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Reclaiming public services:

Giving back ownership and control of the water sector to local government[1]

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The global economic crisis of the 1980s had governments preferring privatization in economic development and the delivery of public services. Privatization followed World Bank and International Monetary Fund conditionalities for loan packages and prescriptions for structural adjustment programs and austerity measures and had the following objectives:

(1) Reduce government involvement in business;

(2) Promote competition, efficiency, and productivity;

(3) Stimulate private entrepreneurship; and

(4) Avoid the monopolies and bureaucracies of state-run enterprises.

Economist Jomo Sundaram (2018), however, maintains that privatization's promises remain unfulfilled, failing to stimulate private entrepreneurship and investment as assets "are […] diverted to take over [state-owned enterprises]" making private funds less available for the real economy while crowding out small and medium-sized enterprises presumed to emerge in the post-privatization era.

Sundaram (2016) notes that since many "state-run activities are public monopolies, privatization will" simply transfer "monopoly powers to private interests likely to use them to maximize profits." As "[p]rivate interests are only interested in profitable or potentially profitable […] enterprises […], the government will be saddled with unprofitable and less profitable activities" (ibid.).

Privatization also results in inequalities in service delivery as private services often cost more leaving the poor to "rely on subsidized public services" (ibid.). Lastly, patronage and corruption frequently accompany "privatization in many developing and transition economies[,] […] enrich[ing] a few with strong political connections [...]" and "sacrific[ing the public interest] to […] powerful […] business interests" (ibid.).

The Philippine water privatization

In 1997, the Philippine government privatized its publicly-owned water provider, the Metropolitan

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Waterworks and Sewerage System (MWSS)—the first large-scale water privatization in Asia. Privatization was meant to address (1) inadequate coverage, (2) unreliable services, (3) inefficient management of water utilities, (4) unsustainable service, and (5) low institutional capacity by local government units (LGUs).

Maynilad, together with a French partner, won the concession for the western half of Metro Manila, while Manila Water and three foreign partners were set to serve the eastern portion of the region (Corral 2003). They offered rates of Php 4.96/m^3 and Php 2.32/m^3, respectively, which are significantly lower than the previous rate of Php 8.78/m^3 (ibid.). A Regulatory Office (RO) for the MWSS was also a result of the concession agreement.

Twenty years later, however, the goals of Philippine water privatization continue to fall short of its promises.[4] The 2007 takeover of a failed Maynilad by a new set of private companies epitomizes the shortcomings of Philippine water privatization. A 2000 MWSS RO–World Bank survey revealed that 67 percent of households think that water services did not improve or had become worse since privatization (IBON 2003a). This perception is due to the following long-standing problems:

1. *High water prices and excessive profit taking*

   In October 2003, basic water rates for Manila Water and Maynilad were PhP19.50/m^3 and PhP24.32/m^3, respectively or eight and five times higher than their 1997 winning bids (IBON 2003b). In succeeding years, the increases in rates were around 500 percent for Maynilad and 700 percent for Manila Water (Rovik Obanil, unpublished interview, July 31, 2018).

   For 2018, Maynilad secured a Php 5.73/m^3 rate increase, while Manila Water got a Php 6.26/m^3 rate hike—both spread over five years (Mallari 2018). There were also "hidden increases" in the approved water bills (ibid.). A December 2003 Commission on Audit report noted excessive profit taking as "Manila Water's actual rate of return […] [of] 40.92 percent […] exceed[ed] the allowable [rate of return] of 12 percent stipulated [in] the MWSS Charter" (PCIJ 2006).

2. *Lack of consultation and public participation*

   The water rate increase and its hidden costs were not fully disclosed to the public consumers especially since "any [rise] in basic charges will […] result in […] increase[s] in environmental and sewerage charges" (Mallari 2018). Public consultations were confined to rate rebasing issues.

3. *Increase in non-revenue water (NRW)*

   NRW refers to losses due to leaks and pilferages. Both companies failed to meet targets set in 1997. For Maynilad, its NRW increased from 56 percent in 1997 to 66 percent in 2001 (Fajardo n.d.). By 2018, Manila Water had decreased its NRW but still hovered around 11 percent, while Maynilad's is worse at 30 percent.

4. *Persistence of corruption and irregular practices*

   Maynilad admits that "a greater volume of their NRW is lost to theft as corrupt employees take bribes to install illegal connections for both small households and big corporations" (IBON 2003b, 9). A 2002 MWSS RO audit disallowed Php 8 billion in Maynilad expenditures as "inefficiently and imprudently incurred," including high advertising costs, huge compensation packages, and the purchase of luxury cars for executives (Corral 2003, 16). Irregular practices take place as when Maynilad convinced the RO's Chief Regulator to push for a contract amendment allowing an "increase [in] tariff rates through an automatic currency exchange rate adjustment (…) mechanism" (ibid.) that is absent in the concession agreement.

   In 2012, a consumers' group filed an estafa complaint with the Quezon City Prosecutor's Office against both Manila Water and Maynilad, stating that the two companies collected from consumers the future costs of two mega-billion

[4] See Tadem 2004; Obanil 2018; Malaluan 2003; Serrano 2001, 10; Freedom from Debt Coalition 2003; Barlow 2001a, 6; Balce 2001, 20; IBON Facts and Figures 2003a, 132; IBON Facts and Figures 2003b; IBON Facts and Figures 2003c; Mallari Jr. 2018, A13; Fajardo n.d., 2; Esguerra 2002, 4; and Dargantes et al. 2011.

projects, the Laiban Dam and the Angat Dam irrigation projects (Cruz 2012a, 2012b). The collections continued even after the projects were discontinued or officially cancelled.

5. *Underspending by the private sector*

   Instead of generous allocations for improving services, private water providers have been underspending. In 2002, Maynilad disobeyed an MWSS order to repair a damaged portion of the Angat–La Mesa aqueduct, reasoning that its business plans had no such budget allocation (IBON 2003b). Maynilad had committed "to spend P[hp] 6.8 billion for infrastructure upgrades from 1997 to 2001, but spent only less than 50 percent of said amount" (IBON 2003a, 7).

6. *Limited and poor water services and sanitation coverage*

   Exaggerated claims of improved coverage are based on redefining "water connection" and miscalculating what makes up an average family household. Maynilad, for one, admits that 600,000 residents in Metro Manila have no access to water (Obanil 2018). The two companies have failed to build major waste water treatment plants as provided for in their 1997 contracts (Aning 2018).

7. *Absence of an efficient regulatory process*

   In the haste to privatize water services, a stronger and more independent regulatory office was dispensed with. The MWSS RO is merely an appendage of the MWSS Board, as its decisions only recommendatory and the Board has the final say. Some high-profile attempts at stricter regulation were only due to the transitory presence of conscientious public officials (R. Obanil, unpublished interview, July 31, 2018). The perception persists, therefore, that MWSS mainly favors the private companies over the consumers. This is known as 'regulatory capture' by the private companies. Close ties between the regulatory agency and the private companies pave the way for the 'revolving door syndrome' whereby some public officers, upon leaving the agency, eventually find lucrative positions in the private companies they had previously regulated.

Alternatives to water privatization

While the Philippines continues to favor privatization of public services, particularly water supply, the fact is, public delivery of water remains a viable and sustainable form of public service. Dargantes et al. (2012) mapped the degree of public versus private sector service delivery in Asia via a survey of 646 water utilities servicing 10 million people. Kishimoto et al. (2017) narrated initiatives at the town level to reverse the privatization process and reclaim public services. The following alternatives to privatization of water services have arisen:

1. *Reforms to water privatization*

   Water services can be regulated more intently by the local governments under the guiding principle that water is not a commodity to be privately controlled where the profit motive rules. This involves instituting and implementing: (1) a stop to raiding the water systems of rural communities; (2) watershed cooperation to protect river and lake systems; (3) national and international legislation to end abusive corporate practices; (4) government taxation of private sector to pay for infrastructure repair; and (5) effective citizens' participation (Barlow 2001b).

2. *Public/non-profit partnerships (PuNPP) or co-privatization*

   Under PuNPPs, "one or more public sector agency works with one or more civil society or community-based organization (CBO) to deliver water services" (Dargantes et al. 2012, 227). The local citizenry are not only consumers but also co-owners. The partnership between local communities and the water utility for joint management of water resources is "based on equity, resource management, reduction of water consumption, improvement of reliability, and reduction in operating costs" (ibid.).

3. *Deprivatization and/or remunicipalization*

   A third alternative is deprivatization or remunicipalization, i.e., returning public services to the government. This involves public management and democratic control that is transparent, accountable, and participatory. Under remunicipalization, LGUs source the capital needed for water service through cheaper loans and undertake the socialization of costs. LGUs may also benefit from tax advantages and the profits generated. Remunicipalization assures the participation of citizens and civil society organizations through seats on the boards of the new public operators (Petitjean and Kishimoto 2017). Remunicipalization has, so far, resulted in 835 successful case studies in 1,600 cities and towns in 45 countries around the world (Kishimoto et al. 2017).

4. *Public-public partnerships (PuPs)*

   PuPs involve collaboration among public sector agencies in preventing privatization of water utilities by opposing privatization of financially viable water districts, collectively developing performance benchmarks, implementing tertiary level treatment of wastewater and reducing demand for piped water, use of excess water, and access to other water sources, e.g., natural springs (Dargantes et al. 2012).

5. *Single non-profit agencies (SiNPs)*

   Non-government organizations (NGOs), acting as SiNPs, "have the capacity to develop non-commercialized water systems" (Dargantes et al. 2012, 231). These involve establishing rain harvesting structures and dams using an integrated water resources management approach, water system improvement, and securing dependable water supply from third-party bulk providers.

The challenges to alternatives to water privatization

While exploring the possibilities of alternatives to water privatization, certain challenges have to be addressed (Petitjean and Kishimoto 2017):

(1) *The difficulty in modifying or terminating contracts.* Experience shows that concessionaire's contracts are not easy to get out of.

(2) *Non-disclosure of information.* Private companies generally refuse to share information thus preventing public regulatory authorities to control and monitor their activities.

(3) *Economic power.* Private companies have vast legal resources to confront deprivatization. They could invoke the Investor State Dispute Settlement (ISDS) mechanism against deprivatization.

(4) *Central government as the obstacle.* In some cases, the central government can also be an obstacle to remunicipalization efforts.

(5) *Large funding requirements.* Like any public service, water utilities entail large investments and capital costs.

The importance of political criteria and tripartite cooperation

The above obstacles have not stopped the general trend by an increasing number of towns seeking alternatives to privatization. The Asian experiences show viable public ownership of water services and success in preventing privatization. Political criteria are essential factors that values participation, empowerment, equity, accountability, quality, safety, efficiency, transparency, solidarity, and replicability (Dargantes et al. 2012).

The key is the strong tripartite cooperation between national and local public officials, water services workers, and communities (Petitjean and Kishimoto 2017). The crucial drivers are vibrant citizens' movements working hand-in-hand with municipalities to claim back ownership of basic services.

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