network, it found out that there were actually 4,000 kilometres, 60 percent more than what was originally in the bid documents. The information provided by the MWSS was the basis of Maynilad's income and cost projections, and this error required additional investments on the company for the network's repair, rehabilitation and maintenance. Maynilad claims that this error on the part of the MWSS is partly to blame for the company's financial problems.

⁴⁶ Financing for the consultancy contract, at US\$6.2 million, was made possible by a French grant and a loan from a government financing institution.

It is important that technical, economic and financial studies are accurate and reliable but as pointed out in Chapter 2, the process of gathering certain information about the water network could be very expensive. Delmon (2001) suggested that governments should invest in this endeavour but the Philippine government did not have the resources to spare for such endeavour. No business transaction is without any risk, and more so in the case of the MWSS which was already riddled with problems prior to privatisation. The government should have properly apprised the concessionaires of the deficiencies on the information. This would have allowed the Maynilad to come up with a reasonable allowance on their projected investments in its financial model. Since the problems of the MWSS were not unknown to the companies, the bidders should have exercised due diligence to ascertain the extent of the risks involved in taking over an inefficient and debt-ridden government-owned public utility.

3.4 Selecting the Private Sector Participation (PSP) Option

The concession arrangement was the route chosen by the Philippine government as it was perceived to solve the MWSS' problem of underinvestment in the rehabilitation of the distribution system and expansion of water services in the Greater Manila Area. Under a concession arrangement, MWSS will transfer all its assets to both the concessionaires without any financial obligations to payback for the use thereof. With this arrangement, it was expected that the private companies would be able to finance the much-needed capital.

Because of the promising picture that a concession arrangement holds, this model was seen to be the answer to many poor countries' problems of low coverage and deteriorating pipe networks. The failed water concession contracts in Buenos Aires, Cochabamba and Atlanta, however, has brought to fore the issue on whether governments of developing countries are prepared enough to enter into concessions for pivotal public utilities such as water. More often than not, these countries lack the political and economic stability to guarantee a twenty to thirty year contract from uncertainties such as currency fluctuations, political instability and corruption.

Moreover, majority of the water consumers in developing countries are poor which would make cost recovery a challenge for the concessionaires.

To determine whether the Manila Water concessions are financially sustainable to begin with, a rough computation on costs and revenues will be made. Both concessionaires were expected to pour in US\$7.5 billion worth of investment over the 25-year period of the contract, or US\$300 million a year. On top of that, both concessionaires also have to service the MWSS' inherited debts. Over the 25 year period, Maynilad has to allocate US\$28.8 million a year for loan payments. For the first five years of the concession, Maynilad was expected to invest US\$42 million into the system or US\$ 8.4 million every year over the five-year period. Manila Water's loan payment, for its part, every year amounts to US\$3.2 million and was expected to invest US\$6 million for the first five years or US\$9.2 million per year. Roughly, Maynilad has to generate revenues of at least US\$62.8 million a year to recover the combined costs of loan payments and capital investments and US\$9.2 million for Manila Water. Table 1 would show that, based on the foregoing computation, except for 2002, Maynilad failed to earn sufficient revenues to recover its costs while Manila Water, on the other hand, managed to recover the cost cited earlier from 1997 to 2002. It must be noted, however, that other costs such as interest on the loans inherited from MWSS, payment for the new loans incurred by both companies, currency fluctuations, and the companies' maintenance and operating revenues were not considered in the rough computations made.⁴⁷

⁴⁷ Computations were made to give a general idea on the amount involved. Figures were derived from the researcher's rough computation based on available information. Since the researcher is neither an accountant nor a mathematician, and in view of the limited access to the concessionaire's book of accounts, she does not claim mathematical precision over the figures.

Table 8.1 Maynilad's Financial Standing

Year	Operating Revenue ¹ (OR)	Exchange rate ¹ (ER) US\$:PhP	Estimated Operating Revenue in US\$ (OR/ER)
1997	751,027,927.00	29	25,897,514.72
1998	1,662,196,828.00	40	41,554,920.70
1999	2,379,164,850.00	49	48,554,384.69
2000	2,678,013,000.00	44	60,863,931.82
2001	3,090,295,000.00	50	61,805,900.00
2002	5,575,490,000.00	51	109,323,333.33

Table 8.2 Manila Water's Financial Standing

Year	Operating Revenue ¹ (OR)	Exchange rate (ER) ¹ US\$:PhP	Estimated Operating Revenue in US\$ (OR/ER)
1997	421,413,000.00	29	14,531,482.76
1998	989,935,062.00	40	24,748,376.55
1999	1,309,533,356.00	49	26,725,170.53
2000	1,499,628,395.00	44	34,082,463.52
2001	658,551,158.00	50	13,171,023.16
2002	2,682,694,274.00	51	52,601,848.51

In transferring the MWSS' old debts, the same problems that plagued the MWSS were merely passed on to the concessionaires. Burdened with these debts and a volatile economy, raising the investments that the concessionaires committed themselves to have in fact proven to be a difficult task, which is contrary to what a concession arrangement envisioned.

3.5 Designing the Contract

At the outset, the bidding process for the MWSS privatisation seemed to have been above board, with the government carefully adhering to what it deemed were the "basics" of water privatisation. In addition, the government tried to learn lessons from previous international water privatisation experiences and hired an international

consultancy organization to assist the Philippine government in the MWSS privatisation process. A careful scrutiny of the contract would show, however, that the government failed to incorporate important issues therein that would eventually cause the contract's undoing.

Chapter 2 emphasized the need to specify the terms under which amendment and renegotiation in the concession contract could take place. While it is an accepted fact that the amendments to the concession agreement cannot easily be avoided, a carefully planned out contract should provide the terms and principles upon which the contract shall be subject to amendment or renegotiation. In the Manila water concessions, the terms and conditions under which a renegotiation should take place is nowhere to be found in the contract except for the requirement that any amendment shall be in writing and signed by the proper parties.⁴⁸ The negative consequences of this lacuna in the concession contract will be discussed in detail in the next chapter.

Earlier, the importance of adopting measures to ensure the creation of an independent regulatory office has been highlighted. Considering the varying interests of the different parties, i.e. the operator, the consumers and the government, the regulator must be able to balance these interests without yielding to pressure from anyone. With the creation of the MWSS-RO under the concession contract, it would seem that the government recognized the import of the regulatory office. But as pointed out in Chapter 2, it is necessary that the regulatory office should be created through legislation. This was also one of the main recommendations the IFC to the MWSS. IFC's prime argument was that it would guarantee that the decisions of the regulatory office would be fair and impartial, which would be beneficial to all parties involved. The government, however, was lukewarm to this proposal as the legislative process for the creation of such a regulatory office could be a lengthy one and could only delay the tight schedule of the MWSS privatisation (Dumol, 2000). In the government's desire to hasten the MWSS privatisation, it failed to incorporate in its timetable the enactment of a law creating the regulatory office.

3.6 Bidding Out the Concessions

Governments turn to private partnerships to augment the needed investment which the government lacks. At the prequalification stage, government should exercise due diligence in evaluating the companies' profile to ensure that the bidders are capable of not only managing, and operating the water project, but more importantly, financing it as well. Chapter 2 of this paper emphasized the importance of the prequalification process. The bidding process should be rigorous enough to ensure that only qualified bidders would participate therein. This to assure that only a technically competent and financially sound company would end up operating the water utility.

In the case of Maynilad, the government failed to carefully scrutinize the financial condition of Benpres Holdings Corporation. As the local partner in the Maynilad consortium, Benpres owns the majority shares and thus, was expected to provide a bigger portion of the capital investment required. The government should have ensured that Benpres Holdings could adequately meet the capital investment required. The government should have examined the finances of each of the companies under Benpres since as a holding company, the financial performance of each of the companies under it are consolidated under Benpres. It is not uncommon for businesses to engage in different business ventures and as such, the performance of one business subsidiary will affect its related businesses.

During the contract design, the economic consultants of MWSS, the NERA, proposed a rate rebasing scheme. A rate rebasing scheme is "a mode of adjusting water and sewerage rates and service expansion targets that is supposed to take place every five years throughout the 25-year life of the concession contracts" (Esguerra, 2002:4). The scheme was initially opposed by the MWSS because it encouraged the submission of so-called "dive bids." One speaks of a dive bid when a bidder bids "at such a low level that will require the company to operate at a loss" (Esguerra, 2003:16). It should be noted that "dive bids" are not *per se* inappropriate - Esguerra (2003) informs that dive bids are not unusual and has even become a norm among

⁴⁸ Article 16.2 of the concession agreement states that "any amendment of any provision of this Agreement shall be in writing signed by the parties and acknowledged by the Republic acting through the Secretary of Finance."

businesses. It is a known fact that companies were bound to experience significant losses during its first years of operation but is expected to yield higher returns later. In this case, however, it would seem that the bidders submitted dive bids on the assumption that they could negotiate having the terms of the contract changed in their favour later on. The financial consultants countered that should the bid submitted be unreasonably low, the concessionaires have no relief under the contract and would have to suffer the consequent losses from their “dive bids.” They could only petition for rate increases to recover losses until the next rate rebasing period, which is ten years from the commencement of the contract (Dumol, 2000).

Notwithstanding the assurance against low bids, the MWSS still found itself with extremely low bids, and in the words of Mark Dumol, he was “flooded” and even thought that the Ayala group could have actually made a mistake (Dumol, 2000). The initial suspicion that the low bids would eventually be unsustainable was proven true when Manila Water petitioned for an early rate rebasing schedule in 2001 - four years into the contract. Manila Water requested the MWSS-Regulatory Office for an amendment of its ADR⁴⁹ from its original bid of 5.2 percent to 18 percent (Esguerra, 2003). Details of the petition will be discussed in the following chapter.

When asked why the government didn't just let the companies suffer the consequences of their bids, as what they had originally intended, concerned government officials said that allowing the companies to suffer bankruptcy would do more harm than good (Esguerra, 2003). When the government decided to take over the Maynilad concession, it proposed for the company's quasi-reorganization instead of outright termination the contract. The MWSS deemed that terminating the concession contract will not yield the best possible financial outcome for all the parties involved. Terminating the contract would entail more costs for the government as the government would be required to pay Maynilad an early termination fee estimated at ₱3-5 billion, and reassume the debts transferred by the MWSS to the concessionaire (Art. 10.3.2 CA). Thereafter, the MWSS would have to take over once more direct operations over the water utility. The decision of

⁴⁹ ADR is the real weighted average cost of capital after taxes (Buenventura, et.al, 2004).

Maynilad's local partner, Benpres, to pull-out of the concession would thus show that the conditions under which the company was operating made it difficult for Maynilad to efficiently operate the water utility.

Esguerra (2003) further pointed out that the Department of Finance was under pressure to assist Maynilad. When Maynilad defaulted on its concession fee payments to MWSS in 2001, the Philippine government, as guarantor to these loans, was obliged to step in the shoes of the principal debtor. According to Buenaventura, Palattao & Nacpil (2004), while the concessionaires agreed to assume the debts of the MWSS to the World Bank's IBRD and the ADB, these remain the debts of the Philippine government as far as creditors are concerned. Payments for the old loans are sourced from the concession fee payments which the concessionaires' pay to the MWSS-RO who, in turn, remits the loan payments to the creditor. In the eyes of the MWSS' creditors there was no subrogation of credit. In the end, the government secured new loans⁵⁰ to pay for the loans when Maynilad defaulted from its concession fee payments starting 2001 (Fajardo, 2003). The government was thus faced with the dilemma of terminating the concession at the risk of shouldering Maynilad's entire financial obligation and be criticised for allowing the company to go scot-free. On the hand the choice is to negotiate the contract but send the wrong signal among potential investors that contracts with government are not secure and can be renegotiated anytime.

3.7 What Went Wrong

In developing countries, the privatisation of public services was usually driven by fiscal crisis, debt, donor pressure, or as a political last resort. In such cases, it has been observed that the privatisation process has usually been "abrupt, with little prior analysis of market conditions, leading to the importation of inappropriate models and without ample deliberation on the sustainability of reforms" (Desai & Imrie, 1998). Governments must show readiness and capability to privatise. It should not be too

⁵⁰ Defaulting on loan payments would mean an extension on the loan which would cost the government roughly P2 billion more a year (Esguerra, 2003).

hasty to replicate other countries' experiences as various differences in situation will yield differing results.

Transferring the responsibility of managing and operating public utilities to the private sector does not guarantee success. If the same problems that existed when the water utility was under the reins of the government still persist after privatisation, governments should not be mistaken to believe that the private sector would do any better. On top of that, the general environment upon which the market operates must be stable enough to protect the business sector from economic and political shocks. Privatisation of water services does not happen overnight. In the end, nothing beats careful planning. It is important that government must do its homework before engaging in such endeavour as privatisation of water utility is not a simple matter. At the prequalification stage, government should exercise due diligence in evaluating the companies' profile to ensure that the bidders are capable of not only managing, and operating the water project, but more importantly, financing it as well. Equally important is the thorough deliberation of the contract, making sure that the most critical issues are addressed therein.

This chapter has shown that much of the problems that confronted the Manila Water concessions started even before the contracts were signed. The government was ill-prepared in taking on the challenge that would befall privatised water utilities. Fiscal problems prompted the Philippine government to privatise. In adopting concession as a form of PSP option, the government expected that the needed investments to improve the water utilities would be addressed by the water sector. The government's decision to transfer the old loans and financing for old projects, in addition to the substantial amount of capital required from the concessionaires made it difficult to operate the water utility at a low cost. While the concessionaires managed during the first few years, the occurrence of the Asian financial crisis, which was further compounded by political instability was more than the concessionaires can take on.

CHAPTER 4

WHAT WENT WRONG: ANALYSIS OF THE POST-PRIVATISATION FACTORS

“No more fights in the water line, no more spending long hours waiting in line to buy water from water vendors who charged more than a third of a poor family’s income (ICIJ, 2003)” – or so they thought.

Seven years after the water concessionaires took over the MWSS, as this chapter would show, the problems that plagued the water utility prior to its privatisation once more became apparent and might even be worse this time around: debts, underinvestment, old and leaky pipes, and illegal connections (ICIJ, 2003). As shown in Chapter 3, the concessionaires failed to meet their investment targets as well as arrest water loss as shown by the high rate of NRW. Moreover, despite the promise of a more efficient delivery of water services without rate increases within the next ten years (ICIJ, 2004), the two companies have been racing each other in rate increases since 2001. As of this year, Maynilad has increased its water rates by more than five hundred percent⁵¹ while Manila Water’s rates have escalated by a little over six hundred percent⁵² (Buenaventura, Palattao & Nacpil, 2004).

This chapter will look into the events that took place following the awarding of the contract to the two concessionaires and how these have shaped the outcome of water privatisation in the Philippines.

4.1 Asian Financial Crisis or Financing Crisis?

As discussed in the previous chapter, the MWSS debts were distributed between the two concessionaires at a ratio of 90:10. When the Asian financial crisis⁵³ struck in

⁵¹ from P4.96 per cubic meter ($/m^3$) to P26.95/ m^3 in 2003.

⁵² from P2.32/ m^3 in 1998 to P15.65/ m^3 in 2004.

⁵³ From an exchange rate of P26:\$1 in 1997 when the concession agreement was signed, the value of the peso significantly devaluated for the next years: P40:\$1 (1998), P39:\$1(1999), P44:\$1 (2000), P50:\$1 (2001), P51:\$1 (2002), P53:P1 (2003), P54:\$1 (2004). http://www.bsp.gov.ph/statistics/stats_ex_archive.htm. While the financial crisis did affect the value of the peso, the political situation in the Philippines also contributed to the volatility of the peso, i.e. charges of graft and corruption against former President Estrada prompted the impeachment

1997, the massive devaluation of the Philippine peso against the US dollar affected the US dollar-denominated concession fee payments of both Maynilad and Manila Water.

From the year 1999, Maynilad and Manila Water have alternately petitioned the government for rate increases to cope with the losses resulting from the Asian financial crisis. Since Maynilad inherited the bigger debt proportion than Manila Water, the financial impact of the peso devaluation was greater on the former company than the latter. Maynilad reported that the crisis cost them foreign exchange losses amounting to \$120 million by the end of 2001 (ICIJ, 2003). Despite the rate increases, the financial condition of Maynilad continued to deteriorate. In 2001, Maynilad started to default on its concession fee payments and in December 2002, the company sought the termination of the concession agreement. Maynilad President, Rafael Alunan, largely blamed the government for its difficulties. According to Alunan, the company was burdened from the very beginning with a “flawed system” characterized by “defective water distribution system in its concession area, inaccurate and corrupted data about the concession, regulatory instability and government unresponsiveness” (Tubeza, Ubac & Cabacungan, 2004).

While the financial crisis could have put Maynilad at financial disadvantage, the ICIJ (2003) asserts the contrary. According to the figures of the MWSS financial regulation division, Maynilad’s concession fee payments remained relatively the same as the original projections (ICIJ, 2003) – from the PhP10.3 billion (US\$25 million) assumption in the business plan to PhP10.9 billion (US\$27 million) between 1997 and 2001. MWSS chief financial officer explained that only not all loans were billed by the creditors during the currency crisis. Only the amount that was due at the time of the crisis was affected by the currency devaluation and not the entire amount of the loan. Similarly, the currency crisis inflated the cost of inputs for investments. Jude Esguerra⁵⁴ (2003) on the other hand points out that the effects of the drastic drop of

proceedings against him which affected investor confidence on the country’s political stability. Eventually, President Estrada was forced to step down from office after a series of mass protests calling for his resignation.

⁵⁴ Jude Esguerra is the Head of the Economics Research Department at the Institute for Popular Democracy (IPD) in Manila and a PhD candidate at the School of Economics of the University of the Philippines where he has been studying concession contracts for water supply service in Manila. <[http://www.unrisd.org/unrisd/ website/ people](http://www.unrisd.org/unrisd/website/people).

the peso to the financial solvency of Maynilad could not have been as severe Maynilad claimed it to be. In Esguerra's study⁵⁵ on the Manila water concessions for Water Aid⁵⁶ and Tearfund,⁵⁷ it was informed that prior to the contract signing, both concessionaires were advised of a possible fluctuation on the exchange rate anticipated at a level of ₱35:US\$1 in 2000 from ₱26:US\$1 in 1997 (Esguerra, 2003). Should that happen, the concession agreement guaranteed the right of both companies to bring in additional equity or by tapping credit lines. Moreover, the effects of the financial crisis were anticipated during the formulation of the terms of the contract (Esguerra, 2003). The Concession agreement provided a mechanism to recover unanticipated foreign exchange (forex) losses through the EPA (Art. 9.3 of CA) whereby both concessionaires could recover additional costs incurred from peso devaluation. The agreement ensured that forex costs could be recovered with interest and on instalment over the life of the contract. In fact, the EPA provision favoured the concessionaires as it has notably reduced the risks on their part by shifting the risks to the consumers who shall eventually be burdened with higher tariffs as a result of the EPA implementation (Slattery, 2003). Both the concessionaires availed of this provision when, in 2001, the MWSS-RO allowed them to increase the tariff rates twice on account of the EPA.

If it is not due to continuing devaluation of the Philippine peso against the US dollar, why was Maynilad losing a lot of money? According to Philip Cases, a former MWSS official who now works for Maynilad, the company mainly directed its capital expenditures on expansion projects (ICIJ, 2004). For 2001, Maynilad's recorded service connections reached 577,637, exceeding its target of 574,590 (see Table 4).

nsf/0/7AA7DBC8BFB91667C1256F09004B02A3?OpenDocument&subsection=collaborating+researchers>
[Accessed 15 October 2004]

⁵⁵ The Corporate Muddle of Manila's Water Concessions, Water Aid and Tearfund 2003. <www.wateraid.org.uk/other/startdownload.asp?openType=forced&documentID=379> [Accessed 15 October 2004]

⁵⁶ WaterAid is an international NGO dedicated exclusively to the provision of safe domestic water, sanitation and hygiene education to the world's poorest people by helping local organisations set up low cost, sustainable projects using appropriate technology that can be managed by the community itself. WaterAid also seeks to influence the policies of other key organisations, such as governments, to secure and protect the right of poor people to safe, affordable water and sanitation services. <http://www.wateraid.org.uk/about_us/default.asp> [Accessed 15 October 2004]

⁵⁷ Tearfund works through local churches and Christian agencies for the world's poorest in helping them gain access to healthcare, literacy classes, clean water and sanitation, HIV/AIDS education, drug rehabilitation or food

Since Maynilad was not investing on the reduction of NRW, the company was losing a lot of money over lost water. In 2002 alone, majority or 68 percent of water distributed by Maynilad is NRW (Buenaventura, Palattao & Nacpil, 2004). The ICIJ (2003) also reported that Maynilad invested more on technical assistance, consultancy services and management fees.

According to Angel Alejandrino of the National Hydraulic Research Center, a loophole in the CA allows the concessionaires to pass the financial costs of water losses to the consumers by raising rates (ICIJ, 2003). It would be more costly to invest in NRW as it would entail repairing and replacing pipe network which are mostly buried underground. The concessionaires also would have to go through bureaucratic procedures to secure various permits to commence the repairs. Further, there was no compulsion on both the concessionaires (Manila Water also failed to meet its NRW targets) to reduce NRW since it is not a performance target under the CA, and at the same time, repairing water leaks does not offer the company a high rate of return (ICIJ, 2003). It would be cheaper and more lucrative for the concessionaires to provide new water connections. According to the ICIJ (2003), what a concessionaire would usually do is to provide a single water main into a community. Each household would be responsible in hiring a contractor to connect the household to the water main. The community would then put up a committee, which would be billed by the concessionaire. While the concessionaire does not make the individual household connections, it would still count each of the households a connection which increases their expansion targets (ICIJ, 2003). By doing so, the concessionaire avoids being penalized for failure to meet its service obligations.⁵⁸

To aid them out of their financial distress, Maynilad tried to secure new loans in the amount of US\$350 million. Potential creditors would grant the application if it deemed that Maynilad had a stable and regular stream of income enough to pay back the loan. To improve its credit rating, Maynilad had to show that it was earning.

security programmes. <<http://www.tearfund.org/About+us/Introducing+Tearfund.htm> > [Accessed 15 October 2004]

⁵⁸ Article 10.4 of the CA provides that a concessionaire shall be penalized for failure to meet service obligation which amount shall be equal to 25% of the costs that, in the reasonable opinion of the MWSS-RO, the concessionaire will incur in order to meet the service obligation in question.

Since Maynilad was losing money from unplugged leaks and stolen water, the company tried to increase its revenue collections through rate hikes, requests for which was approved by MWSS several times. Maynilad was even granted by MWSS a grace period for its concession fee payments until the approval of its US\$350 million loan application with the Asian Development Bank and other international financial institutions.

Maynilad's loan application was subsequently denied which what could have prompted Maynilad to issue a "notice of early termination" to the MWSS on 9 December 2002. According to Esguerra (2003), the bank might have not been convinced that Maynilad could pay back the loan through a "limited recourse financing scheme." Under this scheme, Maynilad used the future receivables of the project itself as security to the loan (Esguerra, 2003). As far as the banks were concerned, Maynilad lacked the credit worthiness they required from potential borrowers. Some financial analysts say that Maynilad should not have relied on foreign financing. Having inherited majority of the MWSS' previous debts which are mostly dollar-denominated, Maynilad could have increased its exposure to forex risks by applying for foreign loans (Llorito and Marcon, 2003).

Manila Water, on the other hand, did not encounter the same problem that Maynilad had in securing loans. Manila Water President Tony Aquino says the company obtained financing from local banks (US\$65 million), and the German Investment and Development Co. (US\$20 million). In early 2003, Manila Water was negotiating for a US\$ 50 million loan from the International Finance Corporation (Llorito and Marcon, 2003). As opposed to Maynilad, Manila Water gambled on its own assets – that of Bechtel's and Ayala's – by using their properties as collateral for its loans (Esguerra, 2003). Maynilad offered no reason for their choice of financing but Esguerra (2003) suggests that the decision was merely risk averse - by not advancing its assets as collateral, it was easier for Maynilad to risk bankruptcy. But judging from the reported financial condition of Benpres' other business ventures, it can be surmised that Benpres cannot afford to risk any more of its properties. While Maynilad continues to suffer heavy losses, Manila Water's reported earnings climbed

from P1.66 billion (US\$33.2 million) in 2001 to P2.5 billion (US\$ 49 million) in 2002, garnering a revenue of P176 million (US\$3.52) and P553 million (US\$10.84 million) respectively. This could be attributed to the fact that Manila Water inherited only 10 percent of MWSS' old loans as opposed to Maynilad's 90 percent. Manila Water benefited from the flawed assumption of the MWSS that the East zone would require a bigger amount of investment which what prompted the skewed apportioning of the debt in the first place. It may be recalled that, as mentioned in Chapter 2, Manila Water's investment undertaking for the first five years of the concession is lower than that of Maynilad's. Further, Manila Water invested more in increasing service connections than reducing NRW. For the year 2001, Manila Water's actual service connection was just one percent short (or 352,982 connections) of its service connection target of 378,670 (see Table 4). Manila Water's NRW for 2002 was three times (or 52.66 percent) its targeted NRW of 15 percent for 2002.

4.2 Regulating Water

Mark Dumol (2000) narrated in his diary⁵⁹ that the government privatisation team encountered the concept of "regulatory office" while the team was already in the stage of discussing the tariff escalation and the ADR. Recognizing the need to regulate water tariff rates and safety standards, a clause was inserted in the concession agreement creating the MWSS-RO (Dumol, 2000). As a creation of the concession agreement, the MWSS-RO is required to implement agreements and decisions reached by the MWSS Board and the private concessionaires. The MWSS-RO receives instructions from the Board, all of whom are appointed by the President of the Philippines and serve at the pleasure of the President. Dumol (2000) acknowledged that it was not a perfect arrangement but he says that it has worked so far – or so he deemed.

⁵⁹ This diary referred to is "The Manila Water Concession: A Key Government Official's Diary of the World's Largest Water Privatisation" published by the World Bank.(2000).

According to the Philippine Institute of Development Studies,⁶⁰ the present structure of the MWSS-RO exposes it to political opportunism (Llanto, 2004 as cited in Bello, 2004). The appointment of the officials of the MWSS-RO is vested with the President and all that a concessionaire needed to do to ensure that regulatory policies would work to their advantage was to maintain a cordial relationship with the Presidential Palace. Conversely, the government could wield its regulatory powers to advance its political goals. When the first wave of requests for water rate increases were granted under the Estrada administration, President Estrada was accused of having a hand therein in view of his affinity to the Lopezes.⁶¹ During the 2004 presidential campaign, the termination of the Maynilad concession became a highly contentious issue. Speculations abound that President Arroyo deliberately delayed the approval of the company's rehabilitation plan, (or what would later be known as Amendment No. 2) until after the 10 May 2004 presidential elections knowing that it would be unpopular to the public. The effect of private businesses and their political clout on contracts will be further discussed later in this chapter.

The fact that the budget of the MWSS-RO comes from concession fee payments undermines further its independence. This arrangement puts the MWSS-RO at the mercy of the concessionaires. Given the concessionaires' claim that they lost a lot of money due to the Asian financial crisis, they petitioned for rate increases to recover their losses. It could be possible that the MWSS-RO would be inclined to approve their petition to ensure that the concessionaires pay the concession fees that sustains the operations of the regulatory office.

⁶⁰ The Philippine Institute of Development Studies (PIDS) was established by virtue of Presidential Decree No. 1201 to respond to the critical and growing need for research for planning and policy formulation. PIDS is organized as a non-stock, non-profit government corporation. <<http://www.pids.gov.ph/about/index.html>> [Accessed on 15 October 2004]

⁶¹ President Estrada's only daughter, Jacqueline, married one of the Lopez's scions, Manuel in 1999, which was dubbed by one of Philippines' leading broadsheets, the Philippine Daily Inquirer as a "marriage of business and politics. The Lopez company, Meralco, headed by Manuel's father, Manolo, is set to renew various franchises with the Estrada-controlled Congress during his presidency. Moreover, the Lopezes' other power companies are competing for government contracts and assets soon to be put on the block by the National Power Corp. Espinosa-Robles, Raissa (1999), For Better Or For Worse. Asiaweek. <<http://www.asiaweek.com/asiaweek/magazine/99/0917/wedding.htm>> [Accessed on 15 October 2004]

According to former MWSS chief regulator Rex Tantiogco,⁶² there were differing opinions on the nature and functions of the MWSS-RO which created a split within the office during his tenure (ICIJ, 2003). Herman Cimafranca who replaced Tantiogco in 2001 maintains that when it comes to implementing orders and decisions, the MWSS-RO is virtually powerless - a “spineless and toothless tiger” (ICIJ, 2003). The MWSS cannot compel the concessionaires to cease and desist from implementing rate increases, and the concessionaires can even contest the regulator’s decisions before an international arbitration panel.

From the above, it has become evident that the MWSS-RO is not an independent body with an independent mandate and independent funding.

4.3 Contract Enforcement, Amendments and Renegotiations

The previous chapter discussed how the MWSS privatisation has painstakingly ensured that it has designed a good contract. As this research paper hypothesizes, a good contract alone does not guarantee a successful water concession but a combination of other factors, which were discussed under Chapter 2. Chapter 2 pointed out that a concession contract must be clear and comprehensive to minimize opportunities for unnecessary renegotiations. After signing the concession agreement, the government should ensure that the concessionaires adhere to its terms and conditions; otherwise it would render the whole privatisation process inutile. The inclusion of the terms and principles upon for contract amendment or renegotiation ensures that the contract would not be subjected to capricious interpretations by the parties. In cases where renegotiation cannot be avoided, both parties to the contract must be in good faith. In some countries, contractual difficulties have been resolved through adjustment of salient contract stipulations. During the 1990s, more than 55

⁶² Rex Tantiogco, who now works with the World Bank as a consultant for its water sector loans in the Philippines, now works with the World Bank as a consultant for its water sector loans in the Philippines resigned in 2001 claiming that he was fed up with the internal conflict in the Regulatory Office. Prior to his resignation, two other regulators accused Chief Regulator Tantiogco of attempting to exclude them from deliberations following their refusal to approve the companies’ petition for tariff hikes (ICIJ, 2003).

percent of privatised water utilities in water in Latin America were renegotiated (Slattery, 2003).

As discussed in Chapter 2, risks that cannot be assessed by the concessionaires better than its customers or those beyond the company's control should be shared with the customers. Among these risks would be unanticipated losses⁶³ from forex fluctuation. Under the concession agreement, the financial crisis constitutes as a "*force majeure*"⁶⁴ which merited an EPA. Therefore, increase in tariff to recover losses incurred from the financial crisis *per se* is not untenable but a mode of managing risks.

What was untenable with the amendment was that that it has immediately, completely and unduly encumbered upon the customers the concessionaires' forex losses. The collection of CERA is justified since the Asian financial crisis has indeed brought about forex losses to the concessionaires. With the further imposition of FCDA and AEPA, however, it seemed that the concessionaires had entirely passed on their losses to the consumers. In addition to the three charges, Maynilad and Manila Water consumers were induced to pay for Environmental Charge, the Maintenance Service Charge, the Sewerage Charge, and the VAT.⁶⁵ To make matters worse, Maynilad's rates for these charges were higher than what was actually prescribed by the MWSS, i.e. P4.07 per cubic meter in FCDA since 1 January 2002, and P4.21 per cubic meter in AEPA since 15 October 2001 which the company continued to bill its consumers even after the collection period has expired (Padilla, 2004). The absence of the terms and conditions for contract amendments and renegotiations in the concession agreement has made the contract vulnerable to regulatory discretion.

⁶³ This should not be confused with the losses incurred by the concessionaires due to dive bids as discussed in the previous chapter, in which case there is no available recourse for the concessionaires.

⁶⁴ Article 9.3 of the Concession Agreement provides that should certain unforeseen events occur during the term of the concession, rates may be adjusted (up or down) from time to time. Further, if the Regulatory Office finds that any of the grounds for extraordinary price adjustment (EPA) occurred, EPA shall be applied to the standard rates. Among the grounds for EPA under Article 9.3.1 is when the concessionaire has incurred significant additional costs as the result of an event of *force majeure* which are not covered by insurance. Under Article 16.10.1, *force majeure* shall include, among other things, "any other event or thing wherever occurring, which shall not be within the reasonable control of the party affected thereby.

⁶⁵ See Appendix E for sample water bill.

When the Panel rendered its decision on the termination cases filed before it by MWSS and Maynilad, it ordered Maynilad to pay concession fees and encouraged the parties to settle their disputes through extra-judicial means. The Panel also ordered Maynilad to discontinue collecting FCDA and AEPA from its customers since the company overcharged and illegally collected from its clients. Notwithstanding the CA provision that the Appeals Panel's decision shall be final and binding, Maynilad proceeded to file a case for debt relief and corporate rehabilitation before a local court in November 2003.⁶⁶ Maynilad's defiance of the order of the Appeals Panel has rendered ineffective not only the Panel's decision but the concession agreement as well. The latter part of this chapter will attempt to uncover the reason why the government cannot seem to compel Maynilad to comply with the contract nor the Panel decision.

4.4 Failure of Governance

In contracting the service of the private sector for water utilities, a government does not merely facilitate and supervise the privatisation process but also protects and enforces the citizens' rights and entitlements. The government should ensure that the contract contains such rights and entitlements and see to it that the contract is adhered to by the concessionaires.

An issue raised earlier in this chapter is that notwithstanding the government's efforts to formulate a "water tight and effective" concession agreement, why didn't the government oblige the concessionaires to adhere to it? To understand this, one has to take into account the political culture of the Philippines. In the Philippines, wealth is concentrated in the hands of a very few elite families. To protect their interests, these families would seek to extend their influence to the political sphere. McCoy (1993) best explains the economic relations between the Filipino elite and the Philippine state with the theory of "rent-seeking." Economist James Buchanan explains that "rents" are created when a "state gives an entrepreneur an artificial

⁶⁶ Article 12.5 of the Concession agreement states that "parties are required to submit their disputes before the Appeals Panel whose decision shall be final and binding upon the parties... the parties have agreed to waive their right to seek interlocutory or other relief from any judicial or regulatory body or other tribunal."

advantage by restricting freedom of entry into the market.” A reciprocal relationship is created between politicians and the elites: the former would seek the latter’s vast resources to support its political career in exchange of “rents” once elected in public office.

The Ayala and Lopez families, owners of the local firms who won the Manila water concessions, are not just two of the richest families in the Philippines today but among the most influential as well. The history of political dynamics between the economic elite and the political elite would show that politics played a big role in the turnout of the MWSS privatisation.

Benpres Holdings is owned by the Lopez family, an old and politically well-connected business family. The Lopezes have been known to support certain politicians sources spanning five generations and maintaining presidential ties all throughout.⁶⁷ Benpres Holdings is the flagship company of the Lopezes with interests in various sectors such as the country’s top media broadcasting company, cable television, telecommunications company, and electricity distribution, among its other business interests.

When the government decided to enter into a compromise agreement with Maynilad by virtue of Amendment No. 2, one of the vice-presidential contenders during the last Philippine national elections in May 2004 claimed that it was all about politics. Senator Panfilo Lacson, one of the candidates during the May 2004 Presidential elections, claimed that the alleged bailout could be part of a deal between President Gloria Macapagal-Arroyo and the Lopez family in exchange for popular broadcaster Senator Noli de Castro's joining the administration ticket as the President's running mate(Burgonio, et.al., 2004).⁶⁸ This event has subjected the government to further criticism. It may be recalled that earlier on, the government failed to compel Maynilad to adhere to the decision of the Appeals Panel.

⁶⁷ Except for President Diosdado Macapagal (1961-65). Although the Lopezes had a falling-out with former President Ferdinand Marcos, the former started out as an ally. See McCoy’s book for details (*Ibid.*).

⁶⁸ De Castro is a top talent in the Lopez-owned ABS-CBN television network.

Of Spanish descent, the Ayalas are not just business moguls but are also active in politics and governance as well, having known to have played prominent roles in the ouster from office of two former Philippine presidents, Ferdinand Marcos and Joseph Estrada (ICIJ, 2003). It was recounted in the previous chapter that the government was initially suspicious of the “dive bids” submitted by the Ayala Corporation. Despite that, and yet they succeeded to win the East zone concession through their subsidiary, Manila Water. A couple of years into the contract, Manila Water petitioned to amend the ADR. When the MWSS-RO disapproved its petition, the dispute was elevated to the Appeals Panel. Manila Water was granted a new ADR of 9.3 percent which the MWSS opposed before a local court but was later on reported to have been withdrawn by MWSS for unknown reasons. Subsequently, Maynilad’s own petition for AEPA on foreign exchange loss was granted by the government, which benefited the Manila Water as well (Esguerra, 2003).

The vast expanse of business interests of these two families have established them as key players in the Philippine economy, and as the foregoing have shown, their contribution to help the nation’s economy afloat apparently have not gone unnoticed.

According to David Dunham, economic policy reforms yield better success in strong states – states that are determined to implement firm decisions even if that may be unpopular in the short-term but in long run, able to muster the political support necessary to sustain these reforms. Thus, water privatisation can be better implemented in strong states but when government cannot protect the rights of the consuming public, water privatisation will not work. The Philippine government’s weakness to compel the water concessionaires to adhere to the concession agreement only gives credence to John Sidel’s (1999:10) characterization of the Philippine state as a “weak state confronting a strong society dominated by traditional elites.” And in the words of Alfred McCoy (1993), in the Philippines, privatisation of public resources only reinforced the stronghold of few fortunate families while weakening the state’s resources and political apparatus (McCoy,1993)

4.5 (Mis)managing the concession

It is an accepted business occurrence that companies operate at a loss or break even during the first few years of its operations. In the case of Maynilad, it has been barely five years since it assumed operations over the water utility when its local partner, Benpres decided to pull-out of the concession. Maynilad cited serious cash flow problems which it largely attributed to the Asian financial crisis and the failure of the government to offer them assistance out of their financial troubles as the reasons behind their decision.

As shown earlier in this chapter, the Asian financial crisis is not the main culprit for Maynilad's present state. Unsound management decisions also account for the company's troubles: failure to invest in the reduction of NRW, opted to seek foreign financing while still servicing dollar-denominated loans inherited from MWSS, and it used a limited recourse financing scheme as a security for its loan application. According to the Freedom from Debt Coalition⁶⁹ (2004), Maynilad's progressively high debt-to-equity ratio⁷⁰ indicated poor financial management of the water company. As of 31 December 2002, the company's total liabilities amounted to PhP15.9 billion while stockholders equity remained constant at PhP5.3 billion. This means that Maynilad's debt was thrice as large as its market value (FDC, 2004).

One also has to look at Benpres Holdings' other business ventures to understand Maynilad's financial problems. According to a Kim-Eng Securities⁷¹ analyst, the Lopez family was aware that it can no longer bring in new investments to Maynilad as their other companies were undergoing restructuring processes (Burgonio, et.al., 2004). Benpres Holdings has been on the red since 2000 with its reported net loss of PhP420 million for that year, PhP9.93 billion in 2001, and

⁶⁹ The FDC is a nationwide coalition in the Philippines that conducts advocacy work in the national, local and international arenas. Advocacy focus on fiscal, monetary and debt issues related to the Multilateral Development Banks. Also work on social service provision particularly power and water. For more information on the organization's work, see www.freedomfromdebtcoalition.org.

⁷⁰ From 2000-2002, the company's debt-to-equity ratios of 1.7, 2.66 and 2.00 respectively, have breached the acceptable range of 0.5-1.5 (FDC,2004).

⁷¹ Kim-Eng Securities is a securities broker which provides a wide range of investment and securities services to its client base of corporate and middle-to-high-income individuals <<http://www.kimeng.co.th/cop.asp>>.

PhP1.06 billion in 2002 (Burgonio, et.al., 2004).⁷² This sparked rumors that Maynilad's mother company was under serious financial difficulties, which could have affected Maynilad's chances to secure new loans (Llorito and Marcon, 2003). Divesting from Maynilad was an obvious option for Benpres to lessen its mounting financial difficulties. This leads one to wonder whether the company was financially sound to begin with when it assumed operations over the water utility in 1997.

Critics⁷³ largely blame IFIs and international water companies the "water barons"⁷⁴ for the failure of water privatisation in developing countries. They claim that IFIs are conniving with the "water barons" in the latter's efforts to create the market for water and earn profit from it. The previous chapter has established a link between the MWSS privatisation and donor pressure. This claim however could not be applied in the case of Maynilad. This chapter has shown that the management did not exercise due diligence when it assumed ninety percent of MWSS' existing debts. As the majority shareholder, decision-making within Maynilad was controlled by Benpres Holdings, the majority shareholder of the company. Manila Water on the other hand is now fully-owned by Ayala Corporation. The 2003 Stockholders' Report of Manila Water announced that the concessionaire's international partner, International Water (MWC), decided to divest its investments, no reasons were cited however.

Compared to Maynilad, Manila Water seemed to be performing better. The foregoing facts showed however that Manila Water cannot claim complete success. While its operations were not riddled with controversies, it too failed to meet most of the service obligations that it committed itself too under the concession agreement.

⁷² The company has yet to release its financial report for 2003.

⁷³ Among the most prominent critics are the Public Services International <www.psiru.org>, Jubilee 2000 <www.jubileeresearch.org> and the Blue Planet Project <www.blueplanetproject.net>.

⁷⁴ See Bill Marsden's Cholera and the Age of the Water Barons posted at <<http://icij.org/water/printer-friendly.aspx?aid=44>>.

4.6 What went wrong

Governments in developing countries resort to water privatisation on the premise that it would bring in the much-needed capital investment to improve and expand the system. Moreover, the private sector's philosophy of corporate governance was expected to professionalize the management of the water utility. The foregoing events have shown, however, that the private sector miserably failed to live up to the expectations.

The World Bank's proposition that privatisation translates to investments has been proven wrong in the MWSS privatisation. Both concessionaires failed to bring in the capital investments which they committed themselves to when they assumed the water utility.

The careful planning of the concession agreement does not guarantee the success of the water concessions. Most of the service obligations in the concession agreement were not met by either of the concessionaires. On the part of Maynilad, it showed that it did not possess the management competence and expertise often attributed to the private sector in view its unsound business decisions.

The seeming complacent attitude of the water concessionaires towards the concession agreement may have been unwittingly prompted by the Philippine government itself. In failing to establish an independent MWSS-RO, the office became susceptible to political pressures. The two water concessions are controlled by the two most influential and richest families in the Philippines who only need to flex their political muscles to ensure that regulatory policies would work in their favour.

As shown in the previous chapter the flawed decisions made by the Philippine government on the MWSS privatisation largely contributed to the failure of the process. The attempt of the local partners of the consortium to could also be attributed to the pre-privatisation errors. Though their act of flexing their political influence cannot be justified, it must be noted that the conditions upon which the concessionaires were operating made it difficult for them to operate at a low cost. As

this chapter has shown, the water concessionaires' failure to fulfil their service obligations may be partly to blame for the foundering of the MWSS privatisation. The Philippine government's wrong choices of decisions can largely be held responsible for the failure of the Manila water concession.

CHAPTER 5

CONCLUSIONS AND LESSONS

FROM THE MANILA WATER CONCESSION

The rapid urbanization in developing countries coupled with the declining economic performance have found governments in a quandary as to how to address the increasing needs of its populace and ensure that everyone has adequate access to basic services, particularly to water supply and sanitation. Faced with these problems, governments of developing countries find themselves running to the IMF/WB for financial assistance. The IMF/WB would oblige themselves to help out but not without doing its own examination to unearth the root of all the problems of these countries. The diagnosis has been that many of the difficulties of most developing countries are fiscal-related problems which require fiscal discipline. One cause of fiscal problems is the propensity of governments of developing countries to engage in activities that could possibly be performed by the private sector more efficiently. In which case, the most logical solution, according to the IMF/WB, is to privatize these enterprises which include water and sanitation services. Having identified the source of the problem, the IMF/WB would extend the much needed loan to improve the liquidity of government finances but on the condition that structural reforms would be implemented. By implementing structural reforms, the IMF/WB believes that the borrowing country's financial condition would improve which would then guarantee that the borrower would have sources of revenue to repay back the loan.

In privatising water utilities, the WB's package of assistance also includes "how-to" manuals to guide governments in privatising their water utilities. The WB recommends a wide range of PSP options that countries could choose from to address the wide range of problems that may afflict their respective water utilities. In the case of the MWSS, the most pressing problem was the lack of investment to fund the rehabilitation of deteriorating pipe networks and the expansion of water services to household with no access to piped water. In the WB manuals, the readily available solution to this problem is a water concession arrangement. According to the WB, a

successful water concession required the establishment of a broader legal and institutional environment governing the concession's design, award and operations and getting the concession contract right.

Aided by the WB's prescription for water concessions and assisted by an international consultant experienced in water privatisation, the Philippine government proceeded to privatize the 119-year old MWSS. Carefully following the guidelines, the government ensured that the legal basis for privatisation was enacted before it proceeded to bid out the MWSS. Technical, economic and financial studies were conducted, wherein the information generated guided the bidders in developing their financial proposals. Not only did the government follow the existing guidelines on privatisation, it also referred to experiences of other countries in water privatisation. Following the Paris experience, the government decided to divide the MWSS service area into two: the West zone and the East zone. Noting the similarities between Buenos Aires and Manila, the government also decided to adopt the concession arrangement. This was followed by the drafting of the concession contract. A successful water concession required the creation of a regulatory body and so the Philippine government ensured the existence of one by including in the contract the creation of the MWSS-RO. Finally in 1997, after two years of planning the MWSS privatisation, the government awarded the Manila water concessions to two private consortiums: Maynilad and Manila Water.

Initially, the public welcomed the privatisation as the rates were lowered to 73.6 percent in the East zone and 43.3 percent in the West zone. The sentiments changed however when after several incremental rate adjustments, both the concessionaires managed to convince MWSS to issue an amendment to the concession contract which allowed them to increase the water rates. The said increase was to compensate for the losses the companies had incurred by the devaluating Philippine peso. The said amendment additionally allowed Maynilad and Manila Water to impose other charges such as the FCDA and the AEPA to the consumers. Despite such increases, Maynilad, still failed to improve its financial conditions which prompted them to issue a notice of early termination of the concession agreement in 2002. This prompted an exchange of legal actions between Maynilad and the

government. Fearing for a possible outcome of Maynilad's sudden withdrawal from delivering water to over 7.3 million consumers, the government decided to takeover the operations of the concession early 2004. To ensure the long-term viability of Maynilad, both parties agreed to the implementation of a restructuring and quasi-reorganization of the company.

To date, Maynilad's financial obligations to the MWSS, creditor banks, and contractor/suppliers are around US\$351.05 million. The main strategy proposed to resuscitate Maynilad's ailing finances is the debt-to-equity swap. Under this scheme, Maynilad's bank loans will be converted into shares of stocks, which would effectively transform the creditor banks into shareholders of the company. The government guarantees that this scheme will turn around the financial conditions of Maynilad. Despite the government's assurance, the concession's future nonetheless remains uncertain with the pending approval of the court handling the rehabilitation of Maynilad. Moreover, creditor-banks feared that the debt-to-equity swap may run counter to the Philippine Constitutional provision on limited ownership of foreign corporation in public utilities. Since most of the creditor-banks are foreign banks, converting the debts into shares of stock would make these banks part owners of Maynilad.

On the part of Manila Water, while it is not embroiled in controversies like Maynilad, its management of the water concession is short of being called a success as well. Its figures may look better than Maynilad but the fact is it failed to measure up its service obligation targets it had stated in the concession agreement with the Philippine government. Manila Water also failed to meet the amount of investments it committed itself to and has been miserably unsuccessful in reducing its non-revenue water.

Seven years after the government promised an improved delivery of water services at an affordable price, the foregoing turn of events brings consumers of both concessionaires an uncertain if not bleak future. To make matters worse, the government recently announced that starting next year, Maynilad's and Manila Water will be allowed to increase water rates by 36 percent and 21 percent, respectively.

When the Ramos administration awarded the Manila water concession in 1997, it was optimistic that the privatisation would deliver on its promise of more investments, improved services and increased coverage. What went wrong? A review of what transpired before, during and after the MWSS privatisation revealed the following deficiencies:

1. *Absence of an independent regulatory body*

The literature on water privatisation emphasized the importance of an independent regulatory agency that would be able to balance the competing interests of the concessionaires, the government and the consumers. To shield the regulatory agency from political maneuverings, the literature recommends that the mandate of said agency must be clearly defined by law. Its officials shall be appointed according to specific qualifications and for a fixed period and their removal from office will be on the basis of grounds specified by law. Equally important is that the agency's funding should be sourced from independent funding. In all aspects, the MWSS-RO failed to meet these criteria. The MWSS-RO was created under the concession agreement without specifying the qualifications, terms of office and grounds for removal of its officials. Officials of MWSS-RO were all appointed by the government. Moreover, the regulatory agency's budget depended on the concession fee payments from the concessionaires. These conditions did not guarantee the independence of the MWSS-RO which made it open to attacks that the decisions of the regulatory agency were made at the behest of the President and her political allies. The closeness of the Arroyo administration to the Lopez and Ayala families, majority owners of both consortiums and both aligned with the President Arroyo's camp. This spurred rumours that the relationship of the two most influential families in the Philippine economy with the President influenced the decisions of the MWSS-RO on the issues confronting the concessions.

2. *Failure to specify important stipulations in the concession contract*

The importance of a sound contract with clear and comprehensive terms and conditions is emphasised in the literature on water privatisation. Among the crucial

terms that should be specified in the contract are the terms for amendment and renegotiation. As much as possible, it is prescribed that terms of the contract should leave no room for interpretation; otherwise it makes the contract susceptible to amendment and renegotiation which could only undermine the bidding process. There are instances, however, where renegotiation cannot be avoided, especially in long term concession contracts, to address the changing conditions over time which could not have been anticipated by the contract. A careful scrutiny of the Manila Water concession contract showed that this important stipulation was missed out. The absence of this stipulation justified the MWSS-RO's issuance of amendments to crucial provisions in the contract such as the ADR, and rate rebasing period, and imposed additional charges on the customers such as the FCDA and AEPA.

The contract additionally failed to require the reduction of NRW as a service obligation. A review of the operations of both the concessionaires revealed that much of the water they produced is lost to old and leaky pipes, and illegal service connections. Instead, the contract stresses importance to increasing service connections. While this obligation is also important, the concessionaires focused more on investing in increasing connections as it assures them guaranteed earnings for every household they connect to the system. Since a loophole in the contract allows them to recover the costs of such losses from the consumers, there was no motivation for concessionaires to reduce NRW as this endeavour is less profitable.

3. *Weak governance*

After all the necessary steps for privatisation have been observed, the literature states that subsequently, the success of a water contract ultimately depends on good governance. This the Philippine government failed to demonstrate when it showed how weak it was in compelling the concessionaires to abide by the decision of the Appeals Panel on the issues brought before it regarding the concessions, despite the contract stipulation that the decision of the Appeals Panel is final and binding upon the parties.

This paper hypothesised that a successful a water concession requires existence of a legal and regulatory framework as well as a good contract design. The failure of the MWSS privatisation which resulted from the foregoing deficiencies seemingly validates this hypothesis. However, the story of the Manila water concessions does not end there. The non-adherence to what could be called the “basics” of privatization prescribed by the WB could have partly contributed to the failure of the Manila water concessions. For the most part, however, the future of the MWSS privatisation has been cast from the very start of the privatisation process: it was doomed to fail from the very beginning. Much of the problems could be traced back to unsound decisions of the Ramos administration to exercise due diligence at the pre-privatisation stage. The government at the time was suffering from a ballooning budget deficit and huge public sector debt. Upon the advice of the WB, the government privatised the MWSS. The government committed a grave error when it trustingly relied on the WB’s assurance that sticking to the basics would guarantee success. The government for the most part tried to follow the basics. However, even if the government managed to follow the guidelines to the letter, success would still have been difficult to achieve. These factors do not exist in a vacuum, it exists within a larger picture – macroeconomic and political conditions of the country, which cannot be controlled by a concession contract.

It was wrong for the Philippine government to assume that privatising the MWSS would be the solution to the problems in water supply and sanitation when the same problems that plagued the MWSS water utility in government hands were merely transferred to the private sector. With this I refer to the fact that the water concession contract required the concessionaires to assume the old debts of MWSS and finance the payments for the pending water supply and sewerage projects of the MWSS, with Maynilad inheriting the huge chunk of the old debts. On top of these obligations, the government required the concessionaires to infuse a total of US\$7.5 billion worth of investments (or average of US\$300 million a year). The government opted for the concession fee arrangement as it would transfer the responsibility of infusing the necessary investments to the private sector. The concessionaires, however, would have to recover their costs, especially since at the end of the 25-year

contract, all assets, including those investments infused by the concessionaire to the water concession, and would have to be reverted back to the government with receiving any compensation for this.

For the first couple of years, both the concessionaires seemed to be managing well. They only requested for incremental adjustments but the resulting rates were still considerably lower than the rates before privatisation. But the currency crisis further compounded by political instability in the Philippines had its effects on the value of the Philippine peso and it severely affected the financial solvency of the companies. Consequently they tried to charge these unforeseen costs to the consumers by charging them higher rates. Ironically, with such high water rates, the poor consumers would not longer be able to afford the water offered by Maynilad and Manila Water, and thus defeating the very purpose of privatisation which is to extend services to the unserved population. Burdened with losses from the currency crisis on top of debt servicing and raising the investment requirements, the concessionaires turn to financing institutions for loans to fund their investments. A portfolio that is debt-ridden and no track record in the business of water do not present a rosy picture to creditor banks. In the end, a water concession arrangement turned out to be inappropriate for the MWSS.

Maynilad was deemed the bigger failure. The circumstance under which it operated could have provided a glimpse of its future – the concessionaire inherited 90 percent of the loans, serviced the bigger zone, and required to raise a larger amount of capital investments. Moreover, Benpres, the majority owner of Maynilad, was losing a lot of money from its other business interests. The loans plus the investment plus the currency crisis plus a losing company easily spells disaster. On the other hand, the companies are not without any fault. Submitting dive bids could have helped the concessionaires win the contract but such move made it difficult for them to recover the huge costs required which was no secret to them in the first place. But the government takes part of the blame. Dumol (2000), one of the key players in the MWSS privatisation, related that the privatisation team had suspicions on the sustainability of such dive bids and yet, the bidders still ended up with the concession

contract again because they are already aware that the companies submitted very low bids.

The case of the Manila water concession leads this research paper to reject its hypothesis that creating a legal and regulatory framework and designing a good contract would make a water concession contract work. The parties assumed that the stipulations of the contract could counter any crisis but in the end it did not. In a rush to privatize, government overlooked the fact that privatisation exists within a larger economic market. While the government cannot be expected to control all crises, it can however set sound policies that can cushion its impact on the businesses. This case study has shown that when privatising the delivery of water services and sanitation, government should not make the mistake of believing that a legal and regulatory framework, and a good contract guarantees a successful water concession.

Moreover, the case of the Manila water concession, while only one case, also speaks a lot on the debates on privatisation. This case suggests strongly that the regime of ownership, whether in public or private, does not determine the success of a water utility. The failure of the MWSS privatisation gives credence to the claim of anti-privatisation groups that privatisation is not a panacea. Corollarily, this research also suggests that water in private hands was not worse off than in public hands. Since this is only one case of failed water privatisation, this observation may be inconclusive and for that matter it brings about agenda for future research:

- 1) That the theory of getting the “basics” right as prescribed by the IFIs do not really fit into the reality of water privatisation;
- 2) That debates on delivery of water services should not solely focus on the current debate on privatisation, i.e. whether it should be in public or private hands;
- 3) That whether in public or private hands, exogenous factors, such as macroeconomic and political conditions, and international economy play a much bigger role.

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BIBLIOGRAPHY

- Alexander, Nancy (2002) *Who Governs Water Resources in Developing Countries? A Critique of the World Bank's Approach to Water Resources Management. Citizens' Network on Essential Services*. [Internet] <<http://www.servicesforall.org>> [Accessed on 15 July 2004]
- Amojelar, Darwin G. (2004) *Maynilad customer face 35.4% tariff hike if court approves new rehab plan*. [Internet] <<http://www.manilatimes.net/national/2004/sept/11/yehey/business/2004091bus2.html>> [Accessed on 15 July 2004]
- Araya, Alfred A., Jr. (2003) *Coalition Calls for Transparency in Maynilad-MWSS Arbitration Process*. [Internet] Cyberdyaryo <http://www.ipd.ph/batay_tubig/news/calls_for_transparency_in_Maynilad.htm> [Accessed on 15 July 2004]
- Awortwi, Nicholas (2003) *Getting the Fundamentals Wrong: Governance of Multiple Modalities of Basic Services Delivery in Three Ghanaian Cities*. The Hague: Shaker Publishing BV
- Bakker, Karen *Good Governance in Restructuring Water Supply: A Handbook*. [Internet] Ontario, Federation of Canadian Municipalities <<http://www.Servicesforall.org/html/Regulation/Bakker-Good%20governance.pdf>> [Accessed on 15 July 2004]
- Barlow, Maude and Tony Clarke (2002) *Blue Gold: The Battle Against Corporate Theft of the World's Water*. London, Earthscan Publication Ltd.
- Basilio, Robert JA, Jr.(2004) *Government may still own 70% of Maynilad after all* [Internet] <<http://www.manilatimes.net/national/2004/oct/04/yehey/business/20041004bus1.html>> [Accessed on 15 October 2004]

- Bello, Walden (2004) *The Anti-Development State: The Political Economy of Permanent Crisis in the Philippines*. Quezon City, University of the Philippines.
- Bennett, Anthony (ed.) (1997) *How does Privatisation Work? Essays on Privatisation in Honour of Professor V.V. Ramanadham*. London and New York: Routledge.
- Bidding for Private Concessions: The Use of World Bank Guarantee* (1998) RMC Discussion Paper Series 120 [Internet] <rru.worldbank.org/PapersLinks/open.aspx?id=215> [Accessed on 15 October 2004]
- Brook Cowen, Penelope J. (?), *Bailout: The Global Privatisation of Water Supply* [Internet] <www.worldbank.org/html/fpd/urban/urb-age/winter99/bail.html> [Accessed on 15 October 2004]
- Buenaventura, Mae, Bubut Palattao, and Lidy Nacpil (2004) *Debt, Trade and the Privatisation of Water Services: The Philippine Experience*. Quezon City, Freedom from Debt Coalition.
- Bunye, Ignacio (2004) *View from the Palace*. [Internet] <http://www.new.op.gov.ph/march27_2004.htm> [Accessed on 27 March 2004]
- Burgonio, TJ, Juliet L. Javellana, Elizabeth Sanchez, and Christine Gaylican (2004). *Maynilad Bailout Rapped*. Philippine Daily Inquirer [19 March 2004] [Internet] <http://www.inq7.net/nat/2004/mar/20/nat_1-1.htm> [Accessed on 15 July 2004]
- Camdessus, Michel (1998) *The IMF and Good Governance*. Address at the Transparency International, Paris ,France (21 January 1998) [Internet] <<http://www.imf.org/external/np/speeches/1998/012198.htm>> [Accessed on 27 March 2004]

Carty, Bob, "Q and A." Interview by CBC Radio (4 February 2003)
<<http://www.cbc.ca/news/features/water/qanda.html>> [Accessed on 15
October 2004]

Causes of poverty and a framework for action (2000). Chapter in World
Development Report 2000/01 on Attacking Poverty. Pp. 31-41. [Internet]
<<http://www.worldbank.org/poverty/wdrpoverty/report>> [Accessed on 15
October 2004]

Chotrani, Raj (1999) Lessons from Philippines Water Privatization. Asian Water
(July 1999) [Internet] <www.mwss.gov.ph> [Accessed on 15 October 2004]

Confederation for Unity, Recognition and Advancement of Government Employee
(1999) "MWSS: A Done Deal, A Model in Privatisation." Manila
(photocopy).

_____. "The Plague of Privatisation." Manila (photocopy).

Contreras, Antonio P. (2002) *Is There Still a Need to Legislate? A Water Policy
Agenda*. Philippine Institute for Development Studies Development Research
News, Vol. XX, No. 4.

Cuaresma, Jocelyn (2003) *Water in Private Hands: Impact on Governance and the
Urban Poor*. In Conference on Challenges to Development: Innovation and
Change in Regulation and Competition, 13-15 October 2003, Mandaluyong.
Quezon City, University of the Philippines

Delmon, Jeffrey (2001) *Water Projects: A Commercial and Contractual Guide*. The
Hague, Kluwer Law International.

Desai, Vandana and Rob Imrie (1998), *The New Managerialism in Local Governance*.
Third World Quarterly, Vol.19, No.4, pp.635-650.

Designing and Implementing an Option for Private Sector Participation (1997).
Washington D.C.: The World Bank.

- Diokno-Pascual, Maria Teresa. *The Privatisation of Philippine Water and GATS*, speech delivered at the United Nations, New York, 20 March 2003.
- Dumol, Mark (2000) *The Manila Water Concession: A Key Government Official's Diary of the World's Largest Water Privatisation*. The World Bank, Washington, D.C.
- Elazegui, Dulce D. (2001) *Watering Down the Water Problem: An Institutional Perspective*. Philippine Institute for Development Studies (PIDS) Policy Notes No. 2001-15.
- Esguerra, Jude (2003) *The Corporate Muddle of Manila's Water Concessions*. London, Water Aid and Tear Fund. [Internet] London, Wateraid and Tearfund <www.wateraid.org.uk/other/startdownload.asp?openType=forced&documentID=379 -> [Accessed on 15 August 2004]
- _____ (2002) *Reckoning Time for Water Privatization*. Political Brief Vol.10 No.6 (December 2002). Quezon City: Institute for Popular Democracy
- Feigenbaum, Harvey, Jeffrey Henig and Chris Hamnett (1999) *Shrinking the State: The Political Underpinnings of Privatisation*. Cambridge: Cambridge University Press
- Figueres, Caroline M., Cecilia Tortajada and Johan Rockstrom (eds.) *Rethinking Water Management: Innovative Approaches to Contemporary Issues*. London: Earthscan Publication Ltd.
- Ginneken, Meike van, Ross Tyler and David Tagg (2004) *Can the Principles of Franchising be Used to Improve Water Supply and Sanitation Services?* Water Supply and Sanitation Sector Board Discussion Paper Series Paper No. 2. The World Bank, Washington D.C.
- Graham-Yooll, Andrew (2003) Argentine Model in Trouble, Once an Example to the World. The New Courier [November 2003] [Internet] <<http://>

portal.unesco.org/en/ev.php-URL_ID=14363&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html> [Accessed on 15 October 2004]

Grindle, Merilee and John Thomas (1991) *Public Choices and Policy Change: the Political Economy of Reform in Developing Countries*. Johns Hopkins University Press, Baltimore and London.

Gutierrez, Eric, Belinda Calaguas, Joanne Green and Virginia Roaf (2003) *New Rules, New Roles: Does PSP Benefit the Poor? Synthesis Report*. London: Wateraid and Tearfund [Internet] < www.wateraid.org.uk/other/startdownload.asp?openType=forced&documentID=393> [Accessed on 15 October 2004]

Gutierrez, Eric (2003) *Privatisation and the failed promise of free market theory in water services provision: towards developing an alternative theoretical framework*. In PRINWASS International Conference, 2nd, 2-3 April 2003, Mexico City [Internet] <www.geog.ox.ac.uk/~prinwass/Gutierrez1.PDF> [Accessed on 15 October 2004]

Haarmeyer, David, and Debra G. Coy (2002) An overview of private sector participation in the global and US water and wastewater sector. In *Reinventing Water and Wastewater Systems: Global Lessons for Improving Water Management*, P. Seidenstat, D. Haarmeyer and S. Hakim (ed.), 7-27. New York: John Wiley and Sons.

Helvetas Water Conference (2003) “*Water Privatisation: the Philippine Experience*.” In *Water in People’s Hands*, 15 March 2002. Quezon City: Freedom from Debt Coalition.

IBON Features (2003), *Consumers Form Group Against Water Privatisation*. Vol. X, No.1 [Internet] <www.ibon.ph> [Accessed on 15 October 2004]

International Bureau of the Permanent Court of Arbitration (2003). “*Resolution of International Water Disputes*.” In PCA International Law Seminar, 8 November 2002. The Hague: Kluwer Law International.

International Consortium for Investigative Journalism (ICIJ) (2003) *Loaves, Fishes and Dirty Dishes: Manila's Privatized Water Can't Handle the Pressure*. Center for Public Integrity (February 2003) [Internet] <<http://forests.org/articles/reader.asp?linkid=20086>> [Accessed on 15 October 2004]

Inocencio, Arlene and Cristina David (2001) *Public-Private Community Partnerships in Management and Delivery of Water to the Urban Poor: The Case of Metro Manila*. Philippine Institute for Development Studies Discussion Paper Series No. 2001-18.

Involving the Private Sector in Water and Sanitation Services: A Prospectus (1997). Washington D.C.: The World Bank.

Iyer, Ramaswamy R. (2003), *Water: Perspectives, Issues, Concerns*. New Delhi, Sage Publications.

Inquirer News Service (2004), *Lopez group to exit Maynilad*, [Internet] <http://www.inq7.net/nat/2004/mar/20/text/nat_1-1-p.htm> [Accessed on 20 March 2004]

Jaspersen, F. (1997) *Aguas Argentinas The Private Sector and Development: Five Case Studies*. IFC, Washington D.C. [Internet] <http://www2.ifc.org/publications/pubs/rog/rog1/chap2.pdf> > [Accessed on 20 March 2004]

Jubilee South Asia-Pacific and the Freedom from Debt Coalition (FDC), 2004, "People's Resistance and Alternatives to Privatisation of Water and Power Services," Jubilee South and FDC, Quezon City.

Kerf, Michael, R. David Gray, Timothy Irwin, Celine Levasque, Robert R. Taylor and Michael Klein (1998) *Concessions for Infrastructure: A Guide to their Design and Award*. World Bank Technical Paper No. 399. Washington D.C., World Bank.

- Kern, M. (1990) *Financial transfers versus real transfers: competing strategies for regional economic development*. In: Ewers, H.J. & Allesch, J. eds. 1990. *Innovation and regional development. Strategies, instruments and policy coordination*. Berlin: Walter de Gruyter. Pp.187-197.
- Komives, Kristin (1999) *Designing Pro-Poor Water and Sewer Concession: Early Lessons from Bolivia*. Policy Research Working Paper 2243 (November 1999). Washington D.C. : The World Bank.
- Lampietti, J.A, A.A. Kolb, S. Gulyani, and V. Avenesyan (2001) *Utility Pricing and the Poor: Lessons form Armenia*. World Bank Technical Paper No. 497.
- Latin America Conference on Sector Reform 13-15 November 2004. Stanford Center of International Development. *Has Private Participation in Water and Sewerage Improved Coverage? Empirical Evidence from Latin America* Clarke, George R.G., Katrina Cosec and Scott Wallsten.
- Llorito, David L. and Meryl Mae S. Marcon (2003) *Bad financing policies add to Maynilad woes*. [Internet] <<http://www.manilatimes.net/others/special/2003/mar/28/20030328spe1.html>> [Accessed on 15 July 2004]
- Lobina, Emanuele and David Hall (1999) “*Public Sector Alternatives to Water Supply and Sewerage Privatisation: Case Studies*.” In Stockholm Water Symposium, 9-12 August 1999. Stockholm. London: Public Services International Research Unit. [Internet] <www.psir.org/reports/9908--W-U-Pubalt.doc> [Accessed on 15 July 2004]
- Lopez-Calva, Luis Felipe (1998) *On Privatisation Methods*. In Development Discussion Paper No. 665, Central America Project series, November 1998. Massachusetts : Harvard Institute for International Development.
- Marsden, Bill (2003) *Cholera and the Age of the Water Barons* [Internet] <<http://www.icij.org/water/report.aspx?sID=ch&rID=44&aID=44>> [Accessed on 15 July 2004]

- McCoy, Alfred W. (1993) (ed.) *An Anarchy of Families: State and Family in the Philippines*. Wisconsin: University of Madison.
- Mehta, Lyla & Oriol Miroso Canal (2004) *Financing Water for All: Behind the Border Policy Convergence in Water Management*. IDS Working Paper 233 (September 2004) Sussex: Institute of Development Studies
- Minogue, Martin (2003) *Regulatory Governance and Improvement of Public Service*. In Conference on Challenges to Development: Innovation and Change in Regulation and Competition, 13-15 October 2003, Mandaluyong. NW England, University of Manchester.
- Moore, Adrian & Geoffrey Segal (2002) *Water FAQs*. [Internet] <<http://www.rppi.org/waterfaqs.html>> [Accessed on 15 July 2004]
- Myrdal, Gunnar (1968) *Asian Drama: An Inquiry into the Poverty of Nations*. Harmondsworth: Penguin.
- National Water Forum (2004) *Water Supply and Sanitation Thematic Paper*. Manila .
- Padilla, Arnold J. (2004) *A Closer Look at Our Water Bills*. IBON Features Volume IV, Number 8 (21-27 March 2004)
[Internet] <<http://www.bulatlat.com/news/4-8/4-8-waterbills.html>>
[Accessed on 15 October 2004]
- Petrella, Ricardo (2001) *The Water Manifesto: Arguments for a World Water Contract*. London: Zed Books.
- Public Citizen (2003) *Water Privatisation Fiascos: Broken Promises and Social Turmoil*. [Internet] <www.citizen.org/documents/privatisationfiascos.pdf>
[Accessed on 15 July 2004]
- Public-Private Infrastructure Advisory Facility (2002) *New Designs for Water and Sanitation Transactions: Making Private Sector Participation Work for the Poor*. Washington D.C [Internet] http://www.grc-exchange.org/info_data/record.cfm?Id=363 [Accessed on 15 July 2004]

- Quismundo, Tarra (2003), *Second Wave: New gastroenteritis outbreak hits Tondo*. Inquirer News Service, 3 November 2003, [Internet] <http://www.ipd.ph/bantay_tubig/news/november_03/gastroentiritis> [accessed on 15 July 2004]
- Rimban, Luz (2000), Big Companies Steal Water <<http://www.pcij.org/stories/2000/water.html>> [Accessed on 15 July 2004]
- Ringskog, Klas (1998) *Private Sector Participation in Latin America. Water Financing / The Engineer's Report: Water Privatisation Projects in the Developing World*. The World Bank. A publication from the engineering panel presentation, United Nations commission on Sustainable Development, 27 April 1998.
- Savedoff, William and Pablo Spiller (eds). (1999) *Spilled Water: Institutional Commitment in the Provision of Water Services*. Washington, D.C.: Inter-American Development Bank.
- Selecting an Option for Private Sector Participation* (1997) Washington D.C.: The World Bank.
- Sidel, John (1999) *Capital, Coercion and Crime, Bossism in the Philippines*. Stanford, Stanford University Press.
- Sison, Marites (2003) Privatisation fails to plug water woes. Manila Times, 25 January 2003 [Internet] <http://www.ipd.ph/bantay_tubig/news/privatisation_fails.htm> [Accessed on 15 July 2004]
- Slattery, Kathleen (2003) *What Went Wrong? Lessons From Cochabamba, Manila, Buenos Aires and Atlanta*. [Internet] <<http://www.rppi.org/apr2003/whatwentwrong.html>> [Accessed on 15 September 2004]
- Smith, Brian (2000) *The concept of an 'enabling' authority*. Environment and Planning. Vol. 18, No. 1, pp.79-94.

Sohail, M. and S. Cavill (2003) *Draft 1: Regulatory Guidelines for Upgrading Project*. [Internet] <<http://www.itdg.org/html/shelter/docs/rguu-workshop-wedc.doc>>

[Accessed on 15 September 2004]

Stiglitz, Joseph (2002) *Globalization and its Discontents*. London: Allen Lane The Penguin Press.

Tasman Economic Research Pty Ltd (1993) *Philippines: Water Sector Supply Reform Study*.

The Unadorned Truth About the Maynilad-MWSS Agreement (2004) [Internet] <<http://www.benpres-holdings.com/pressrelease-4012004.shtml>> [Accessed on 15 October 2004]

The Design of the Manila Concessions and Implications for the Poor. PPIAF/ADB Conference on Infrastructure Development –Private Solutions for the Poor: The Asian Perspective.

Tubeza, Philip, Michael Ubac & Gil Cabacungan (2004) Maynilad Deal Saves Lopez P2B. *Philippine Daily Inquirer* (26 March 2004) [Internet] <http://www.inq7.net/nat/2004/mar/26/nat_1-1.htm> [15 July 2004]

Transnational Institute (2004) *Reclaiming Public Water: Participatory Alternatives to Privatization*. TNI Briefing Series No. 2004/7 (October 2004). Amsterdam: GCA.

Van de Loo, Bastiaan (2004) *The Failure of the Philippine Presidential System*. *Asia-Europe Journal* Volume 2, Number 2 (July 2004) [Internet] <http://www.springerlink.com/app/home/contribution.asp?wasp=ngda3q7qqr5tnm9cyd9l&referrer=parent&backto=issue,9,15;journal,2,7;linkingpublicationresults,1:110364,1>

Visto, Cecille S. (2004) *East-West not keen on Maynilad proposal to convert loan into equity* [Internet] <<http://members.tripod.com/~fglinc/archive94sep5.htm#>

East West not keen on Maynilad proposal to convert loan into equity
[Accessed on 15 October 2004]

_____ (2004) Maynilad creditors not keen on equity conversion loan
[Internet] <<http://members.tripod.com/~fglinc/archive04sep5.htm>> [Accessed
on 15 October 2004]

_____ (2004) Maynilad strike averted [Internet] <[http://bworld.com.ph/oe10012004/Top Stories/topstory3.html](http://bworld.com.ph/oe10012004/Top%20Stories/topstory3.html)> [accessed 15 October 2004]

Walker, Ian, Fidel Ordoñez, Pedro Serrano and Jonathan Halpern (2000) Pricing, Subsidies and the Poor Demand for Improved Water Services in Central America.

[Internet]
<[http://wbln0018.worldbank.org/Research/workpapers.nsf/5ade973899c8608685256731006834d5/82e99f61556cb4a785256989005dc1c6/\\$FILE/wps2468.pdf](http://wbln0018.worldbank.org/Research/workpapers.nsf/5ade973899c8608685256731006834d5/82e99f61556cb4a785256989005dc1c6/$FILE/wps2468.pdf)> [Accessed on 15 October 2004]

Water Supply and Sanitation Blue Pages: The World Bank Sector Guide 2000 (2000)
Washington D.C.: The World Bank.

What a Private Sector Participation Arrangement Should Cover (1997) Washington D.C.: The World Bank.

Yepes, Guillermo (1995) *Reduction unaccounted for water: the job can be done!* Washington D.C.: The World Bank.

Government Documents

Amendment No. 2 to the Concession Agreement Containing the Terms for the Quasi-Reorganization of Maynilad Water Services, Inc. 17 March 2004

Concession Agreement of the Government of the Philippines with the Manila Water Company, Inc. January 1997, Manila.

Executive Order No. 286 Reorganizing the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Water Utilities Administration. 2 January 1996.

Executive Order No. 311 Encourage Private Sector Participation in the Operations and Facilities of the MWSS. 20 March 1996

International Arbitration Panel, UNCITRAL (2003), Award in the matter of an arbitration between MWSS and Maynilad. 7 November 2003, Manila.

Manila Water Company Inc. Balance Sheets and supplementary schedule of revenues and operating costs and expenses. 31 December 1997-1998

Manila Water Company Inc. Balance Sheets and supplementary schedule of revenues and operating costs and expenses. 31 December 1999-2000

Maynilad Water Services Inc. Balance Sheets. 31 December 1997-1998

Maynilad Water Services Inc. Balance Sheets. 31 December 1999-2000

Maynilad Water Services Inc. Balance Sheets. 31 December 2001-2002

Maynilad Water Services Inc. Balance Sheets. 31 December 2002-2003

Maynilad Water Services Inc. Balance Sheets. Executive Summary of Annual Report. 1998-2002

Maynilad Water Services, Inc. Revised Rehabilitation Plan. September 2004

MWSS Regulatory Office 2002 Annual Report

MWSS Regulatory Office Board Resolution No. 487-2001. 1 October 2001

MWSS Regulatory Office Board Resolution No. 2004-073. 17 March 2004

MWSS Regulatory Office Information Kit

Republic Act No. 6234 also known as An Act Creating the Metropolitan Waterworks and Sewerage Authority, and for Other Purposes. 19 June 1971

Republic Act No. 8041 also known as An Act to Address the National Water Crisis
and for Other Purposes

1987 Constitution of the Republic of the Philippines.

Newspaper and Magazines

Asiaweek *<http://www.asiaweek.com/>*

BusinessWorld *www.bworld.com.ph*

Manila Times *www.manilatimes.net/*

Philippine Daily Inquirer *www.inq7.net*

Other Sources:

Interview with MWSS-RO Administrative Director Virginia Octa

Phone interview, 15 September 2004

Email Interview, 9 November 2004

Identification and Allocation of Risks

<i>What is the risk?</i>	<i>How does it arise?</i>	<i>How should it be allocated?</i>
<i>Design/development risk</i> Design defect	Design fault in tender specifications Public sector to bear risk Contractor design fault	Liquidated damages to be paid by contractor; once liquidated damages are exhausted, erosion of project company's returns
<i>Construction risk</i> Cost overrun	Within construction consortium's control (inefficient construction practices, wastages, and so on)	Contractor to bear risk through fixed-price construction contract plus liquidated damages; once liquidated damages are exhausted, erosion of project company's returns
	Outside construction consortium's control: changes in the overall legal framework (changes of laws, increased taxes, and so on)	Insurer risk if insurance is available; once insurance proceeds are exhausted, erosion of project company's returns
	Outside construction consortium's control: actions of government that specifically affect the project (delays in obtaining approvals or permits, and so on)	Public sector to bear risk
<i>Delay in completion</i>	Within construction consortium's control (lack of coordination of subcontractors, and so on)	Liquidated damages to be paid by constructor; once liquidated damages are exhausted, erosion of project company's returns
	Outside construction consortium's control (force majeure, and so on)	Insurer risk, if risk was insured; once insurance proceeds are exhausted, erosion of project company's returns
Failure of project to meet performance criteria at completion	Quality shortfall, defects in construction, and so on	Liquidated damages to be paid by constructor; once liquidated damages are exhausted, erosion of project company's returns
<i>Operating cost risk</i> Operating cost overruns	Change in practice of operator at project company's request	Project company to bear risk
	Operator failure	Liquidated damages to be paid by operator to the project company; once liquidated damages are exhausted, erosion of project company's returns
Failure or delay in obtaining permissions, consents, and approvals	Public sector discretion	Public authorities to bear risk

<i>What is the risk?</i>	<i>How does it arise?</i>	<i>How should it be allocated?</i>
Changes in prices of supplies	Increased prices	Allocation of risk to the party best able to control, manage, or bear it (supplier, project company, or users)
Nondelivery of supplies on the part of public authorities	Public sector failure	Public authorities to bear risk
<i>Revenue risk</i> Changes in tariffs	In accordance with the terms of the contract (for example, indexation of tariffs leads to reduced demand)	Project company to bear risk
	Government breach of the terms of the contract	Public sector to bear risk
Changes in demand Shortfall in quantity, or shortfall in quality leading to reduced demand	Decreased demand Operator's fault	Project company to bear risk Liquidated damages to be paid by the operator; once liquidated damages are exhausted, erosion of project company's returns
	Project company's fault	Liquidated damages to be paid by the project company to public authority
<i>Financial risk</i> Exchange rates; interest rates Foreign exchange	Devaluation of local currency; fluctuations Nonconvertibility or nontransferability	Project company to bear risk (hedging facilities might be put in place) Public sector to bear risk; in case of contract termination, compensation to be paid by government
<i>Force majeure risk</i> Acts of God	Floods, earthquakes, riots, strikes, and so on	Insurer risk, if risk was insured; otherwise, risk to be borne by project company
Changes in law	Changes in general legal framework (taxes, environmental standards, and so on)	Normally, project company to bear risk (public sector could bear risk when changes are fundamental and completely unforeseeable; for example, switch from free market to central planning)
	Changes in legal or contractual framework directly and specifically affecting the project company	Public sector to bear risk
<i>Performance risk</i> Political force majeure	Breach or cancellation of contract; expropriation, creeping expropriation, failure to obtain or renew approvals	Insurer's risk, if risk was insured; otherwise risk to be borne by public sector; in case of contract termination, compensation to be paid by government
<i>Environmental risk</i> Environmental incidents	Operator's fault	Liquidated damages to be paid by the operator; once liquidated damages are exhausted, erosion of project company's returns
	Pre-existing environmental liability	Public sector to bear risk

Source: World Bank (1997), as cited in Kerf, et al, 1998

MWSS PRIVATIZATION TIMELINE

Date	Event
1994	
June	Malaysian firm presents offer to purchase MWSS on a negotiated basis
July	President Fidel V. Ramos creates the MWSS Privatization Committee
December	British firm, Biwater sends "unsolicited proposal" to privatize MWSS
1995	
February	House of Representatives starts deliberation on the proposed "Water Crisis Act"
7 June	Congress passes Republic Act No. 8041 or the Water Crisis Act of 1995
July	French government approves grant of technical aspect of privatization study
September	<ul style="list-style-type: none"> • MWSS receives third offer to privatize from a large local real estate firm. • Local bank agree to finance remaining cost of privatization advisory contract
10 November	MWSS signs consultancy contract with the International Finance Corporation
6 December	President Ramos signs Executive Order No. 286 ordering the reorganization of the MWSS and the Local Water Utilities Administration"
1996	
20 March	President Ramos issues Executive Order No. 311 which encourages the entry of the private sector in the operation of the MWSS
April	MWSS privatization team goes to Buenos Aires to learn the Argentinian privatization experience
May	A "Data Room" was opened in MWSS to interested companies that pay the \$25,000 bidders fee
July	MWSS Board approves the privatization strategy
August	<ul style="list-style-type: none"> • Start of formal prequalification of bidders. • MWSS increases water tariffs by 38 percent
October	<ul style="list-style-type: none"> • Pre-negotiation of contract with bidders • Congressional public hearing questioning the MWSS privatization
18 October	Committee on Privatization approves MWSS privatization
December	<ul style="list-style-type: none"> • Final approval of prequalified bidders • Final tender documents issued • President Ramos approves the privatization strategy

1997	
6 January	<ul style="list-style-type: none"> • President Ramos approves Concession Agreement • The Philippine government accepted four (4) bids for two (2) concessions
7-22 January	Technical Working Group evaluates the technical proposals
23 January	<ul style="list-style-type: none"> • Opening of the financial proposal before a full press coverage • MWSS Board endorse recommendation of award to Committee on Privatization
31 January	COP endorses recommendation of award to President Ramos
21 February	<ul style="list-style-type: none"> • President Ramos approves award of contract • Secretary Vigilar signs Concession Agreements with MWSS and Maynilad
1 August 7	The two (2) winning bidding consortia fully took over the MWSS operations
1999	
	MWSS grants Maynilad's first request for rate increase application
2000	
12 December	Maynilad and Manila Water petitions the Regulatory Office for an automatic "currency exchange adjustment"
2001	
February	President Gloria Macapagal-Arroyo rejects the petition of Maynilad the institution of the Auto-CERA
8 March	Maynilad stops paying its concession fees to the MWSS
5 October	Maynilad gets an "amended agreement" allowing Maynilad to increase its tariff rates by P4.21 a cubic meter from October 2001 to December 2002; it also allows Maynilad to recover foreign exchange losses from 1 January 2001 to December 2001; it also authorizes Maynilad to impose "quarterly rate adjustments" on present and future forex losses or gains from 1 January 2002 until the end of the agreement.
14 December	MWSS allows another round of price adjustments for Maynilad effective on 2002.
2002	
4 March	MWSS passes Resolution 68-2002 extending the deadline for the payment of Maynilad's concession fees to 30 June 2003 to from November 2002.
May	MWSS announces plans to apply for a P100 million loan from the Deutsche Bank to avoid default with its creditors
9 December	Maynilad files a "notice of early termination" of its 1997 Concession Agreement with the Philippine government and that it will return the concession after 60 days
2003	
7 February	Maynilad President confirms the termination of concession "due to

	MWSS' serious breaches of its obligations under the concession agreement."
February	MWSS in turn files a notice terminating Maynilad's concession agreement
March	Maynilad defaults again on the final deadline for concession fee payments set by the MWSS after several extensions and grace periods. As of this period, Maynilad owes the government up to P5 billion or US\$91 million in Concession fees.
April	The International Arbitration Panel (IAP) issues a provisional order stopping MWSS from drawing on Maynilad's performance bond
31 July	Maynilad's performance bond expires.
August	Maynilad's inherited loans amounting to US\$120 million that remain in government's name matures.
August	The IAP begins its 10-day closed-door process of hearing and cross-examining evidence on the termination dispute
August	MWSS Board of Trustees states it intent to incur additional loans in light of the MWSS' old loans amounting \$120 million maturing that month.
October	Cholera epidemics and other gastro-intestinal diseases break out in various parts of Metro Manila
7 November	The IAP releases its decision on the dispute, finding no ground for termination of the concession contract but ordering Maynilad to pay P6.77 billion in unpaid concession fees
13 November	Maynilad filed for corporate rehabilitation before the Regional Trial Court of Quezon City saying that it could no longer pay its debts.

2004

17 March	MWSS Board of Trustees issues Board Resolution No. 2004-073 approving "Amendment No. 2 to the Concession Agreement for the West Concession with Maynilad" which gives effect to the quasi-reorganization and restructuring of Maynilad
July	<ul style="list-style-type: none"> • NEDA rejects the compromise agreement under Amendment No. 2 • Supreme Court allows MWSS to draw the entire US\$120 million performance bond of Maynilad. • The government decides to junk the compromise agreements.
20 July	Maynilad writes MWSS insisting that MWSS' "unilateral withdrawal" cannot alter the binding effect of the compromise deal, i.e. Amendment No. 2.
September	Maynilad restructuring and quasi-reorganisation plan is submitted to the court handling the rehabilitation of Mayniald

Source:

Buenaventura, Mae; Bubut Palattao and Lidy Nacpil (2004). Debt, Trade and the Privatization of Water Services: The Philippine Experience. The Freedom from Debt Coalition, Quezon City.

Dumol, Mark (2000). The Manila Water Concession: A Key Government Official's Diary of the World's Largest Water Privatization. The World Bank, Washington D.C.

Llorito, David L., and Meryl Mae S. Marcon (2003). Maynilad: A model in water privatization springs leaks. Manila Times. <http://www.manilatimes.net/others/special/2003/mar/26/20030326spe1.html>

Inquirer News Service (2004). Water deal valid---Maynilad. http://www.inq7.net/nat/2004/jul24/text/nat_10-1.htm

Manila Water Company, Inc.
(East Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July. 2002	=	132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40	56.12 + 3.80/m ³ in excess of 20 m ³	P 94.12
11-100		

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
-------------------	---------

C. FCDA - Foreign Currency Differential Adjustment = 49.598% of (A)

49.598% (94.12)	P 46.68
-----------------	---------

D. EC - Environmental Charge = 10% of (A+B+C)

10% (170.80)	P 17.08
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E. SC - Sewerage Charge = 50% of (A+B+C)

0	P 0.00
---	--------

* Not connected to sewer

50% (170.80)	P 85.40
--------------	---------

** Not connected to sewer

F. MSC - Maintenance Service Charge (based on meter size)

1/2" or 13 mm	P 1.50
3/4" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

10% (189.88)	P 18.99
--------------	---------

* Not connected to sewer

10% (275.28)	P 27.53
--------------	---------

** Not connected to sewer

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
* Not connected to sewer	P 208.87
** Not connected to sewer	P 302.81

Manila Water Company, Inc.
(East Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July 2002	=	132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40	33.48 + 3.49/m ³ in excess of 20 m ³	P 68.38
11-100		

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
-------------------	---------

C. FCDA - Foreign Currency Differential Adjustment = 49.598% of (A)

49.598% (68.38)	P 33.92
-----------------	---------

D. EC - Environmental Charge = 10% of (A+B+C)

10% (132.30)	P 13.23
--------------	---------

E. SC - Sewerage Charge = 50% of (A+B+C)

0	P 0.00
---	--------

* Not connected to sewer

50% (132.30)	P 66.15
--------------	---------

** Not connected to sewer

F. MSC - Maintenance Service Charge (based on meter size)

1/2" or 13 mm	P 1.50
3/4" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

10% (147.03)	P 14.70
--------------	---------

* Not connected to sewer

10% (213.18)	P 21.32
--------------	---------

** Not connected to sewer

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
* Not connected to sewer	P 161.73
** Not connected to sewer	P 234.50

Manila Water Company, Inc. (East Zone Customers)

• Sample Water Bill
 Present Reading = 16 Aug. 2002 = 162 m³
 Previous Reading = 16 July 2002 = 132 m³
 Water Consumption for the period covered = 16 July to 16 Aug. 2002 = 30 m³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40		
11-100	68.56 + 6.86/m ³ in excess of 10 m ³	P 205.76

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
-------------------	---------

C. FCDA - Foreign Currency Differential Adjustment = 49.598% of (A)

49.598% (205.76)	P 102.05
------------------	----------

D. EC - Environmental Charge = 10% of (A+B+C)

10% (337.81)	P 33.78
--------------	---------

E. SC - Sewerage Charge = 50% of (A+B+C)

<i>* Not connected to sewer</i>	
0	P 0.00

<i>** Not connected to sewer</i>	
50% (337.81)	P 168.90

F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

<i>* Not connected to sewer</i>	
10% (374.59)	P 37.46

<i>** Not connected to sewer</i>	
10% (543.49)	P 54.35

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
<i>* Not connected to sewer</i>	P 412.05
<i>** Not connected to sewer</i>	P 597.84

Manila Water Company, Inc. (East Zone Customers)

• Sample Water Bill
 Present Reading = 16 Aug. 2002 = 162 m³
 Previous Reading = 16 July 2002 = 132 m³
 Water Consumption for the period covered = 16 July to 16 Aug. 2002 = 30 m³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40		
11-100	74.18 + 7.46/m ³ in excess of 10 m ³	P 223.38

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
-------------------	---------

C. FCDA - Foreign Currency Differential Adjustment = 49.598% of (A)

49.598% (223.38)	P 110.79
------------------	----------

D. EC - Environmental Charge = 10% of (A+B+C)

10% (364.17)	P 36.42
--------------	---------

E. SC - Sewerage Charge = 50% of (A+B+C)

<i>* Not connected to sewer</i>	
0	P 0.00

<i>** Not connected to sewer</i>	
50% (364.17)	P 182.08

F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

<i>* Not connected to sewer</i>	
10% (406.59)	P 40.66

<i>** Not connected to sewer</i>	
10% (588.67)	P 58.87

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
<i>* Not connected to sewer</i>	P 447.25
<i>** Not connected to sewer</i>	P 647.54

Maynilad Water Services, Inc.
(West Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July 2002	=	- 132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40	143.02 + 9.69/m ³ in excess of 20 m ³	P 239.92
11-100		

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
-------------------	---------

C. FCDA - Foreign Currency Differential Adjustment = 35.73% of (A)

35.73% (239.92)	P 85.72
-----------------	---------

D. EC - Environmental Charge = 10% of (A+B+C)

10% (355.64)	P 35.56
--------------	---------

E. SC - Sewerage Charge = 50% of (A+B+C)

<i>* Not connected to sewer</i>	
0	P 0.00

<i>** Not connected to sewer</i>	
50% (355.64)	P 177.82

F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

<i>* Not connected to sewer</i>	
10% (393.20)	P 39.32

<i>** Not connected to sewer</i>	
10% (571.02)	P 57.10

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
<i>*Not connected to sewer</i>	P 432.52
<i>**Not connected to sewer</i>	P 628.12

Maynilad Water Services, Inc.
(West Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July 2002	=	- 132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40	85.15 + 8.90/m ³ in excess of 20 m ³	P 174.15
11-100		

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
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C. FCDA - Foreign Currency Differential Adjustment = 35.73% of (A)

35.73% (174.15)	P 62.22
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D. EC - Environmental Charge = 10% of (A+B+C)

10% (266.37)	P 26.64
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E. SC - Sewerage Charge = 50% of (A+B+C)

<i>* Not connected to sewer</i>	
0	P 0.00

<i>** Not connected to sewer</i>	
50% (266.37)	P 133.18

F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

<i>* Not connected to sewer</i>	
10% (294.51)	P 29.45

<i>** Not connected to sewer</i>	
10% (427.69)	P 42.77

H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill	
<i>*Not connected to sewer</i>	P 323.96
<i>**Not connected to sewer</i>	P 470.46

Semi-Business

Residential

Maynilad Water Services, Inc.

(West Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July 2002	=	132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40		
11-100	174.29 + 17.51/m ³ in excess of 10 m ³	P 524.49

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
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C. FCDA - Foreign Currency Differential Adjustment = 35.73% of (A)

35.73% (524.49)	P 187.40
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D. EC - Environmental Charge = 10% of (A+B+C)

10% (741.89)	P 74.19
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E. SC - Sewerage Charge = 50% of (A+B+C)

** Not connected to sewer*

0	P 0.00
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*** Not connected to sewer*

50% (741.89)	P 370.94
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F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

** Not connected to sewer*

10% (819.08)	P 81.91
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*** Not connected to sewer*

10% (1,190.02)	P 119.00
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H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill

<i>*Not connected to sewer</i>	P 900.99
<i>**Not connected to sewer</i>	P 1,309.02

Maynilad Water Services, Inc.

(West Zone Customers)

• Sample Water Bill

Present Reading	= 16 Aug. 2002	=	162 m ³
Previous Reading	= 16 July 2002	=	132 m ³
Water Consumption for the period covered	= 16 July to 16 Aug. 2002	=	30 m ³

A. Basic Charge

Consumption Bracket (in m ³)		Sub total
21 - 40		
11-100	188.59 + 18.98/m ³ in excess of 10 m ³	P 568.19

B. CERA - Currency Exchange Rate Adjustment = P1.00 per m³ consumption

30 m ³	P 30.00
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C. FCDA - Foreign Currency Differential Adjustment = 35.73% of (A)

35.73% (568.19)	P 203.01
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D. EC - Environmental Charge = 10% of (A+B+C)

10% (801.20)	P 80.12
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E. SC - Sewerage Charge = 50% of (A+B+C)

** Not connected to sewer*

0	P 0.00
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*** Not connected to sewer*

50% (801.20)	P 400.60
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F. MSC - Maintenance Service Charge (based on meter size)

½" or 13 mm	P 1.50
¾" or 20mm	2.00
1" or 25 mm	3.00
2" or 50 mm	6.00

G. VAT - Value Added Tax = 10% of (A+B+C+D+E)

** Not connected to sewer*

10% (887.32)	P 88.73
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*** Not connected to sewer*

10% (1,287.92)	P 128.79
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H. TOTAL = A+B+C+D+E+F+G

Your Total Water Bill

<i>*Not connected to sewer</i>	P 976.05
<i>**Not connected to sewer</i>	P 1,416.71

APPENDIX D

June 19, 1971

REPUBLIC ACT NO. 6234

AN ACT CREATING THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM AND DISSOLVING THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY; AND FOR OTHER PURPOSES.

Sec. 1. Declaration of Policy. - The proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety. It is therefore declared a policy of the state that the establishment, operation and maintenance of such systems must be supervised and controlled by the state. cda

Sec. 2. Creation, Name, Domicile and Jurisdiction. -

- (a) There is hereby created a government corporation to be known as the Metropolitan Waterworks and Sewerage System, hereinafter referred to as the System, which shall be organized within thirty days after the approval of this Act.
- (b) The domicile and principal place of business of the System shall be in the City of Manila. The System shall have such branches and agencies as may be necessary for the proper conduct of its affairs.
- (c) The System shall own and/or have jurisdiction, supervision and control over all waterworks and sewerage system in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan. All other waterworks and sewerage systems now under the supervision and control of National Waterworks and Sewerage Authority (NWSA), shall remain with the System unless the provinces, cities and municipalities concerned shall elect to separate from the System, in which case, they shall communicate their decision to the System and the separation shall take effect upon agreement of the System and the local government not later than thirty (30) days from the time the System receives the notice of the decision.

The Wells and Springs Department of the National Waterworks and Sewerage Authority shall be ceded, transferred and conveyed to the Bureau of Public Works.

- (d) Any provision of law to the contrary notwithstanding, all existing waterworks systems or any system that may hereafter be established by cities and municipalities shall

have exclusive control and supervision over all sources of water supply, such as rivers and streams for waterworks purposes in their respective jurisdictions, and any water right now enjoyed by the National Waterworks and Sewerage Authority in the different cities and municipalities concerned: Provided, however, That in case of provincial waterworks systems now existing, the said water rights shall be transferred to that provincial system.

Sec. 3. Attributes, Powers and Functions. - The System shall have the following attributes, powers and functions:

- (a) To exist and have continuous succession under its corporate name for a term of fifty (50) years from and after the date of the approval of this Act, notwithstanding any provision of law to the contrary: Provided, however, That at the end of the said period, the System shall automatically continue to exist for another fifty (50) years, unless otherwise provided by law;
- (b) To prescribe its by-law;
- (c) To adopt and use a seal and alter it at its pleasure;
- (d) To sue and be sued;
- (e) To establish the basic and broad policies and goals of the System;
- (f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purify, regulate and control the use, as well as prevent the wastage of water;
- (g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;
cdtai
- (h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;
- (i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;
- (j) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonably required for the transaction of the lawful business of the same;
- (k) To construct works across, over, through and/or alongside, any stream, water-course, canal, ditch, flume, street, avenue, highway or railway, whether public or private,

as the location of said works may require: Provided, That, such works be constructed in such manner as to afford security to life and property and so as not to obstruct traffic: Provided, further, That the stream, water-course, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored without unnecessary delay to its former state. Any person or entity whose right may be prejudice by said works shall not obstruct the same; however, he shall be given reasonable notice before the construction and shall be paid just compensation. The System shall likewise have the right to locate, construct and maintain such works on, over and/or through any street, avenue, or highway and land and/or real rights of the Republic of the Philippines or any of its branches, agencies and political subdivisions upon due notice to the office, or entity concerned, subject solely to the condition that the street, avenue, or highway in which said works are constructed be restored without unnecessary delay to its former state unless otherwise agreed upon by the System and the office or entity concerned;

- (l) To exercise the right of eminent domain for the purpose for which the System is created;
- (m) To contract indebtedness in any currency and issue bonds to finance projects now authorized for the National Waterworks and Sewerage Authority under existing laws and as may hereafter be expressly authorized by law with the approval of the President of the Philippines upon the recommendation of the Secretary of the Finance;
- (n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;
- (o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;
- (p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;
- (q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction;
- (r) To render annual reports to the President of the Philippines and the Presiding Officers of the two Houses of Congress not later than January thirty-first of every year.

Sec. 4. The Board of Trustees, composition; qualification; appointment; tenure. - The corporate powers and functions of the System shall be vested in and exercised by a Board of Trustees composed of a Chairman, the General Manager as ex-officio Vice-Chairman and three members, one of whom shall be nominated by the Labor Union representing the majority of the rank and file of the employees in the System. They shall possess any one or a combination of the following qualifications; duly licensed professional of recognized competence in civil engineering and/or sanitary engineering, business management and

finance, and law, or recognized labor leader within the ranks with sufficient training, particularly in the field of labor-management relations or corporate practice, all of good moral character with at least five (5) years of actual and distinguished experience in their respective fields of expertise. cdasia

The Chairman and the three members of the Board shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chairman and the three members of the Board shall hold office for a period of three years, except that the members initially appointed shall serve, as designated in their appointments, one for one year, one for two years and one for three years: Provided, That, any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds: Provided, further, That the term of the member nominated by labor maybe terminated sooner than as above provided if so requested by the nominating union in which case the President of the Philippines shall appoint a replacement who shall similarly be nominated by said union.

Sec. 5. The Suspension and Removal of Trustees. - Any member of the Board of Trustees may for cause be suspended or removed by the President of the Philippines upon the recommendation of the Secretary of Justice after due notice and hearing.

Sec. 6. Meetings of the Board; quorum, required votes; per diems. - The Board of Trustees shall, immediately after its organization, adopt rules and procedures in the conduct of its meetings. A majority of the Board shall constitute a quorum for the transaction of business and the affirmative vote of three shall be required for the adoption of any action. For actual attendance at meetings, the Chairman and the three members, shall each receive a per diem of one hundred pesos but in no case shall any one receive more than four hundred pesos a month.

Sec. 7. Other Officers and Employees; their appointment; qualifications; compensations and tenure. - The management of the System shall be vested in the General Manager. He shall be assisted by four Assistant General Managers - one for Engineering, one for Operation, one for Finance and Administration, one for Commercial and Customers Service, and the heads of departments. Said officials shall perform managerial and/or confidential functions.

The General Manager shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. He shall receive an annual compensation of Thirty-six thousand pesos (P36,000.00) and hold office for a period of six years unless sooner terminated for incapacity or other causes. The President may for cause, suspend or remove the General Manager after due notice and hearing. In case of temporary disability or absence of the General Manager, the Chairman of the Board shall designate any Assistant General Manager to act as General Manager.

The Assistant General Managers shall be appointed by the Board with the approval of the President. Each shall receive an annual compensation of Twenty-eight thousand pesos (P28,000.00) and shall hold office until retirement age as determined by law, unless

sooner terminated for incapacity or other causes. In case of temporary disability or absence of any Assistant General Manager, the act as Assistant General Manager. cd

The Assistant General Managers shall be persons of integrity, competence and experience in the technical and executive fields related to the purposes of this Act. Their other qualifications as well as powers and duties shall be determined by the Board.

The Department Heads, Division and Section Chiefs, and other officers of equivalent rank shall be appointed or promoted by the General Manager upon recommendation of the Assistant General Manager concerned, with the approval of the Board.

The powers, duties, qualifications and compensation of said officers and of the other personnel shall be determined by the Board.

All other personnel shall be appointed or promoted by the General Manager upon recommendation of the Assistant General Manager concerned. The General Manager shall submit to the Board a monthly report on such appointments and non-disciplinary transfer made in the month immediately preceding.

Sec. 8. Other powers and duties of the General Manager. -

- (a) To direct and manage the System in accordance with and to carry out the policies of the Board;
- (b) To control, direct and supervise all the officers and employees under him;
- (c) To remove, suspend or otherwise discipline for cause, or terminate by reason of incapacity the term of office of, Department Heads, Division and Section Chiefs, and other officers of equivalent rank, subject to the approval of the Board. The decision of the Board may be appealed within thirty days from receipt thereof to the proper Court of First Instance, but shall be immediately enforceable notwithstanding said appeal;
- (d) To remove, suspend or otherwise discipline for cause, or terminate by reason of incapacity the term of office of, all other personnel, without prejudice to an appeal within thirty days from receipt of the decision to the Board, the decision of which Board shall be immediately final and enforceable;
- (e) To detail any officer or employee when required by the exigencies of the service, for a period not exceeding six months, without reduction in salary, and his decision shall be final;
- (f) To submit to the Board an annual budget and plantilla of personnel not later than sixty days prior to the beginning of a fiscal year, and thereafter such supplemental budgets as may be necessary; cdtai
- (g) To submit to the Board, not later than the twentieth of every month, a financial and an operational report for the month preceding, and not later than ninety days after the

close of each fiscal year an annual report, and from time to time such partial reports as he may see fit to render or as may be required by the Board; and

(h) To perform such other powers and duties as may be assigned by the Board or prescribed either by law or by the By-laws of the System.

Sec. 9. Appointment and Promotion; Terms and Conditions of Employment. - Officers and employees of the Metropolitan and Local Systems shall not be subject to the Civil Service Law, rules and regulations. The System is hereby empowered to conduct such appropriate examination it deems necessary as additional bases for appointment and promotion.

The terms and conditions of employment in the System are governed by law, except that the WAPCO rules and regulations shall not apply, without prejudice to the right of collective bargaining.

Sec. 10. Administrative Jurisdiction for Disciplining Other Officers and Employees. - The General Manager may, for dishonesty, oppression, misconduct, neglect of duty, conviction of a crime involving moral turpitude, notoriously disgraceful or immoral conduct, improper or unauthorized solicitation of contributions from subordinate employees, lobbying for personal interest or gain in legislative halls and offices without authority from the Board, directly or indirectly obstructing, defeating or violating the civil rights and liberties of an individual, promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority willful violation of reasonable office regulations, or in the interest of the service, remove after due notice and hearing, any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine in an amount not exceeding six month's salary.

A transfer from one position to another without reduction in rank and salary shall not be considered disciplinary when made in the interest of public service and the action of the General Manager shall not be final until approved by the Board of Trustees.

Sec. 11. Audit. - The Auditor General shall appoint a representative known as the Auditor and the necessary personnel to assist said Auditor in the performance of his duties. The Auditor General shall also fix the salaries and the number of personnel to assist said Auditor. Once fixed by the Auditor General, such salaries and number of auditing personnel shall not be thereafter increased, diminished or altered unless initiated by him. The auditing personnel under this section shall be subject to the provisions of the civil service law. The budget and plantilla for salaries, maintenance and operating expenses of the auditing office as fixed by the Auditor General shall be subject to confirmation by the governing board of the corporation.

The financial transactions of the System shall be audited in accordance with law, administrative regulations, and the generally accepted principles of accounting and standards of auditing. The Auditor General shall submit to the President of the Philippines, the Presiding Officers of the two Houses of Congress and the Board of

Trustees an Audit Report for each fiscal year, within ninety days after the close thereof.
cdt

Sec. 12. Review of Rates by the Public Service Commission. - The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.

In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

Sec. 13. Disposition of Income. - The income of the System shall be disposed of according to the following priorities:

First, to pay its contractual and statutory obligations and to meet its essential current operating expenses;

Second, to serve at least fifty per cent (50%) of the balance exclusively for the expansion, development and improvement of the System; and

Third, to allocate the residue enhancing the efficient operation and maintenance of the System which include increases of administrative expenses or increases or adjustment of salaries and other benefits of the employees.

Sec. 14. Assistance to local system. - The System may provide technical and management assistance to the various local waterworks and sewerage system upon their request; and for this service the System may charge actual expenses incurred plus ten per cent (10%) thereof as overhead expenses.

Sec. 15. Abolition of NWSA; Transfer of Assets, Liabilities, and Personnel. - The Corporation known as the National Waterworks and Sewerage Authority shall be abolished upon the organization of the Metropolitan Waterworks and Sewerage System as provided for in Section 2 (a) of this Act. Its records, properties, equipment, assets, rights, choses in action, obligations and liabilities are hereby transferred to, vested in, and assumed by the System: Provided, That an inventory and valuation of the properties,

equipment, assets, rights choses in action, obligations, liabilities of NWSA shall be made by the Auditor General, and the accountable officers of NWSA shall continue to be fully accountable therefor, until issued a certificate of clearance by the Auditor General.
cdasia

Employees and laborers, including the personnel of the planning and coordinating office and the provincial, city and municipal departments in the places enumerated in Section 2(c) of this Act are hereby transferred to and absorbed by the System: Provided, That the Board of Trustees is hereby authorized to make personnel movement on the basis of merit and fitness in accordance with the comprehensive and progressive merit system to be established by the Metropolitan Waterworks and Sewerage System immediately upon its organization: Provided, further, That the salary of any employee shall in no case be reduced as a consequence of said personnel movement: Provided, finally, that in no case shall the expense in any fiscal year for salaries, wages, allowances, emoluments, and other fringe benefits exceed thirty five per cent (35%) of the gross income of the system in the immediately preceding fiscal year.

Sec. 16. Gravity. - Any personnel of the National Waterworks and Sewerage Authority not so appointed or who refuses such appointment shall be paid the money value of his accumulated vacation and sick leave, and such retirement gratuity as may be due him under existing retirement laws. Any of the employees and laborers who does not qualify under any existing retirement law shall be paid one month salary for every year of service, payable in lump sum. For this purpose, there is hereby appropriated out of any funds in the national treasury not otherwise appropriated the sum of fifteen million pesos to provide for their separation gratuities, accumulated vacation and sick leaves and/or retirement, when and if, payable and due to them, subject to reimbursement by the system to the national treasury out of its earnings within three fiscal years from the date of availment of the appropriated amount.

The personnel of the Wells and Springs Department whose salaries are paid from Congressional Appropriations and who cannot be absorbed by the Bureau of Public Works, shall be paid their terminal pay and retirement gratuity from Congressional Appropriations. However, in case an officer or employee is subsequently reinstated in the government, its branches and instrumentalities, including government corporation, he shall refund to the paying agency the value of the gratuity which he would not have received had he been paid in monthly installments.

Sec. 17. Transfer of local systems. - Whenever the local government exercises the right mentioned in Section 2(c) hereof, the local systems now under the control and supervision of the NWSA together with all the employees and laborers including the personnel of the district offices, records, properties, equipment, assets, choses in action, obligations and liabilities shall be ceded, transferred and conveyed to their respective provinces, cities and/or municipalities which owned and/or operated them before the NWSA operated the same: Provided, That in case of disagreement between the system and the local governments on liabilities or obligations being charged by the National Waterworks and Sewerage Authority to the local government, the same shall be passed

upon and decided by an arbitration committee to be composed of a representative of the local government, a representative of the System, and a third member to be chosen by both. aisa dc

Any of the employees and laborers not so appointed in the local system or who refuses such appointment shall be paid from the amount of fifteen million pesos appropriated under this Act, the money value of his accumulated vacation and sick leaves and such retirement gratuities as may be due him under existing retirement laws: Provided, That any of the employees and laborers who does not qualify under any existing retirement laws, shall be paid one month salary for every year of service payable in lump sum.

Similarly, all employees and laborers, records, property and equipment of the Wells and Springs Department shall be ceded, transferred and conveyed to the Bureau of Public Works. The accounts and liabilities corresponding to said Department shall be adjusted accordingly by the Auditor General.

Those systems initially constructed and operated by the NWSA, shall be ceded, transferred and conveyed to the provinces, cities or municipalities which they serve: Provided, however, That where the System serves two or more municipalities, the same shall be ceded, transferred and conveyed to the provincial government: Provided, further, That where the System serves a city, or a city and municipalities, the system shall be transferred, ceded or conveyed to the city: Provided, furthermore, That the outstanding obligations incurred by the NWSA, including interest, in the construction, operation and maintenance of such systems, shall be assumed by the local government concerned: Provided, still further, That in the case of outstanding bond indebtedness in the construction, operation and maintenance of such systems, the national government shall continue to guarantee the obligation until the same shall have been fully paid: Provided, finally, That the Auditor General shall determine the accounts and liabilities of the respective local governments. In case the liabilities exceed the value of the assets transferred to the local governments, the excess shall be assumed by the national government.

Conflicts between local governments served by one system shall be decided by a board to be composed of their respective mayors, and treasurers as members, and the representative of the Auditor General as Chairman.

Sec. 18. Tax Exemption. - All articles imported by the Metropolitan Waterworks and Sewerage System or the local governments for the exclusive use of their waterworks and sewerage systems particularly machineries, equipment, pipes, fire hydrants, and those related to, or connected with, the construction, maintenance, and operation of dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pumping stations; or of artesian wells and springs within their territorial jurisdictions, shall be exempt from the imposition of import duties and other taxes. cdtai

Sec. 19. Repeal or Modification. - All Acts, executive orders, administrative orders, and proclamation or parts thereof inconsistent with any of the provisions of this Act, are hereby repealed or modified accordingly.

Sec. 20. Separability Clause. - In the event that any provision of this Act or the application of such provisions to any person or circumstances is declared unconstitutional, the remainder of this Act or the application of said provision to other persons or circumstances shall not be affected thereby.

Sec. 21. Effectivity. - This Act shall take effect upon its approval.

Approved: June 19, 1971

APPENDIX E



The former MWSS service area which has now been divided into two (2) zones: the west zone which was under the Maynilad Water Services, Inc. prior to the contract termination; and the East Zone, which is being serviced by Manila Water.

