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# FDC bulletin

April 2004

## The IMF at 60: *An "Unhappy Birthday" Party*

**SIXTY** years is a fruitful age, one characterized by momentous accomplishments. After 60 years of existence, the International Monetary Fund (IMF) is ready to celebrate, look back, and take stock of its perceived achievements.

However, there can be no celebration when one in three children and one in seven adults are malnourished, one in five has no access to clean drinking water, and one in four subsists on less than one dollar a day.

Since the Philippines entered into IMF's tutelage 40 years ago, Filipinos have only seen the elite grow more affluent,

and the vast majority sink deeper into poverty. And in the crisis years when the economy contracted, IMF austerity measures made sure that this same

impoverished majority bore the greater burden.

Policies of the IMF abetted the systematic deterioration of

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the country's fiscal and monetary condition. For example, the passage of the Electric Power Industry Reform Act (EPIRA), a key IMF conditionality, has only strengthened the foothold of elite interests while consigning the people's interests for lower electricity rates to the dustbin.

The IMF's conditionality of allowing foreign interests unhampered and easy entry and exit into the country's economy has sunk it deeper into crisis.

These measures serve as a smokescreen for the IMF's true concern: to ensure that the Philippines can and will continue to pay its debt. Under every IMF program, the country has adopted a strategy that relies on borrowing as the main solution to economic problems.

While not in any formal IMF



program, the Philippine government continues to tread the line of its financial master. The IMF up to now enjoys its position of being able to shape economic

policies, using its "seal of good housekeeping" as leverage. This seal is necessary for developing countries to have access to international credit and investments. Such leverage wields the same power as any actual program, that could be used to force conditionalities on poor countries.

What could the IMF boast of in its 60th year of existence? Nothing but 60 years of destruction. FDC joins the call of South Countries whose peoples have suffered from IMF policies and programs: "Sixty years is more than enough! Retire now!" ■



**BOTH** the government and big business have been calling recently for more incentives for the private sector to make the Philippine power industry attractive to investors and avert what they call a 'looming power crisis'. The Freedom from Debt Coalition (FDC) has expressed concern over the real motives behind these alarmist claims. Are they raising the alarm now to enjoin all the sectors concerned to address together a foreseen problem, or simply to condition the consumers to brace themselves for new rates increases?

First Generation Holdings Corp. president Federico Lopez earlier said that the power sector was not attracting needed investments to bankroll additional power capacity, which would result in a power crisis in many parts of the country. Lopez then said that in order to address this 'looming power crisis', power utilities must be allowed to contract their own new power supplies.

That then is the real motive. If Lopez' proposal is allowed, the Manila Electric Co. (Meralco) would likely opt to buy all its

power from the Lopez-owned independent power producers (IPPs), just as it had in its controversial breach of contract with the National Power Corp.



# POWER CRISIS?

(Napocor). But the Energy Regulatory Commission found that Meralco buys power from its IPPs at a higher rate, averaging P4.21/kWh, than from Napocor, at P2.12/kWh. Thus, if the Lopezes would have their way, it would mean higher generation charges for Meralco's power and higher power rates for its consumers.

Other groups have categorically debunked the doomsday scenario. The National Association of Electricity Consumers for Reforms (Nasecore), for instance, citing data from the Board of Investments pointed out that four new power projects worth P108.84 billion will translate to 1,305.4 megawatts of power, once implemented. Other companies have also expressed willingness to put up power plants in various parts of the country.

Nasecore president Pete Ilagan sees behind the warning of Federico Lopez the intent "to sow fear among the Filipino people...[this]...means more money for the Lopez group of companies [and] higher power rates for the consumers."

While electricity in the Philippines is already among the most expensive in the world, Nasecore revealed that residential consumers of Meralco are also paying the most expensive electricity among the private distribution utilities in the country, paying an average price of P6.1341/kWh.

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**POWER CRISIS?...CONTINUED FROM PAGE 3**

This, in fact, is the real crisis that the power sector faces - the high cost of electricity and the looming threat that consumers may soon lose the capability to avail of this public utility. The real crisis, moreover, lies in the Arroyo administration, which refuses to address the root cause of the electricity problem - the onerous IPP contracts. Under these contracts, Napocor has to pay in full for the amount of contracted power – generated



or not – which it then passes on to consumers.

The real crisis indeed is a government that echoes the alibis of big business, parrot its prescriptions and, by all indications, upholds its interests over that of the people. ■



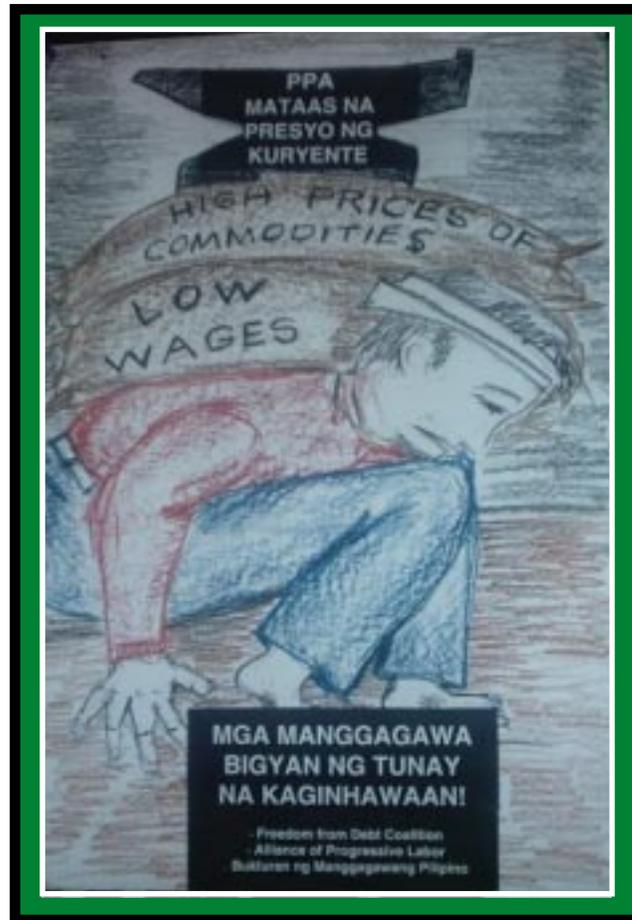
# Meralco-Napocor Settlement: Another stab in the back

**THE** Freedom from Debt Coalition (FDC) recently asked the Energy Regulatory Commission (ERC) to junk the proposed settlement agreement between the National Power Corp. (Napocor) and the Lopez-controlled Manila Electric Co. (Meralco). FDC stated that the settlement, which was jointly filed by Napocor and Meralco last April 15 at the ERC, does not protect consumers since it allows Meralco to pass on to them the P20 billion penalty it has to pay Napocor for breach of contract. FDC further said that the lopsided proposal showed President Gloria Macapagal-Arroyo's bias towards the Lopezes and against the consumers.

Under the settlement agreement, Meralco has to pay Napocor a net amount of P20 billion, but with a provision explicitly stating that this amount will be recovered from the consumers.

## Blatant Trickery

The settlement, forged on July 15, 2003, is supposed to



address the dispute between the two corporations, which stemmed from Meralco's unilateral revocation of its 10-year power supply contract with Napocor. In 2002 Meralco, in violation of the contract, reduced the volume of energy it was taking from Napocor, and instead sourced its power requirements from the Lopez-

owned independent power producers (IPPs), First Gas Power Corp. and Quezon Power Philippines Ltd.

For this, Napocor had wanted Meralco to pay a P28-billion penalty for the unused but contracted power between 2002 and 2004. Meralco, for its part, said the state-owned firm owed it over P7 billion for the delay in the construction of a transmission line which would allow its two IPPs (the very same IPPs in favor of which Meralco reneged on its obligations) to run at their contracted levels. In effect, what Meralco is saying is that if not for Napocor's construction delay, Meralco's IPPs would have been operational much earlier and

Meralco would have presumably reneged on the contract much earlier. And for that, Napocor owed Meralco P7 billion. Talk about blatant trickery. And yet, amazingly, Napocor agreed in the proposal to a net settlement amount of P20 billion and even agreed to allow the Meralco IPPs to run at contracted levels.

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**MERALCO-NAPOCOR SETTLEMENT**  
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### **PPA on Top of PPA**

What is even more deplorable about this breach of contract by Meralco is that its own favored IPPs actually have much higher electricity rates than Napocor. The average rate of Meralco's IPPs is P4.21/kwh compared to Napocor's P2.46/kwh, a difference of P1.75/kwh being charged to the consumers. Thus, in shifting its source of power from Napocor to its own IPPs, Meralco unilaterally decided to burden its consumers with higher rates and, of course, to award its own IPPs with higher profits.

Moreover, as a result of Meralco's breach, Napocor's contracted power from its own IPP suppliers was left with no takers. But since these IPPs have "take-or-pay" provisions, such unused and un-produced power must still be paid for by Napocor, the cost of which added to its power rates as Purchase Power Adjustment (PPA) and ultimately charged to the consumers, thereby resulting in even higher consumer prices.

And now the consumers learn in the end that, should the said settlement be approved, the cost of Meralco's un-bought power from Napocor amounting to P20 billion would be paid for by the consumers just the same,

even when that same un-bought power was already paid for by the consumers through the PPA.

### **Sugarcoating the Pill**

Meralco tried to sweeten the bitter pill by claiming that the settlement would actually reduce power rates. The firm said that allowing Meralco's IPPs to run at contracted levels would lower their generation costs, which would more than offset the increase from the settlement amount, and actually bring the prices down (as though the two conditions are concomitant with each other, in the first place).

What Meralco isn't saying is that with Napocor's reduced energy sales and fixed obligations to its own IPPs, the settlement would mean higher PPAs and, thus, higher power rates from Napocor.

Moreover, the agreement would result in additional losses to Napocor, as the ERC allowed it only P1.51/kwh to charge Meralco for the un-bought electricity instead of the P2.46/kwh that Napocor computed. This would result in an estimated loss of P17.3 billion for the unconsumed electricity amounting to 18,222 GWh.

Even the taxpayers then stand to suffer from this agreement. As Napocor has incurred additional losses, its capacity to pay its financial obligations to

its creditors diminishes further. To address this, it would have to acquire additional loans guaranteed by the government.

### **A Stab in the Back**

It is appalling that the government that is supposed to represent the people has been party to this attempt to defraud them. Instead of penalizing Meralco for renegeing on its obligations under its contract with Napocor, the administration has rewarded the offender by allowing it to pass on its burden to the consumers, and condoning its actions to source its power from its own IPPs, which was the cause of the dispute in the first place.

Then instead of compelling Meralco to reduce its electricity rates by either scaling down its contracted energy or by reducing the electricity rates of its IPPs, the agreement stands to legitimize these burdensome power agreements.

In the end it is the consumers again that are penalized for the offense of a business empire that seems to have the favor of the current administration, even to the detriment of the people.

To arrest this injustice, FDC is calling on the ERC to disapprove the lopsided settlement agreement and compel Meralco to reduce its rates by bringing down the cost of its IPP contracts. ■

# Amendment 2: A scheme for Maynilad's Tax Evasion

**MAYNILAD** has gone to great lengths to explain to the public that Amendment 2 represents the “best arrangement” to settle the dispute with MWSS “without violating the law and compromising national interests,” and that the “agreement completely wiped out the \$80 million investment of the Lopezes that it placed in Maynilad through the Benpres Holdings Corp. Ineffect, Amendment 2 of the Concession Agreement between the Lopez-owned water concessionaire Maynilad and the government’s Metropolitan Waterworks and Sewerage System

(MWSS) had been drafted to provide the “legal basis” for the debt-to-equity swap scheme in the controversial bailout of Maynilad by the government.

Maynilad conveniently fails to mention that it squandered away the said \$80 million investment due to management failures and in the process, buried itself in P12 billion worth of debts.

The bailout arrangement already drew flak from various sectors for rescuing instead of penalizing an erring company, and for effectively freeing it from its financial obligations such as

unpaid concession fees and outstanding loans to creditor-banks, to the disadvantage of the government. Upon closer scrutiny of the controversial Amendment 2, the Freedom from Debt Coalition (FDC) also found out that the scheme will likewise save Maynilad from paying at least P600 million in capital gains and documentary stamp taxes.

## Legal Irregularities

Annex A of the Amendment, entitled ‘Secretary’s Certificate’ spells out that Maynilad’s authorized capital of P6 B and its stockholders’ equity will be reduced to zero and then in the same breath its authorized capital will be increased to P10B.

There are irregularities arising from these resolutions. One, experts say that reducing equity to zero effectively dissolves the corporation. The Corporation Code provides that every director must own at least one share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation.

Two, since authorized capital stock in lawful money no longer exists, no structure is therefore present to represent the corpora-



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tion. The question then is what governing structure is present to decide to increase the authorized capital stock.

### Tax Evasion

Annex B-1 of the Amendment entitled 'Debt Conversion and Subscription Agreement' prescribes that a portion of Maynilad's outstanding liabilities to MWSS in concession fees, amounting to P5.247 billion, shall be converted into equity for MWSS. It also provides for the conversion of Maynilad's P1.583 billion debt to Suez into shares of stocks for Suez; the P167 million debt to Benpres into shares of stocks for Benpres; and allows equity participation for Maynilad Employees of up to 4 percent or P336 million.

This Section allows for the transfer of equity shares from Maynilad to MWSS, Suez, Benpres, and the Maynilad employees,

without having to bear the required capital gains or donor and documentary stamp taxes that go with a normal turn-over of stocks either through sale or donation.

At the minimum, capital gains tax of 10 percent of the paid up capital of P5.251 billion easily translates to P525 million plus documentary stamp tax of P39 million (this being but the minimum tax that Maynilad is spared from). As this contravenes the Corporation Code of the Philippines, this is tantamount to tax

evasion with complicity of the MWSS Board, as the latter has already approved the proposed Amendment 2.

### Disadvantageous to Public Interest

Amendment 2, other than all its drawbacks that have already been raised, is a clever way for the ailing Maynilad to avoid shelling out precious cash to pay for taxes as required by law. This should be one more reason for MWSS to reconsider its concur-



rence to the Amendment. It also sets a dangerous precedent in corporate dissolutions.

Amendment 2 is disadvantageous to public interest. It also deprives the government of significant revenues that could help cut its severe fiscal deficit. ■

# The Failure of Privatization

**THE** Freedom from Debt Coalition (FDC) renewed the call against privatization amid the fiasco of the Maynilad bailout and the occasion of the celebration of Earthday last April 22, 2004. In several fora, FDC took the World Bank to task for the failed privatization of water services in the Philippines, as it abided by its stand that water is a human right and should remain in peoples' hands.

At a time when the corporate giants' insatiable drive for huge profit, supported by local big business and governments, extend monopoly control over water resources and services to the detriment of the peoples' welfare, the Earthday theme, *Water for Life*, captured the struggle of peoples throughout the world for access to clean and potable water.

Through the neoliberal policy of privatization of international financial institutions like the World Bank and the Asian Development Bank (ADB), transnational water companies continue to amass great wealth from the water industry at the expense of consumers throughout the world.

Yet the privatization of the Philippines' Metropolitan Waterworks and Sewerage System, peddled through claims of effi-

ciency and better services, proved to be a disastrous failure.

The World Bank conspicuously remains silent over the failure of the privatization scheme that it prescribed and engineered, and for which it was paid a fee of \$6.2 million and a bonus of \$1 million through the International Finance Corporation (IFC). The privatization promised to bring huge investments for water infrastructure, decreased government fiscal burden and efficient delivery of safe and affordable water and sanitation services. After seven years of implementation, the promised investments and improvements in distribution and sewerage services are nowhere to be seen, and all the people got were more local and foreign debts, overcharging, a 600 percent increase in water rates, cholera and contaminated water, contract renegotiations, loss of transparency and, now, a government bailout of the concessionaire.

The Philippine water privatization experience is by no means unique, as similar evidence has been fast piling up in different parts of the world. Water fiascos have been reported from Buenos



Aires, Argentina; Cochabamba, Bolivia; Atlanta, Georgia, U.S.A.; Jakarta, Indonesia; Nelspruit, South Africa; United Kingdom. Yet the World Bank continues to push privatization and facilitate the entry of water firms when it has been repeatedly demonstrated that it does not necessarily mean efficient and better service to the people. What has become clear, in fact, is that privatization protects private profit and big business interests.

Water is a basic requirement to sustain human life, and is vital and paramount for economic activity, whether for industrial, agricultural or commercial purposes. Water activists and environmentalists then must continue to challenge the current water policies of the World Bank, IMF and ADB.

FDC calls on the Philippine government to reverse its privatization policy and to keep the country's water resources safe and accessible for the consumption of the people. ■

# An open letter to the World Bank- International Finance Corporation

**SURELY** you could not have missed the huge controversy over the proposed Amendment # 2 to the contract between the Philippine Government/MWSS and the MAYNILAD Water Corporation - a rather messy attempt to salvage a failed privatization project.

You most certainly know about the long litany of complaints dished out by MAYNILAD in their effort to convince the public that they are in fact the victims in this fiasco. They claim to have suffered heavy losses because:

- The original contract did not anticipate the Asian financial crisis which led to unanticipated changes in the foreign exchange rates. (Of course they neglect to mention that Amendment # 1 took care of this)
- The government has been uncooperative on water rates increases (Of course they do not bother to state that all the rates increases they asked for was granted in full, except for the last one)
- They had to shoulder most of the MWSS loan payment obligations -- 90%, with MANILA Water only assuming 10% (Of course they do not say they also got the biggest share of the consumer market and enjoyed the use of infrastructure assets to which the MWSS loans were used.)
- Inaccurate records of water infrastructure -- they say that upon taking over the West zone they discovered they have to maintain 3,500 kilometers of pipes instead of 2,700. (Why did they not raise this then?)

And, after having repeatedly failed to meet their performance obligations stipulated in the contract, they are now saying that the targets are unrealistic. Seven years after the fact!

Do you not have anything to say about all these? After all, you were the experts who conducted the feasibility studies, designed the MWSS privatization strategy including the bidding process, and reviewed and approved the financial and technical models and business plans submitted by the bidders. And for these, you WERE PAID by the Philippine government a hefty \$6.2 M retainer's fee and a bonus of \$1 M upon hand-over of the MWSS to the private operators.

Can you explain to us why the Philippine government will now end up part owner of a water company that has even bigger debts than MWSS when it was privatized?

Were you hoping it would escape our notice that the MWSS privatization experience is turning out very similar to other privatization programs you engineered? Buenos Aires (Argentina), Cochabamba (Bolivia), Jakarta (Indonesia), Atlanta (Georgia, U.S.A.) have resulted in early contract termination or are nearing termination.

We wonder why neither the Philippine government nor MAYNILAD has seen it necessary to mention your involvement nor take you to task for your part in this mess. Faithful friends, or fearful clients?

We dare you to break your self-serving silence, and face up to your responsibilities.

*The National Executive Committee  
Freedom from Debt Coalition  
15 April 2004*

**GARNERING** failing marks on her handling of issues involving the power sector, the Arroyo government was deemed unfit by the Freedom from Debt Coalition (FDC) for another six-year term. On 25 April 2004, members of FDC and the Samahan ng Magkakapitbahay na Nagkakaisa (SAMANA) sa Kalayaan, in a protest action, pinned their electric bills on a life-size picture of Arroyo to show their dissatisfaction and their negative rating over her lame policies in the power sector.

FDC exposed Arroyo's claim as being the only president who made a decisive action on the purchase power adjustment (PPA) and other issues in the power industry. The bottomline is that Arroyo failed to truly address the basic problem in the power industry - high electricity rates. Instead of upholding the people's interest, she chose to side with the few and privileged at the expense of the consumers and the taxpayers.

**Failure to Abolish the Burdensome PPA**

Instead of completely scrapping the PPA, Arroyo chose the

# GMA: Unfit for another term



easier path by imposing a P0.40-cap on the National Power Corporation's (Napocor) PPA in May 2002. But since that time, payment for unused electricity has reached 85 to 90 percent of the total basic charge in the Meralco franchise areas, and 30 to 80 percent in other areas.

It is apparent that the cap on Napocor's PPA will soon be lifted as Napocor's debts continue to soar due to continuous payments to Independent Power

Producers (IPPs) despite reduced Napocor collection to pay such obligations.

**Failure to Cancel Onerous Contracts with IPPs**

President Arroyo brags about her alleged success in reviewing and renegotiating the IPP contracts, purportedly resulting in government savings of \$1.036 billion. Yet no one knows where the savings are as details of the renegotiation of the contracts were kept from the public eye. What is apparent is that despite these so-called savings, consumers continue to pay for high electricity rates.

Meanwhile, the onerous terms in the contracts with the IPPs have resulted in the ballooning of Napocor's debts from only P122 billion in 1994 to almost P1.3 trillion in 2003. This burden is passed on to the consumers through the PPA.

**Excellent in Giving into the Whims of the Lopezes**

One thing that the President excelled in is friendliness to vested interests like that of the Lopezes. She has gone the extra mile just to accommodate the

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Lopez's caprices by ensuring that the family continues to reap profits, even to the detriment of the consumers.

One illustrative case is the Energy Regulatory Commission's decision to lift the cease and desist order (CDO) earlier issued to Meralco for its PPA. The lifting of the CDO on 19 December 2002 allowed Meralco to recoup its deferred PPA from January 2000 to September 2002, totaling some P7.3 billion.

Another case is the settlement between Meralco and Napocor of their dispute over Meralco's reneging on its obligations under its contract with Napocor. But instead of being penalized, Meralco is being allowed to pass on to the consumers the burden of paying its P20-billion penalty.



### Unfit for Another Term

Clearly, the incumbent president has miserably failed to protect the interest of the public and of the people. But instead of telling the truth and proclaiming humility, Arroyo continues to proclaim

that her administration championed the interests of the people.

President Arroyo does not deserve to be in power for another term. ■



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Address contributions to Freedom from Debt Coalition, #34 Matiyaga Street, Barangay Central Quezon City, 1100, Philippines  
Or call (632) 921-1985 and (632) 924-6399 [Telefax]

**E-mail addresses:**

[fdcadmin@skynet.net](mailto:fdcadmin@skynet.net)

[mae@freedomfromdebtcoalition.org](mailto:mae@freedomfromdebtcoalition.org)

[mail@freedomfromdebtcoalition.org](mailto:mail@freedomfromdebtcoalition.org)

**Website:**

[www.freedomfromdebtcoalition.org](http://www.freedomfromdebtcoalition.org)