AGWWAS Comments*
Review of Implementation of ADB's 2001 Water Policy: "Water for All"
5 DECEMBER 2005, Manila, Philippines

Established in 1994, the Alliance of Government Workers in the Water Sector (AGWWAS) is an aggrupation of government workers' unions and associations in the different water agencies in the Philippines with aim to promote trade union rights and collective bargaining agreements.

AGWWAS is also a member of the Public Services International (PSI), a global union federation made up of more than 600 trade unions. PSI represents more than 20 million workers who deliver public services in 160 countries around the world. PSI and its affiliates are committed to build quality public services that meet the needs of workers and communities. Priorities include global campaigns for water, energy and health services. PSI also promotes gender equality, worker rights, trade union capacity building and equity, and social dialogue. PSI is an officially recognised non-government organization (NGO) for the public sector within the International Labour Organisation and has accreditation with UNESCO, ECOSOC and UNCTAD. PSI also works in association with the International Confederation of Free Trade Union (ICFTU).

AGWWAS was among those who participated at the 17-18 November 2005 Regional Civil Society Consultation on the Review of ADB's Water Policy. We would like to submit the following comments and recommendations for consideration of the ADB Water Review Panel.

General Comments:

A. Water is a basic human need and a fundamental human right and its provisioning should form part of the core of quality public services delivered by government as a social responsibility to its citizens. More importantly, fundamental laws of many countries have enshrined the provisioning of water as a basic social service and a responsibility of the state.

B. We view with caution ADB's recent statements that the Bank no longer supports privatization, "but advocates for improved delivery of water services, which may require the participation of the private sector (PSP)." We further note the slight shift from the 2001 policy which states that privatization will be promoted "where appropriate"; the Bank likewise on many occasions in the past has extolled the supposed benefits from privatization.

C. The Bank's continued support for PSP in water, as articulated in its 2001 policy, is based on the flawed assumption that private is better than public. There is an increasing body of evidence to prove that this is not necessarily so, and major problems in PSP in water had been increasingly recognized, including by the Bank and other multilateral institutions.

D. We take a special interest in the failure of bulk water supply contracts in Chengdu (China) and such other cities as Ho Chi Minh (Vietnam) and Kuala Lumpur (Malaysia). Similar

* AGWWAS acknowledges the research assistance provided by Public Services International Research Unit (PSIRU-Asia) www.psiru.org.

projects - both solicited and unsolicited – are currently awaiting approval in the Philippines, and AGWWAS and its affiliates are at the forefront of challenging these risky and non-transparent proposals.

E. While promoting "a national focus on water sector reforms", we note that the Bank has made use of its considerable financing leverage -- infrastructure loans, technical assistance grants, policy advice, roundtable discussions -- to influence the direction of national water reforms, targeting sovereign and subsovereign levels. We challenge the ultimate aim of these reforms, which increasingly seems to us is merely an excuse to make viable and well-functioning water utilities more attractive targets for PSP or private take-over.

F. We also note with alarm that the Water Policy will shift the role of government from primary provider to a mere regulator. Moreover, while on the one hand the policy recommends the reduction of subsidies to the poor, the policy shall grant non-transparent subsidies (e.g. concessional financing, guarantees) to the private sector. These provisions we find inequitable, regressive and unacceptable within a water management framework that supposedly aims to provide 'water for all'.

G. We laud ADB's efforts at benchmarking the performance of water utilities in the region; the survey data has shown that in many cases, well-functioning public water utilities (e.g. Osaka, Seoul) outperform the privatized utilities in Manila and Jakarta.

H. We also laud the Bank's efforts in promoting the public sector model provided by the Phnom Penh Water Supply Authority (PPWSA); a closer scrutiny of the model shows that various forms of 'public-public' and 'public-community partnerships' have contributed to making the public utility a success story.

I. Finally, organized workers in the water sector – in their multiple roles as human resources, experts, repositories of knowledge, watchdogs, etc -- are an important stakeholder partner in achieving the millennium development goal of providing safe, affordable and sustainable water for all.

<u>Recommendations:</u>

1. We urge the Bank to rethink its notion of water as an "economic good" and adopt the increasingly universal view of water as a basic human need, a fundamental human right, a finite natural resource and a basic social service; this view should eventually find its way into an updated version of the Bank's Water Policy.

2. ADB – through either this water policy review or other ongoing reviews within the Bank (e.g. review of the PSD strategy) – should faithfully document and review the experience of the MWSS privatization; as well, the Bank's "Knowledge Management Center" should incorporate knowledge generated from the review, including those coming from sources critical of the privatization.

3. We strongly recommend that the Bank undertake a major and long overdue review of PSP in water supplies of developing countries, to be carried out in a transparent manner and jointly with various water stakeholders. AGWWAS and its affiliates would be willing to take part in this undertaking. The areas of evaluation could include NRW reduction, investment magnitude, staff training, asset mapping, metering, computerization, performance analysis, service to the urban poor, reselling water, tariff constraints on investment, and reviewing compliance with ILO core labor standards in the implementation of PSP in water.

4. The ADB should make a serious re-appraisal of the economics of existing water supply BOTs, and a put a moratorium on further developments, while the lessons of this experience are explored. Otherwise long-term economic liabilities may be accumulated which damage the ability of water utilities to function. ADB can start this review with the Bank-funded Chengdu water project; the Bank should also welcome the participation of interested water stakeholders in any review of PSP experience.

5. The global clamor against water privatization should warrant a review of policies and agreements entered into by both the local and national governments with international financial institutions. The ADB, on its part, should review these agreements and national water policies that are being formulated with the use of various forms of assistance from the Bank. The Bank should also look into the root of lack of people's access to water, which is not a matter of lack of supply but a matter of who controls the sources and the lack of government will to put monies into a basic social service as water provisioning for all. A key provision of any water policy should also be an active environment program should be undertaken to protect sources for water all over the archipelago.

6. We urge the Bank to make public and more transparent the terms and conditions offered to the private sector when this involves the Bank's various financing modalities. Likewise, there should be more genuine consultation, including with trade union stakeholders, on various policies that affect the water sector.

7. The Bank should study the experience of the many viable and well-functioning public sector models that exist in the region (Phnom Penh, Japan, Singapore, Hongkong) and explore public-public and public-community partnerships that ensure transparent, accountable and participatory forms of governance in the water sector.

8. Finally, we urge the Bank to recognize the strategic role played by organized workers in the water sector and include their representatives in any consultation or forum that influences policy and generates knowledge.

A. Water is a basic human need and a fundamental human right and its provisioning should form part of the core of quality public services delivered by government as a social responsibility to its citizens. More importantly, fundamental laws of many countries have enshrined the provisioning of water as a basic social service and a responsibility of the state.

Water is vital to life itself and access to water for human needs is a fundamental right that should not compromised by profit motives that are paramount in the private sector. Water is also a finite natural resource and water bodies are the natural habitats where fish thrive and upon which whole communities depend for food and livelihoods. Water is a basic social service that national governments need to provide especially in archipelagic countries like the Philippines where many areas remains inaccessible and undeveloped; the delivery of social services take a backseat when governments choose foreign debt servicing and military spending over social spending.

We therefore find highly contentious the ADB Water Policy's thrust to treat water as an economic good as with any other commodity, with its use, allocation and tradability determined by market principles.[1] The emergence of water markets and a regime of 'tradable water rights'[2] is anathema to long-held notions of water as a social good and a common property resource. Selling water on the open market does not address the needs of poor, thirsty people; on the contrary, privatized water is delivered only to those who can pay for it, and this negates the overarching goal of "water for all". "High-value"[3] uses of water as a principle of water allocation is fraught with risks, especially if "high-value" is not determined through a transparent, participatory and accountable mechanism that only government and can be able to effectively provide.

We urge the Bank to rethink its notion of water as an "economic good" and adopt the increasingly universal view of water as a basic human need, a fundamental human right, a finite natural resource and a basic social service; this view should eventually find its way into an updated version of the Bank's Water Policy.

B. We view with caution ADB's recent statements that the Bank no longer supports privatization, "but advocates for improved delivery of water services, which may require the participation of the private sector (PSP)."[4] We further note the slight shift from the 2001 policy which states that privatization will be promoted "where appropriate";[5]

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[1] Sec. 21:*"ADB's water policy… seeks to promote the concept of water as a socially vital economic good that needs increasingly careful management to sustain equitable economic growth and to reduce poverty."*

[2] Sec. 31: *"(ADB) will support the evolution of water allocation through markets of transferable water rights…"*

[3] Sec. 55: *"The allocation of water to high-value uses is a matter of economic accountability and ADB will support the DMCs in developing appropriate methodologies for improved allocative efficiencies."*

[4] Available at the ADB water website.

[5] Sec 37: "…will include community participation, corporatization, commercialization, and privatization where appropriate."

the Bank likewise on many occasions in the past has extolled the supposed benefits from privatization.[6]

Right at the Bank's backyard, the Manila water utility (Manila Waterworks and Sewerage System or MWSS) was privatized in 1997. The spectacular failure of this privatization is extensively documented elsewhere.[7] Maynilad Water Services (MWS) and Manila Water Company (MWC) which took over the MWSS failed to meet the expected coverage of their services. In Maynilad's case, only 57 percent of its clients have 24-hour water service. In December 2002, Maynilad, the larger of the two concessionaires unilaterally terminated its 25-year contract, leaving management of the water service in shambles and its financials in disarray, and upon unfavourable ruling from international arbitration, sought corporate rehabilitation. This rehabilitation plan is currently being challenged at the high court by several citizens groups as the plan entails a massive bail-out of this corporation by government, and ultimately by the nation's poor majority. Even as key performance targets contained in the 1997 concession agreement had not been achieved, the regulatory office allowed escalating water tariffs which by January 2003 ballooned to 500% and 700% in both concessions. While consumers are burdened by high water rates, international funding institutions and private investors are counting their profit by the millions. At the 'more successful' concessionaire (Manila Water), a 1999 government audit found that rate on return was a high 41%, well above the legal limit of 12% set for public utilities! This does not include costs for current and future investments in sanitation and sewerage which will be passed on to the consumers. It goes without saying that the rights to tenure and protection of public sector workers were sacrificed at the outset of the privatization. Violation of workers rights, including their security of tenure, and various forms of union busting continue to this day. There are very important lessons that need to be learned by the Bank as well as the different water stakeholders from this failed privatization experience.

ADB – through either this water policy review or other ongoing reviews within the Bank (e.g. review of the PSD strategy) – should faithfully document and review the experience of the MWSS privatization; as well, the Bank's "Knowledge Management Center" should incorporate knowledge generated from the review, including those coming from sources critical of the privatization.

C. The Bank's continued support for PSP in water, as articulated in its 2001 policy, is based on the flawed assumption that private is better than public. There is an increasing body of evidence to prove that this is not necessarily so, and major problems in PSP in water had been increasingly recognized, including by the Bank and other multilateral institutions.

[6] For instance, in April 2002, former Bank President Tadao Chino only had glowing remarks for the Manila water (MWSS) privatization --- "more people have access to piped water, especially among the poor; service quality has improved markedly with regular hours of supply, fewer interruptions, and an improvement in water quality; in general, water concessions improve service coverage and quality, and efficiency of operation." (In: Tadao Chino, "*ADB's Water Financing Policies and Experience*," Opening remarks at the Second Meeting of the World Panel on Water Infrastructure Financing, 18 April 2002, ADB Headquarters, Manila, Philippines.)

[7] See for instance website of Freedom from Debt Coalition-Philippines www.freedomfromdebtcoalition.org.

In the 1990s, the argument on the desirability of privatization and PSP in water was framed by financial institutions like the World Bank and ADB on the supposed efficiency -- and therefore better management -- of the private sector. The 2001 Water Policy is replete with this assumption as provided in sections such as:

- Sec. 38 on 'Improving water services & private sector participation': *"Private sector initiatives and market-oriented behavior are expected to improve performance and efficiency, particularly in service delivery… To maximize the efficiency of publicly owned and managed water service delivery systems, ADB will promote the contracting out of specific operations to the private sector."*

- Sec. 39 on 'Public-private partnerships': *"Global experience indicates that public responsibility and ownership are often best blended with private management.*"

Experience in the Asia-Pacific region and elsewhere across the globe has not borne out this assumption. There are now studies that conclude that overall there is no evidence that private sector operators are intrinsically likely to be more efficient than private operators. There is an increasing stream of empirical evidence – including those coming from the multilateral institutions – that consistently and repeatedly shows that there is no systematic significant difference between public and private operators in terms of efficiency or other performance measures. The evidence that the public sector is not intrinsically less efficient is now supported by studies on water operators on all continents across the globe. (see also Annex A) [8]

In 2003, ADB water specialist Arthur McIntosh examined the experience of PSP in the region, and came out with the following "realities":[9]

- Coverage with piped water does not always require major urban water utilities to seek funds from external sources.
- The private sector will not always bring much needed funds for development to the table and improve water utility efficiency.
- It is not possible to run a $20–100 million per year commercial operation (selling water) with civil servant rules and salaries.
- Regulatory bodies are not only needed because of private sector contracts.
- Private operators are not always eager to serve the urban poor.
- Private sector participation does not always bring competition.

[8] Studies cited in this section from: "The relative efficiency of public and private sector water", by David Hall and Emanuele Lobina, Public Services International Research Unit (PSIRU), Business School, University of Greenwich, October 2005 (available at http://www.psiru.org/reports/2005-10-W-effic.doc)

[9] *Asian Water Supplies – Reaching the Urban Poor, A Guide and Sourcebook on Urban Water Supplies in Asia for Governments, Utilities, Consultants, Development Agencies, and Nongovernment Organizations*, by Arthur C. McIntosh. Asian Development Bank and International Water Association, August 2003, pp 1-3.

McIntosh also cited the problems of PSP in the water sector: [10]

- The headlong rush toward private markets has failed to address some of the most important issues and concerns about water. Water has vital social, cultural, and ecological roles to play that cannot be protected by purely market forces.
- There is a need to provide for the basic water requirements of people and ecosystems, permit access to water for poor populations, include affected parties in decision making, and improve water use efficiency and productivity.
- Openness, transparency, and strong public regulatory oversight are fundamental requirements in any efforts to shift the public responsibility for providing clean water to private entities.
- The World Bank, other international aid agencies, and some water organizations like the World Water Council are increasingly pushing privatization in their efforts, but without a common set of guidelines and principles.
- The rapid pace of privatization in recent years and the inappropriate ways several projects have been implemented have compounded the worries of local communities, NGOs, and policy makers. As a result, private water companies are increasingly seeing serious and sustained public opposition to privatization proposals.
- Improvements in efficiency reduce water sales and hence may lower revenue. As a result, utilities or companies that provide utility services may have little or no incentive to encourage conservation.
- Efforts should be made to strengthen the ability of governments to meet water needs. Unfortunately the worst risks of privatization are also where governments are weakest.

  We strongly recommend that the Bank undertake a major and long overdue review of PSP in water supplies of developing countries, to be carried out in a transparent manner and jointly with various water stakeholders. AGWWAS and its affiliates would be willing to take part in this undertaking. The areas of evaluation could include NRW reduction, investment magnitude, staff training, asset mapping, metering, computerization, performance analysis, service to the urban poor, reselling water, tariff constraints on investment, and reviewing compliance with ILO core labor standards in the implementation of PSP in water.

D. We take a special interest in the failure of bulk water supply contracts in Chengdu (China) and such other cities as Ho Chi Minh (Vietnam) and Kuala Lumpur (Malaysia). Similar projects - both solicited and unsolicited – are currently awaiting approval in the Philippines, and AGWWAS and its affiliates are at the forefront of challenging these risky and non-transparent proposals.

At the Bank, the 2001 Water Policy ushered in a 'new generation' of water projects that promote PSP in its various modalities, such as the failed Chengdu BOT project in China. The Chengdu project is China's first pilot BOT water supply project, and the Bank's first private sector project in the water sector. The Bank provided US$48 million out of the total investment of US$106.5 million. The BOT contract requires the municipal water operator, which has supplies of its own for 900,000 cubic metres per day, to buy 400,000 m³ per day on a "take-or-pay" basis. A large

[10] *Ibid,* p. 91.

part of the Philippine's fiscal deficit, huge debt burdens and high power rates today can be traced back to 'take-or-pay' agreements forged in the power sector in the 1990s, giving government a reason to privatize the national power company.

In February 2002, ADB touted the project as a "model BOT project".[11] A year later, the alarm was raised on the risks and expensive take-or-pay water in Chengdu:

> "… Unfortunately, the present daily requirement of Chengdu is only about 1 million m³ per day. As the supply is more than the demand, CMWSC (the municipal water operator) had to close some waterworks, but the distribution company must buy the 400,000 m³ per day from the private sector joint venture at the specified price. This situation has caused some concern. It came about partly because of overestimation of population growth and a lack of capital for new area development. It is also aggravated by the abundance of groundwater use by SSWPs (small scale water producers). After completion of the BOT water quality improved, but the price of water increased, too, which reduced demand…. The BOT contract in Chengdu is causing concern. Demand has been overestimated. The city is left not wanting any more water at the moment, but it is forced under the "take or pay" contract to buy 400,000 m³ per day. This clearly shows that governments take a risk with "take or pay" BOTs."[12]

There are similar problems with bulk water BOTs elsewhere in the region and across the world. In Ho Chi Minh, three "take or pay" contracts for bulk supply of treated water were signed in 1995, 1997, and 1999.There was a mismatch, however, of production and distribution capacity, so the water company had to pay for water that could not be sold; one of the BOT operators is pulling out due to financial difficulties.[13] In Kuala Lumpur, the public utility PUAS Bhd has water supply contracts with three private firms; PUAS became so heavily indebted because it had to bear the costs of leaks and non-revenue water, and is now destined for privatization.[14]

In the Philippines, several water districts have pending take-or-pay BOT proposals. In Metro Cebu, an unsolicited BOT project will take-or-pay 50,000-60,000 cu m/day of treated water from a private consortium. The draft BOT contract stipulates that there shall be an automatic (most likely upward) adjustment in water rates due to inflation, power costs, and other cost adjustments. A lopsided provision states that if the private proponent defaults on its target, the water district may assume all assets and liabilities of the system; but if the water district defaults, the private proponent can take-over all or part of the operations, except its liabilities. Moreover, the private take-over of the water district may be occasioned by the simple failure of water agency to pay monthly dues for allocated water. With possible take-over of the water district's

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[11] *Water: Pioneering Project - ADB Review*, By Ian Gill, ADB Media Center, 2002
http://www.adb.org/Documents/Periodicals/ADB_Review/2002/vol34_3/pioneering_project.asp

[12] *CHENGDU Utility Profile Water Utility*, In: ASIAN WATER SUPPLIES – REACHING THE URBAN POOR, by Arthur C. McIntosh. Asian Development Bank and International Water Association, August 2003.
http://www.adb.org/Water/Indicators/Profiles/Chengdu_utility.pdf

[13] Ibid, p. 89.

[14] For more examples, see: David Hall, Violeta Corral, Emanuele Lobina and Robin de la Motte. 2004. *Water privatization and restructuring in Asia Pacific*. Public Services International Research Unit (PSIRU), University of Greenwich, London, UK. (available at: http://www.psiru.org/reports/2004-12-W-Asia.doc)

assets, our union members have alleged that the proposed BOT is "a backdoor method of privatization." Instead of approving this risky BOT proposal, the union recommends several doable measures: (a) Improve system recovery rate of 68%, or decrease NRW; (b) Improve collection efficiency; (c) Procure additional standby electric pumps; (d) Construction of additional, cheaper water reservoir; (e) Cost-cutting measures; and (f) Ensure transparency, stakeholder participation. There should be no need to seek risky financing from the private sector is the government prioritizes the budget for water services. (see Annex B for full text of the union's position paper)

Coincidentally, the private proponent in this perilous BOT undertaking is none other than the 'better concessionaire' in the 1997 Manila water privatization. We note that the Bank had been giving this particular private sector more than ample "airtime" and publicity in the many Bank-organized water fora/consultations, including at the recently-held "Roundtable Discussion on PSP in Urban Water Supply in India" in June.[15]

In the remote mountain town of Butong, Ronda in Cebu island, dirt-poor residents pay a staggering P150 for every cubic meter of water and have to pay upfront from a solar-powered, prepaid water supply system installed by a Philippine subsidiary of a US-based corporation. In Baguio in northern Philippines, attempts to bid out a US$70 million bulk water supply project to the private sector had already failed twice; the mining company who lost the bid bared its plans to convert its idle open mining pit into a reservoir for drinking water! This mining company is also actively bidding for water projects across the archipelago; as well, construction and real estate companies are increasingly interested players in the water sector.

> The ADB should make a serious re-appraisal of the economics of existing water supply BOTs, and a put a moratorium on further developments, while the lessons of this experience are explored. Otherwise long-term economic liabilities may be accumulated which damage the ability of water utilities to function. ADB can start this review with the Bank-funded Chengdu water project; the Bank should also welcome the participation of interested water stakeholders in any review of PSP experience.

E. While promoting "a national focus on water sector reforms", we note that the Bank has made use of its considerable financing leverage -- infrastructure loans, technical assistance grants, policy advice, roundtable discussions -- to influence the direction of national water reforms, targeting sovereign and subsovereign levels. We challenge the ultimate aim of these reforms, which increasingly seems to us is merely an excuse to make viable and well-functioning water utilities more attractive targets for PSP or private take-over.

For several years now, various government agencies in the Philippines have been looking into the issue of water supply security. The main reason of managing water resources and distribution

[15] See: http://www.adb.org/Water/Financing/PSP/2005/roundtable-meeting-report.asp; *Manila Water's Tony Aquino: Living Up to the Promise of Private Sector Involvement in Water*, Water for All, September 2005 http://www.adb.org/Water/Spotlight/aquino.asp

revolves around the relation of Malthusian economics the populations and resource use, second efficiency of supply and generation, demand side driven with an inclination to corporate consumers. Moreover, the national government is undertaking austerity measures to cut down on national expenditures, targeting offices where local and national government is giving operational subsidy. In strict terms, the direction of these actions is towards greater partnership of private and the government.

The national government and the local government units (LGUs) claimed that the irresponsible use of water supply will bring about more fiscal problems whereby funds will be redirected to the use of addressing the problem. However, data from various government agencies show that area service of existing water district is small compared to the ideal number to be served. A 1997 government study, for instance, cited that while the country has abundant water resources, 63 percent of the population does not have access to potable water and 47 percent of the agricultural lands lack irrigation.

In recent times, private entities and various government offices have been selling the idea that existing water districts are mismanaged and inefficient in delivering water to various communities. Departing from the idea of subsidy and efficiency, it seems that the government is painting a scenario of crisis to justify its inefficiencies. Water crisis has now become a catchphrase for a ploy to privatize water districts nationwide.

The problem of many water districts in the country is not about a water crisis or generation of supply, but of developing and distributing the existing supply of water, as well as the government's dismal failure to subsidize to expand the operations of many water districts and other water cooperatives. Despite not receiving subsidies in any form, these water districts have been surviving for the past years of their operation.

The bleak scenario concocted by responsible government agencies is a tailor-made slogan to allow the private sector's active profiteering or participation in the service sector. The Macapagal-Arroyo government, and sadly with the collaboration of international financial institutions (IFIs) like the ADB and the World Bank, is targeting a country-wide water a privatization program that will see the abolition of some 575 water districts across the country to be replaced by IFI-funded private water companies in supposed partnerships with LGUs.

An Executive Order (EO) released by current President Macapagal-Arroyo in February 2004 will corporatize and ultimately privatize water districts. The EO will re-classify water service providers into creditworthy, semi-creditworthy, pre-creditworthy and non-creditworthy. The more creditworthy water providers will have to rely on private or commercial sources of development financing, which may lead to foreclosures and pave the way for privatization.

At the root of the issue -- the idea of security of water supply is a question of who controls our natural resources. Water has become more commodified as a result of privatization. Elsewhere in the world, countries such as Bolivia and Argentina who have experienced the dismal effects of water privatization are now calling for re-nationalization with full government support for beleaguered public water utilities.

The global clamor against water privatization should warrant a review of policies and agreements entered into by both the local and national governments with international financial institutions. The ADB, on its part, should review these agreements and national water policies that are being formulated with the use of various forms of assistance from the Bank. The Bank should also look into the root of lack of people's access to water, which is not a matter of lack of supply but a matter of who controls the sources and the lack of government will to put monies into a basic social service as water provisioning for all. A key provision of any water policy should also be an active environment program should be undertaken to protect sources for water all over the archipelago.

F. We also note with alarm that the Water Policy will shift the role of government from primary provider to a mere regulator. Moreover, while on the one hand the policy recommends the reduction of subsidies to the poor, the policy shall grant non-transparent subsidies (e.g. concessional financing, guarantees) to the private sector. These provisions we find inequitable, regressive and unacceptable within a water management framework that supposedly aims to provide 'water for all'.

Language reducing government's role is contained in such provisions as:

- Sec. 37 on 'Improving water services': *"Governments (also) need to modify their roles from one of service provider to regulator."*

- Sec. 55 on 'Improving governance': *"(ADB) will dialogue with governments to modify their roles and increasingly adopt functions of a regulatory nature."*

Language removing subsidies to the poor is in:

- Sec. 45 on 'Conserving water and cost recovery': *"Evidence from scores of water projects shows that the poor are increasingly willing to pay for water services that are predictable and effective. … Likewise, requiring the poor to pay for the true costs of urban and rural water supplies is possible and has been found to be an effective means of sustaining the services and involving the poor in their management.… ADB will promote the phased elimination of direct subsidies to the poor for accessing basic water services in line with an increase in affordability levels."*

- Sec. 46 on 'Conserving water and cost recovery': *"Subsidies are a controversial issue in the water sector. ADB will support subsidies for water services in the following circumstances: (i) where treated water uses have beneficial external effects in preventing health problems, (ii) where the transaction costs of measuring usage are very high, and (iii) where a limited quantity of treated water for the poor is regarded as a basic human need. Taken together, these circumstances may justify a limited lifeline element in tariff policy. Other forms of subsidies, such as cross-subsidization between systems, will be reviewed to ensure that targeting is efficient and transparent. However, in the long term, governments and*

regulatory agencies will be persuaded to phase out subsidies as economic conditions improve."

While direct subsidies to the poor will be reduced, subsidies such as guarantees and concessional financing shall be granted to the private sector:

- Sec. 38 on 'Improving water services': *"ADB will seek to provide innovative financial packages to enable commercial lenders and promoters to manage the risks involved with investing in water-related projects. In financing build-operate-transfer and build-own-operate projects from its private sector window, ADB will promote selection through international or local competitive bidding. Through such financing ADB will secure additionality of resources for the water utility, superior management structures, advanced project implementation capability, construction technology, and improved operation and maintenance services. ADB will also assist DMCs to identify suitable projects for such financing and engage concessionaires. Where utilities are privatized, ADB's various financing and guarantee modalities can help obtain access to credit with longer maturities and provide relief from the debt-service burden in the early years of operation. To maximize the efficiency of publicly owned and managed water service delivery systems, ADB will promote the contracting out of specific operations to the private sector."*

  We urge the Bank to make public and more transparent the terms and conditions offered to the private sector when this involves the Bank's various financing modalities. Likewise, there should be more genuine consultation, including with trade union stakeholders, on various policies that affect the water sector.

G. We laud ADB's efforts at benchmarking the performance of water utilities in the region; the survey data has shown that in many cases, well-functioning public water utilities (e.g. Osaka, Seoul) outperform the privatized utilities in Manila and Jakarta.

In its 2002/2003 survey of 18 cities in Asia-Pacific, the Bank collected key performance data that comprise essential benchmarking indicators on service level, service quality, operational efficiency, and financial management (Annex C).[16] Closer analysis of the data will show that two cities with private sector concessions - Manila and Jakarta -- were performing significantly worse than most public sector operators on four indicators of coverage, investment, and leakage:[17]

- The percentage of households connected to water supply in Manila and Jakarta is lower than all other cities except one (Ulanbaator);
- the percentage with access to sewerage in Manila and Jakarta is lower than in any of the other cities except one (Vientiane)

16 Presented in: *Water in Asian Cities - Utilities Performance and Civil Society Views.* ADB. January 2004 http://www.adb.org/Documents/Books/Water_for_All_Series/Water_Asian_Cities/regional_profiles.pdf

17 In: Hall et al, PSIRU. 2004.

- Capital expenditure (US dollars per connection) in Manila and Jakarta is much lower than in cities such as Delhi and Dhaka, even though these latter are in countries with lower per capita income;
- In terms of the levels of non-revenue water (leakage and unpaid consumption) Manila is worst, and Jakarta fourth worst.
- On six indicators (unit production costs, percentage of expenses covered by revenue, cost to consumers of constant level of usage per month, 24 hour supply, tariff level, connection fee) their performance is middling, not outstanding.
- The private cities perform relatively well only on two indicators: revenue collection efficiency, and minimizing the number of staff per 1000 connections.

To argue furthermore on the relative efficiencies of public and privately-run utilities, below is a comparison of non-revenue water of selected utilities (2002 figures):

– Manila (private for 7 years)	62%
– Jakarta (private for 7 years)	51%
– London (private for 15 years)	40%
– Dhaka	40%
– Philippine Water Districts (ave.)	29%
– Phnom Penh	26%
– Hongkong	25%
– Seoul	25%
– Osaka	7%

In the ADB's survey, the city of Osaka was described as providing "an excellent water service", and its level of non-revenue water, at 7%, is outstandingly low, by international standards. This performance is now threatened, however, by policies of the Japanese government and proposals from the state-owned Development Bank of Japan (DBJ).

H. We also laud the Bank's efforts in promoting the public sector model provided by the Phnom Penh Water Supply Authority (PPWSA); a closer scrutiny of the model shows that various forms of 'public-public' and 'public-community partnerships' have contributed to making the public utility a success story.

This is a welcome development as the Bank in the past tend to ignore the alternative of public sector water undertakings, although the public sector is still the main provider of water and sanitation services for the great majority of the population in the region.

The Phnom Penh Water Supply Authority (PPWSA) is cited by the ADB survey to be "one of the better run utilities in the Asian region". It has improved performance since the early 1990s, in terms of extension of connections, financial efficiency, ending of corrupt practices and leakage (NRW is reported to be 26%, just above the average for England and Wales). All connections have been metered, and revenue has risen from covering half of the costs to covering total costs; the public participate in reporting leaks. In 2003, the price of PPWSA water was 350 riel, compared with 3000 riel for private water. From the ADB video documentary "Water Voices:

The Experience of PPWSA", we note the following features which to our mind has made the PPSWA a success story:

- Strong vision and a committed leadership and core of utility workers – "We are working for the country, which has suffered so much from the Khmer Rouge."
- Use of own local, appropriate and affordable technology – PPWSA rejected offer of foreign contractor that would have jacked up the cost to ten times, and constructed waterworks themselves: "We learn by doing".
- Human resource development and skills training through 'public-public partnerships' – PPWSA core of technical workers received training from the former East Germany.
- Continuing public awareness and consumer education ('public-community partnership') – For instance, in the future challenge to provide sanitation services: "You have to pay for water that you drink, now you have to pay for water that you waste."
- Income above "full cost recovery" plowed back to invest in future expansion: "Profit made by us will be profit by the country"
- Development financing made available to the public utility at concessional rates.

Public–public and public-community partnerships can be used to achieve the following objectives: (a) They can lead to *improved services* because they are a way of restructuring the public sector, which helps to overcome some of the current limitations of the public sector. They may lead to greater efficiency, improved access to services or more equitable treatment; (b) PuPS can be used to *build capacity* in public agencies and the skills of a workforce. There is evidence that the process of capacity-building, which involves different groups or parts of the public sector, is often the most successful in drawing together groups to learn; (c) They can help to *build stronger community support and accountability* for services[18]

Indeed the model provided by Phnom Penh and such other cities as Osaka in Japan, run by effective public sector water operators, can clearly provide lessons for other water undertakings in Asia.

The Bank should study the experience of the many viable and well-functioning public sector models that exist in the region (Phnom Penh, Japan, Singapore, Hongkong) and explore public-public and public-community partnerships that ensure transparent, accountable and participatory forms of governance in the water sector.

I. Finally, organized workers in the water sector – in their multiple roles as human resources, experts, repositories of knowledge, watchdogs, etc -- are an important stakeholder partner in achieving the millennium development goal of providing safe, affordable and sustainable water for all.

[18] For more on PuPs, see: David Hall, Jane Lethbridge, Emanuele Lobina, *"Public-public partnerships in health and essential services"*, Public Services International Research Unit, Regional Network for Equity in Health in Southern Africa (EQUINET), Municipal Services Project (MSP), DISCUSSION PAPER 23, July 2005 (Issue Editors: R Loewenson, R Pointe) http://www.equinetafrica.org/bibl/docs/DIS23pub.pdf

While we laud ADB's efforts to consult with civil society, we also bewail the fact that AGWWAS was the only water sector trade union representative at the 17-18 November 2005 consultation. When the Bank in its 2001 water policy determined that "technical and economic issues" are the concern of governments,[19] it failed to recognize that organized workers in these public utilities are key stakeholders in the overarching goal of "Water for All".

- Public sector workers are among the most important resources of government, and are intimately involved in, and deeply concerned by, the decisions taken by politicians and water managers.

- Workers in the water sector are organic repositories of knowledge -- we are the engineers, technicians, accountants, financial analysts, etc who have the skills and expertise to run the day-to-day operations and maintenance of water utilities. We can contribute our knowledge and expertise in the overall efforts to provide safe, affordable and sustainable water and sanitation services for all, including the marginalized poor across the region.

- Organized workers in water utilities – protected by their trade union rights and empowered by their continuous struggle for decent working conditions – play important watchdog roles within the water agency to counter any mismanagement or irregularities that are inimical to the public interest.

  Finally, we urge the Bank to recognize the strategic role played by organized workers in the water sector and include their representatives in any consultation or forum that influences policy and generates knowledge.

[19] Sec. 14: *"Water users are… less aware of technical and economic issues that are more the concern of developing member country (DMC) governments."*

ANNEX A
Public and private sector efficiencies: Some evidence to date

- A policy paper written by the International Monetary Fund in consultation with the World Bank in 2004 concerned public private partnerships (PPPs).[i] The key issue is whether PPPs result in efficiency gains that more than offset the higher borrowing costs, as the question of private sector efficiency is crucial for justifying any form of PPP because public sector borrowing is invariable cheaper than private sector borrowing. The IMF paper states that: *"Much of the case for PPPs rests on the relative efficiency of the private sector. While there is an extensive literature on this subject, the theory is ambiguous and the empirical evidence is mixed.… It cannot be taken for granted that PPPs are more efficient than public investment and government supply of services."*

- Earlier statements from the World Bank also reveal a neutral position on public or private operators. In July 2003 the Wall Street Journal ran a story headed 'The World Bank as Privatisation Agnostic', [ii] quoting senior WB officials on the re-appraisal of their policies on privatisation: *"'There's certainly a lot of soul-searching going on' says Michael Klein, the World Bank's vice president for private-sector development"*: and the article announced that *"World Bank officials have now decided it doesn't matter so much whether infrastructure is in public or private hands"*.

- A new World Bank paper by Estache et al in 2005 has summarised the econometric evidence on water efficiency thus: *"Most cross-country papers on utilities find no statistically significant difference in efficiency scores between public and private providers."* [iii]

- The picture is similar in respect of operators in OECD countries. Most recently, a Brookings Institute paper in 2005 looked at public and private water operators in the USA in terms of regulatory compliance and household expenditure on water. [iv] It found that *"when controlling for water source, location fixed effects, county income, urbanization, and year, there is little difference between public and private systems."*

Sources:

[i] International Monetary Fund Public-Private Partnerships March 12, 2004
http://www.imf.org/external/np/fad/2004/pifp/eng/031204.htm

[ii] Wall Street journal 21 July 2003 *The World Bank as Privatization Agnostic*

[iii] *Infrastructure performance and reform in developing and transition economies: evidence from a survey of productivity measures*. A. Estache, S. Perelman, L. Trujillo World Bank Policy Research Working Paper 3514, February 2005.
http://wdsbeta.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/03/06/000090341_20050306101429/Rendered/PDF/wps3514.pdf

[iv] *Public or Private Drinking Water? The Effects of Ownership and Benchmark Competition on U.S. Water System Regulatory Compliance and Household Water Expenditures*" by Scott Wallsten and Katrina Kosec. Working Paper 05-05. (March 2005) http://www.aei-brookings.com/publications/abstract.php?pid=919

ANNEX B

MCWD EMPLOYEES UNION
C/o Metro Cebu Water District Main Office
Corner Magallanes-Lapu-lapu Sts., Cebu City, Philippines

MEU's Position Statement on the [draft] Water Supply Agreement

for the Carmen Bulk Water Supply Project (September 2004)

The Metro Cebu Water District Employees Union (MEU) is strongly opposed to terms and conditions as set forth in the [draft] Water Supply Agreement for the Carmen Bulk Water Supply Project.

Preliminarily, it must be stated that the Carmen Bulk Water Project appears to be a necessity considering the state of water supply in Cebu City and neighboring cities.

However, the question whether this imperative project is to be undertaken by the private sector or by the State lies in the heart of the union's opposition to the water supply agreement.

One, the power sector's experience with the Independent Power Producers, not unlike the water supplier in the Carmen Bulk Water Supply Project, paints the ugly picture of spiraling upward adjustments of power rates. The replication of this picture is not unlikely, but is a certain eventuality.

For *another*, not being a government entity, the water supplier is *un*fettered by State accountability to the people, moved primarily by profit, not service.

Hence, it is the union's position that, being an indispensable utility, the Carmen Bulk Water Supply Project must be undertaken by the Metro Cebu Water District or any other governmental entity with adequate expertise and financial capability, and *not* by a private entity.

Further, in and by itself, the terms and conditions of the [draft] water supply agreement read like a model contract wholly written by the private proponent with only guaranteed profit in mind.

The financial position of the private proponent is invariably almost always assured in the water supply agreement. Even in terms of penalties, damages or sureties, the provisions are favorable to the private proponent and prejudicial to MCWD.

The lopsided nature of this agreement is amply shown below:

Liability of private proponent upon its failure to deliver minimum off-take	**Liability of MCWD Upon its failure to accept minimum off-take**
Pay liquidated damages equivalent to the amount of undelivered water.[20]	Pay whole value of the minimum take-off as if actually accepted.[21]

[20] §8.2, [Draft] Agreement.

The table shows that the private proponent is decreed to pay liquidated damages equivalent to the amount of undelivered water upon its failure to deliver the minimum off-take. This may appear fair enough. However, if we read a subsequent provision:

> Sec. 8.4. *Priority*. In order to allow the company to meet the target Allocated Water which shall be an annual average of 50,000 cubic meters per day, MCWD is committed to accept the Minimum Off-take of up to 60,000 cubic meters daily, subject to proof by the company that they are indeed below the 50,000 cubic meters average target at such particular period. xxx

It redounds that there can never be an instance when the private proponent must pay the liquidated damages as it can offset its deficiency.

There is no such equivalent escape hatch for MCWD.

Annual adjustment of water tariff to include inflation rate, power tariff adjustment and other cost parameters.	**Water tariff adjustment due to increase or *decrease* in construction-based risks**
Automatic, no need of approval process.[22]	Subject to negotiation.[23]
	Water tariff adjustment due to additional cost or *savings* brought about by extraordinary conditions
	Subject to negotiation.[24]

The factors in the left hand column of the table above refers to those conditions which, as present economics have taught us, are always increasing. Not surprisingly, these factors are *automatically* reckoned in the computation of the annual adjustment of water tariff without need of any approval process.

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[21] §8.3, [Draft] Agreement.

[22] §8.11(b), [Draft] Agreement.

[23] §8.11(d), [Draft] Agreement.

[24] §8.11(f), [Draft] Agreement.

Compare this *proviso* with that relating to factors which could *pull down* the water tariff, as set forth in the right hand column, and note that these must still be subject to negotiation.

Requirement for the parties to put up a surety bond to cover performance of undertakings

Is there such requirement for the private proponent?	**Is there a requirement for MCWD?**
Yes, but only a *construction security* to cover its liquidated damages if completion date has not occurred on or before target completion date, or within *24 months* from NEDA ICC award.[25]	Yes, to cover its undertakings for the whole duration of the project[26] for *25 years*, which may be extended.

It is not clear why the surety bond for MCWD is for a far more longer period than that required of the private proponent. What is clear though is that the surety bond for MCWD is far more onerous than that required for the private proponent.

Unfavorable changes in Law or Circumstances

Option of private proponent	**MCWD's option** **Under the agreement**
(a)Sell its stake to MCWD or proper gov't agency at buy-out price; (b) LWUA buy-out.[27]	None.

As above laid, MCWD is not provided any relief under the agreement in case of unfavorable changes in law or circumstances. On the other hand, the private proponent is safely cushioned, with a proviso on the buy-out price more than adequate to cover a handsome return of investment. Clearly, the State is the insurer of the success of the private proponent's business.

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[25] §4.6, [Draft] Agreement.

[26] §8.13(d), [Draft] Agreement.

[27] §9.1, [Draft] Agreement.

Private proponent's Default	MCWD Default
One of the options of MCWD:	One of the options of the private proponent:
Take over the project, and assuming all the assets and *liabilities* of the system.[28]	Take over MCWD, and operate part or all of the operations, the facilities or properties of the defaulting MWCD except its *liabilities*.[29]

When the private proponent defaults, MCWD may assume all assets and *liabilitie*s of the system, unlike that in the case of MCWD defaulting where its liabilities are specifically excluded.

It is noteworthy that the MCWD take-over may be occasioned by the simple failure to pay the monthly dues for allocated water. Additionally, there is no fixed timeframe within which the take-over is to take effect. This is, plainly, a backdoor method of privatization. What more, there is no limitation whether in its take-over the private proponent may dispose or encumber the properties of MCWD, hence, the dislocation of the affected civil servants is not unlikely nor farfetched.

All said, it is thus indubitable that the union can take only but a singular position on the [draft] water supply agreement, and that is to oppose the same not only for being repugnant to the interest of MCWD's concessionaires, but also for being a threat to MCWD's existence and the security of tenure of its employees.

[28] §11.2, [Draft] Agreement.

[29] §11.4, [Draft] Agreement.

ANNEX C - ADB water indicators for 18 cities

(Jakarta, Manila private concessions highlighted in blue: averages in yellow)

		Chengdu	Colombo	Delhi	Dhaka	HoChiMinh	HongKong	Jakarta	Karachi	Kathmandu	Average(18)
Production/Population	(m3/d/c)	0.38	0.48	0.30	0.22	0.37	0.38	0.27	0.34	0.11	0.40
WaterCoverage	(%)	83	69	69	72	84	100	51	58	83	79
Sewerage Access	(%)	85	33	60	30	12	100	2	50	22	51
24hourAvailability	(%)	100	60	1	0	75	100	92	0	0	67
Consumption/Capita	(l/c/d)	138	119	110	115	167	187	77	197	68	165
NonrevenueWater	(%)	18	55	53	40	38	25	51	30	37	34
AverageTariff	(US$)	0.14	0.22	0.07	0.06	0.18	0.35	0.29	0.07	0.09	0.24
ConnectionsMetered	(%)	98.5	70.0	32.7	50.7	100.0	100.0	98.8	0.3	38.0	76.5
WorkingRatio		0.5	0.52	2.45	0.89	1.13	2.41	0.8	1	1.04	1.05
Staff/1,000Connections	(ratio)	33.8	7.6	19.9	11.6	3.5	2.3	5.3	6.4	15.2	8.3
NewConnectionFee	(US$)	1*	129	2	29	53	146	13	3	21	212
RevenueCollection Efficiency	(%)	100	94.8	70.4	82	100	99.8	98	54	70	87.7
CapitalExpend/Connection	(US$)	176	8	78	140	72	115	47	7	17	88
		KualaLumpur	Manila	Osaka	Phnom Penh	Seoul	Shanghai	Tashkent	Ulaanbaatar	Vientiane	Average(18)
Production/Population	(m3/d/c)	0.44	0.56	0.53	0.23	0.39	0.47	1.04	0.44	0.27	0.40
WaterCoverage	(%)	100	58	100	84	100	100	99	49	63	79
SewerageAccess	(%)	80	7	100	41	98	68	85	48	0	51
24hourAvailability	(%)	100	88	100	100	100	100	100	48	50	67
Consumption/Capita	(l/c/d)	132	127	263	104	205	251	328	278	110	165
NonrevenueWater	(%)	43	62	7	26	25	17	27	36	28	34
AverageTariff	(US$)	0.30	0.14	1.37	0.24	0.49	0.10	0.01	0.19	0.04	0.24
ConnectionsMetered	(%)	100.0	100.0	100.0	100.0	99.8	100.0	8.3	80.3	100.0	76.5
WorkingRatio		1.34	1.22	1.08	0.46	0.57	1.08	0.47	0.83	1.1	1.05
Staff/1,000Connections	(ratio)	1.4	4.4	1.7	5.4	1.4	5.7	5.6	823.3	10.5	8.3
NewConnectionFee	(US$)	13	107	1506	87	850	83	32	454	74	212
RevenueCollection Efficiency	(%)	95	97.3	87.2	99.7	93	93.5	76.8	90	76.8	87.7
CapitalExpend/Connection	(US$)	173	18	224	203	100	38	3	1,978	47	88

Source: Water in Asian Cities. ADB. January 2004