

# Towards a New Public-Private Sector Engagement in Water Security in the Philippines: A Preliminary Discussion

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*Water [is not] just a commodity. It is a source of life.*

— Sandra Postel<sup>1</sup>

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## I. INTRODUCTION

Water plays an indispensable role in our everyday life. As a source of health, a source of cleanliness, and, ultimately, a source of life, access to water has determined the quality of life of communities across the globe. Water is a valuable natural resource often taken for granted where it is abundant; but where water is scarce, it is an issue that needs to be addressed in order to sustain life.

According to the United Nations (U.N.), “approximately 884 million people lack access to safe drinking water[,]”<sup>2</sup> and 2.6 billion people — 40% of the world’s population — do not have access to basic sanitation.<sup>3</sup> Water- and sanitation-related diseases have also been found to cause the death of approximately 1.5 million children below five years of age.<sup>4</sup> These diseases further account for 443 million school days lost by school children.<sup>5</sup>

In a study by the Water Organization, it was found that 3.41 million people die each year from diseases related to water, sanitation, and hygiene.<sup>6</sup> The lives claimed by the problems related to water and sanitation deficiency are more than “[what] [ ] war claims through guns.”<sup>7</sup> Access to water is also inequitable, as in the case of informal settlers who often pay five to 10 times more per liter of water than wealthy people do, even though both groups are located in the same city.<sup>8</sup>

Due to the problems set forth by freshwater shortages and inequitable access to water, the U.N. Educational, Scientific, and Cultural Organization

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1. Henrylito D. Tacio, Not a drop to drink?, *available at* <http://www.sunstar.com.ph/weekend-davao/not-drop-drink> (last accessed Dec. 31, 2014).
  2. G.A. Res. 64/292, U.N. Doc. A/Res/64/292 (Aug. 3, 2010). *See also* U.N.-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council, The Human Right to Water and Sanitation (Media Brief) 1, *available at* [http://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_media\\_brief.pdf](http://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf) (last accessed Dec. 31, 2014) [hereinafter U.N.-Water Decade Programme].
  3. G.A. Res. 64/292, *supra* note 2. *See also* U.N.-Water Decade Programme, *supra* note 2, at 1.
  4. G.A. Res. 64/292, *supra* note 2.
  5. *Id.*
  6. Water.org, The Crisis, *available at* <http://water.org/water-crisis/water-facts/water> (last accessed Dec. 31, 2014).
  7. *Id.*
  8. *Id.*

(UNESCO) Director General Koichiro Matsuura stated that such issues pose “the greatest ecological and human rights threats of our time.”<sup>9</sup>

This is because water is an irreplaceable element of a healthy and functioning ecosystem. Thus, the production of ecosystem services is of great importance to people.<sup>10</sup> Water, as a public utility, should be accessible to all. Access to water should be ensured, taking into account its affordability, quality, and quantity necessary to satisfy human needs.<sup>11</sup>

## II. WATER: PUBLIC UTILITY, HUMAN RIGHTS, AND DEVELOPMENT

### A. *Water as a Public Utility*

Historically, water supply and sanitation were services provided by State-owned monolithic water organizations.<sup>12</sup> However, in the 1980s and the 1990s, market-led systems brought forth the transformation of utilities into “more modern service delivery organizations that emphasize operational and financial sustainability.”<sup>13</sup> The organizations that provide commodities imbued with public interest are commonly referred to as public utilities.<sup>14</sup>

In the Philippines, the Supreme Court defined a public utility as “a business or service engaged in regularly supplying the public with some commodity or service of public consequence[,] such as electricity, gas, [and]

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9. Koichiro Matsuura, Director General of United Nations Educational, Scientific and Cultural Organization, Right to Water as a Human Right, Address at the Summit of Nobel Peace Laureates in Paris (Dec. 11, 2008) (transcript *available at* <http://unesdoc.unesco.org/images/0017/001786/178613e.pdf> (last accessed Dec. 31, 2014)).

10. Barton H. Thompson, Jr., *Water as a Public Commodity*, 95 MARQUETTE L. REV. 1, 3 (2011).

11. John Scanlon, et al., Water as a Human Right? (A Paper by the International Union for Conservation of Nature and Natural Resources Environmental Policy and Law) 12, *available at* <https://portals.iucn.org/library/efiles/documents/EPLP-051.pdf> (last accessed Dec. 31, 2014).

12. Aldo Baietti, et al., Characteristics of Well-Performing Public Water Utilities (Working Notes by the World Bank on Water Supply & Sanitation Working) 1, *available at* <http://siteresources.worldbank.org/INTWSS/Resources/Workingnote9.pdf> (last accessed on Dec. 14, 2014).

13. *Id.*

14. *Id.* at 2. The notes define public utility “as an organization that is majority owned and controlled by government and could consist of number of different forms, some of which may be undistinguished from the government unit that they may be part of.” *Id.*

water[.]”<sup>15</sup> The Supreme Court also emphasized that to constitute a public utility, “the facility must be necessary for the maintenance of life and occupation of the residents.”<sup>16</sup> This implies the presence of two elements — public use and public service.<sup>17</sup>

Thus, despite being operated by private organizations, these utilities still retain their public character. It is important to note that public goods, like water being distributed by public utilities, have an instrumental role in the full realization of human rights. Such is the case for water, which humans use for personal, domestic, and commercial consumption.

### *B. Right to Water as a Human Right*

The Universal Declaration of Human Rights<sup>18</sup> (UDHR) states that every human being “has the right to a standard of living adequate for the health and well-being of [one]self, and of [one’s] family, including food, clothing, housing[,] [ ] medical care[,] and necessary social services[.]”<sup>19</sup> However, there is no interpretation under the UDHR of what is meant by “adequate standard of living.” The seeming ambiguity on this concept was clarified by the U.N. General Assembly, through a Resolution,<sup>20</sup> which interpreted the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup> Significantly, the U.N. General Assembly recognized the “right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights[.]”<sup>22</sup>

The ICESCR states that everyone has the right “to an adequate standard of living for [one]self and [one’s] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>23</sup>

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15. *JG Summit Holdings, Inc. v. Court of Appeals*, 412 SCRA 10, 20 (2003) (citing GENEROSO O. AMARIO, *TRANSPORTATION AND THE PUBLIC SERVICE LAW* 267 (1997)) (emphasis supplied).

16. *JG Summit Holdings, Inc.*, 412 SCRA at 20.

17. *Id.* at 21.

18. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 at 71 (Dec. 10, 1948) [hereinafter UDHR].

19. *Id.* art. 25.

20. G.A. Res. 64/292, *supra* note 2.

21. International Covenant on Economic, Social and Cultural Rights art. 11, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

22. *Id.* ¶ 1.

23. *Id.*



The ICESCR also ensures the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>24</sup>

In the General Comment No. 15: The Right to Water<sup>25</sup> (General Comment No. 15), the U.N. Committee on Economic, Social and Cultural Rights (UNCESCR) stated that the right to water is necessarily included in the ICESCR.<sup>26</sup> The Committee provided a definition of the right to water

The *human right to water* entitles everyone to sufficient, safe, acceptable, physically accessible[,] and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of [contracting] water-related disease[,] and to provide for consumption, cooking, personal[,] and domestic hygienic requirements.<sup>27</sup>

In a public statement, Amnesty International announced that the U.N. Human Rights Council, at its 21st session, finally recognized that the right to water emanates from the right to an adequate standard of living.<sup>28</sup>

The role of water in personal and domestic uses demonstrates its invaluable nature.<sup>29</sup> For example, water is necessary to produce food, which ensures the right to adequate food.<sup>30</sup> It is also important to ensure environmental hygiene, which is linked to the right to health.<sup>31</sup> Water is also

24. *Id.* art. 12.

25. United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*].

26. *Id.*

27. *Id.* ¶ 2 (emphasis supplied).

28. Amnesty International, United Nations: States must recognize and not undermine the content of the rights to water and sanitation (A Public Statement dated Oct. 29, 2012) 1, available at <http://www.amnesty.org/es/library/asset/IOR41/020/2012/es/e8083f6f-af2d-485b-a273-98a08c1cafe4/ior410202012en.pdf> (last accessed Dec. 31, 2014) (citing H.R.C. Res. 21/2, U.N. Doc. A/HRC/RES/21/2 (Oct. 9, 2012)).

29. See WORLD HEALTH ORGANIZATION, THE RIGHT TO WATER 18 (2003) [hereinafter WORLD HEALTH ORGANIZATION, THE RIGHT TO WATER] (citing *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25).

30. WORLD HEALTH ORGANIZATION, THE RIGHT TO WATER, *supra* note 29, at 18.

31. *Id.*

essential for livelihood, which fulfills the right to gain a living by work.<sup>32</sup> Water is also used for enjoying certain cultural practices, which ensures the right to take part in cultural life.<sup>33</sup>

Moreover, water has an impact on sustainable growth and poverty alleviation due to its usefulness in almost all kinds of production in many areas of society.<sup>34</sup> The scarcity of water would have an impact on food availability, human health, livelihood, and economic development.<sup>35</sup> Water, therefore, is literally a source of life since it plays “a central role in human societies.”<sup>36</sup>

### *C. Water Security as a Human Right*

Having established that water is important in the fulfillment of human rights and that the right to water is recognized as a human right by General Comment No. 15,<sup>37</sup> it can be argued that securing water for the people is in itself a human right. Recognizing water security as a human right complements the recognition of the right to water as a human right. After all, the first step in upholding the human right to water is to secure it through policies and mechanisms.

However, to ensure the fulfillment of the human right to water, reasons for water scarcity and contamination must first be understood.<sup>38</sup> Water security is comprised of “sustainable use and protection of water systems, the protection against water[-]related hazards (floods and droughts), the sustainable development of water resources[,] and the safeguarding of (access

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32. *Id.*

33. *Id.*

34. See David Grey & Claudia W. Sadoff, *Water for Growth and Development* (A Theme Document of the 4th World Water Forum, 2006) 5, available at [http://siteresources.worldbank.org/INTWRD/Resources/FINAL\\_0601\\_SUBMITTED\\_Water\\_for\\_Growth\\_and\\_Development.pdf](http://siteresources.worldbank.org/INTWRD/Resources/FINAL_0601_SUBMITTED_Water_for_Growth_and_Development.pdf) (last accessed Dec. 31, 2014).

35. See Yatsuka Kataoka, *Overview Paper on Water for Sustainable Development in Asia and the Pacific* (An Unpublished Paper Submitted to the Asia-Pacific Forum for Environment and Development) 1, available at [http://www.apfed.net/apfed1/pdf/5\\_1.pdf](http://www.apfed.net/apfed1/pdf/5_1.pdf) (last accessed Dec. 31, 2014).

36. Grey & Sadoff, *supra* note 34, at 5.

37. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25.

38. See JEFF CONANT, *WATER FOR LIFE: COMMUNITY WATER SECURITY* 4 (2005).

to) water functions and services for humans and the environment.”<sup>39</sup> By securing the sources of water, a State also secures two other things — the access of communities to water and the rights that spring from such access. Special attention must be given to vulnerable groups in society that have difficulty in accessing water.

The lack of security in water is manifested by the difficulty that some communities find in accessing it. Drinking water, for example, is used for industry and agriculture, or otherwise sold at a price that people cannot afford.<sup>40</sup> According to a study published in collaboration with the U.N. Development Programme, “[w]hether water is managed by [a] community, by [a] government, by [a] private compan[y], or by a partnership of these groups, the people who need water most must have a say in how it is priced, distributed, and used.”<sup>41</sup> The right to water will not be truly upheld in situations where water is actually available but sold for a price that the poor cannot afford.

It may be argued that the first step to ensuring access to water is its recognition as a human right. By recognizing the existence of such right, access to water, specifically fresh water, will be considered a legal entitlement as opposed to a commodity or service provided on a charitable basis. Further, means and mechanisms in the U.N. human rights system may be utilized to ensure the respect, protection, and fulfillment of the right to water and, ultimately, water security. This may improve levels of access at an accelerated rate. The participation of communities and vulnerable groups in decision-making processes involving access to water and water security would serve to empower the people who are usually deprived of such right. Also, States — as duty-bearers — can be held accountable for violations of such rights.<sup>42</sup>

#### *D. Role of Water in Development*

The development of water resources is an integral part of economic and social development.<sup>43</sup> Rapid development — as manifested by urbanization

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39. Bart Schultz & Stefan Uhlenbrook, ‘Water Security:’ What Does it Mean, What may it Imply? (Draft Discussion Paper for the Session on Water Security) 2, available at [http://www.iahr.org/uploadedfiles/userfiles/files/3\\_paper%20water%20Secur%20Box%20draft.pdf](http://www.iahr.org/uploadedfiles/userfiles/files/3_paper%20water%20Secur%20Box%20draft.pdf) (last accessed Dec. 31, 2014).

40. *Id.*

41. CONANT, *supra* note 38, at 4.

42. See WORLD HEALTH ORGANIZATION, THE RIGHT TO WATER, *supra* note 29, at 9.

43. See UNESCO, New report highlights crucial role of water in development, available at <http://www.unesco.org/new/en/media-services/single-view/>

— requires stable water resources.<sup>44</sup> Urban populations have increased water consumption levels, which lead to a higher requirement for water sanitation.<sup>45</sup> Apart from human water consumption, industries that are highly dependent on water, such as companies in the food industry, are adversely affected by the lack of water.<sup>46</sup> This has a negative impact on the economic growth of a country.<sup>47</sup> Agricultural workers are also affected by the lack of freshwater that can be used to irrigate their fields.<sup>48</sup> These two examples ultimately affect the food security of a country.<sup>49</sup> Viewing the problem from the perspective of an individual, the lack of water, for whatever reason, would surely have an immense impact on the quality of life because water is essential for the survival of any person.<sup>50</sup>

Consequences of the lack of water are evidently seen in the lives of the poor, who, as mentioned earlier, pay more for its access.<sup>51</sup> Given the poor's relative incapacity to access water, water security remains a major issue in developing countries<sup>52</sup> — the Philippines included. The lack of water would greatly impede the development of a country.<sup>53</sup>

As noted earlier, water is essential for economic and social development.<sup>54</sup> But the problem is not, and cannot, be confined in the economic and social spheres. The issue of access to water must also be seen as a political issue. For example, water is more accessible in some areas because politicians — who are usually the key decision makers — have

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news/new\_report\_highlights\_crucial\_role\_of\_water\_in\_development/#.VHIwLxYt9lFI (last accessed Dec. 31, 2014).

44. *Id.*

45. Schultz & Uhlenbrook, *supra* note 39, at 11.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. See CONANT, *supra* note 38, at 4.

52. See Yaw Bonsu Osei Asare, Household Water Security and Water Demand in the Volta Basin of Ghana, at 1 (2004) (unpublished Ph.D. dissertation, University of Bonn) available at [http://www.glowa-volta.de/fileadmin/template/Glowa/Downloads/thesis\\_osei.pdf](http://www.glowa-volta.de/fileadmin/template/Glowa/Downloads/thesis_osei.pdf) (last accessed Dec. 31, 2014).

53. See GrowingBlue, Water in 2050, available at <http://growingblue.com/water-in-2050/> (last accessed Dec. 31, 2014).

54. UNESCO, *supra* note 43.

placed more emphasis in ensuring their constituents' access to water.<sup>55</sup> This goes against the concept that ensuring more equitable access to water for everyone would minimize, if not totally eliminate, societal tensions resulting from disparities in the access to — and the people's capacity to access — this vital resource. Such equitable access would likewise ensure the fulfillment of the human right to water. This would contribute to the attainment of full human development.

### III. GENERAL COMMENT NO. 15: RIGHT TO WATER AS A HUMAN RIGHT

The primary reference to the right to water in relation to international human rights is in General Comment No. 15<sup>56</sup> issued by the UNCESCR.<sup>57</sup> It is an interpretation of Articles 11 and 12 of the ICESCR.<sup>58</sup> General Comment No. 15 starts with the acknowledgment that water is “a limited natural resource and a public good fundamental for life and health.”<sup>59</sup>

Prior to General Comment No. 15, water as a human right was first recognized in General Comment No. 6: The Economic, Social, and Cultural Rights of Older Persons<sup>60</sup> (General Comment No. 6). Interpreting Article 11 of the ICESCR on the right to an adequate standard of living, General Comment No. 6 states that water is included in the necessities that older persons should have access to.<sup>61</sup> General Comment No. 6 also includes water in its list of basic rights.<sup>62</sup> In General Comment No. 14: The Right to the Highest Attainable Standard of Health,<sup>63</sup> water is included as one of the

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55. *Id.*

56. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25.

57. *Id.*

58. ICESCR, *supra* note 21, arts. 11-12.

59. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 1.

60. U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 6, The Economic, Social, and Cultural Rights of Older Persons*, U.N. Doc. E/1996/22 (Dec. 8, 1995).

61. *Id.* ¶ 32.

62. *Id.* ¶ 5.

63. U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*].

underlying determinants of health.<sup>64</sup> Access to water also includes the right to adequate housing.<sup>65</sup> Other international sources also include water as a right.<sup>66</sup>

But it was not until the issuance of General Comment No. 15<sup>67</sup> that water was considered as a right in itself and not merely as an incidental entitlement in relation to other rights. This right to water is anchored on the ICESCR, particularly in Article 11, where it is stated that “[t]he State[–]Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.”<sup>68</sup> The ICESCR, as a whole, is also the prelude to numerous interpretations made by subsequent general comments.

Also, under General Comment No. 15, special notice is given to the word “including,” which can be interpreted as characterizing the non-

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64. *Id.* ¶ 11. This paragraph provides —

The Committee interprets the right to health, as defined in [A]rticle 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition[,] and housing, healthy occupational and environmental conditions, and access to health-related education and information, including [information] on sexual and reproductive health.

*Id.*

65. See Office of the High Commissioner for Human Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*]. In General Comment No. 4, the Office of the High Commissioner for Human Rights provides that

[a]n adequate house must contain certain facilities essential for health, security, comfort[,] and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage[,] and emergency services.

*Id.* ¶ 8 (b).

66. See *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 4, fn. 5.

67. *Id.*

68. ICESCR, *supra* note 21, art. 11 (1).

exhaustive nature of the enumerated needs.<sup>69</sup> Thus, it does not exclude other such guarantees to attain an adequate standard of living. This is driven by the recognition of water as an essential component for personal and domestic uses, among others.<sup>70</sup>

The right to water is also expanded to “freedoms and entitlements.”<sup>71</sup> It is further discussed that

[t]he freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.<sup>72</sup>

To further understand the right to water, the UNCESCR recommended that the right to water must be “adequate for human dignity, life, and[,] health, in accordance with [A]rticle[ ] 11, [P]aragraphs 1[ ] and 12.”<sup>73</sup> In understanding adequacy, the UNCESCR noted that three important principles must be considered — availability, quality, and accessibility.<sup>74</sup>

69. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 3.

70. *Id.* ¶ 6. This is affirmed by the Report of the World Summit on Sustainable Development (WSSD), which included water and sanitation, as one of the action plans for sustainable development. According to the summary of the partnership plenary meetings of the WSSD,

water is not only the most basic of needs but it is also at the [center] of sustainable development and essential for poverty eradication. Water is intimately linked to health, agriculture, energy, and biodiversity. Without progress on water, reaching other Millennium [D]evelopment [G]oals will be difficult, if not impossible.

World Summit on Sustainable Development, Johannesburg, S. Africa, Aug. 26–Sep. 4, 2002, *Report of the World Summit on Sustainable Development*, ch. III, ¶ 29, U.N. Doc. A/CONF.199/20 (2002) (citing World Summit on Sustainable Development, Johannesburg, S. Africa, Aug. 26–Sep. 4, 2002, *Chairperson’s Summary of the Partnership Plenary Discussion on Water and Sanitation, Energy, Health, Agriculture and Biodiversity*, ¶ 29, U.N. Doc. A/CONF.199/16/Add.2 (2002)).

71. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 10.

72. *Id.*

73. *Id.* ¶ 11 (emphasis supplied).

74. *Id.* ¶ 12 (a–c) (citing WORLD HEALTH ORGANIZATION, GUIDELINES FOR DRINKING-WATER QUALITY (1993); *General Comment No. 4: The Right to*

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*Adequate Housing (Art. 11 (1) of the Covenant)*, *supra* note 65, ¶ 8 (b); U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 13, The Right to Education*, ¶ 6 (a), U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999); & *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 63, ¶ 8 (a-b)). This paragraph provides —

While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

- (a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, [and] personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions;
- (b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances, and radiological *hazards* that constitute a threat to a person's health. Furthermore, water should be of an acceptable [color], [odor,] and taste for each personal or domestic use[; and]
- (c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State[-P]arty. Accessibility has four overlapping dimensions:
  - (i) *Physical accessibility*: [W]ater[ ] and adequate water facilities and services[ ] must be within safe physical reach for all sections of the population. Sufficient, safe[, ] and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution[, ] and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle[, ] and privacy requirements. Physical security should not be threatened during access to water facilities and services;
  - (ii) *Economic accessibility*: Water[ ] and water facilities and services[ ] must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable[ ] and must not compromise or threaten the realization of other Covenant rights; [and]



The right to water cannot be separated from its accessibility, both physical and economic, since the realization of this right primarily means the access to water. According to John E. Scanlon of the U.N. Development Program, the right to water as the right to access sufficient water can further be understood by defining “sufficient” as referring to both the quality and quantity of water necessary to meet basic human needs and the term “access” as referring to its economic accessibility.<sup>75</sup>

For these reasons, water must be sufficiently available for various uses, such as domestic and personal. The water available for consumption must also be in such quality that is acceptable and appropriate for its intended use. Also subsumed under the right to water are the principles of non-discrimination and equality,<sup>76</sup> which provide that the right to water must be enjoyed without discrimination.<sup>77</sup> Related policies must not have the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water, especially by vulnerable and marginalized groups in society.<sup>78</sup>

#### IV. WATER SECURITY IN THE PHILIPPINES

##### *A. Philippine Regulatory Framework*

Water security in the Philippines is immersed in a system of privatization. As early as the 1970s, the Philippine Government has introduced development practices and concepts for water security.<sup>79</sup> Small water systems and institutionalized support for water levels paved the way for an improved overall sustainability of water utilities.<sup>80</sup>

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(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds[.]

*Id.*

75. Scanlon, et al., *supra* note 11, at 2.

76. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶¶ 13–16.

77. *See ICESCR*, *supra* note 25, art. 2, ¶ 2.

78. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 13.

79. THE WORLD BANK OFFICE MANILA, I RURAL WATER SUPPLY DESIGN MANUAL I.I (2012).

80. *Id.*

In 1974, the National Water Resources Council (NWRC) was created by Presidential Decree (P.D.) No. 424,<sup>81</sup> to address several issues, such as

[the] urgent need for a well-integrated and coordinated planning and prosecution of projects, including an expanded effect in the continuing task of water resources survey and appraisal, in order to achieve an orderly and scientific development[,] as well as optimum utilization and control of [the State's] water resources[,] to meet the present and future needs of the country.<sup>82</sup>

The NWRC was vested with regulatory and executory powers, which includes the power to coordinate and integrate water resources development activities within the context of national plans and policies,<sup>83</sup> to determine, adjudicate, and grant water rights for the appropriation and utilization of surface ground water,<sup>84</sup> and to formulate and promulgate rules and regulations for the optimum utilization of water resources and the general criteria and methods for evaluation and project investigation,<sup>85</sup> among others. The NWRC also possessed advisory and recommendatory powers.<sup>86</sup>

The powers of the NWRC were also bolstered by the Water Code.<sup>87</sup> The Water Code stated that all the waters belonged to the State<sup>88</sup> and that the “utilization, exploitation, development, conservation[,] and protection of water resources shall be subject to the control and regulation of the government through the [NWRC].”<sup>89</sup>

Subsequently, Executive Order (E.O.) No. 124-A<sup>90</sup> renamed the NWRC as the National Water Resources Board (NWRB) and transferred

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81. Creating a National Water Resources Council, Reconstituting its Membership, Vesting the Same with Powers to Coordinate and Integrate Water Resources Development, and Providing Funds Therefor, Presidential Decree No. 424 (1974).

82. *Id.* whereas cl.

83. *Id.* § 2, ¶ A (a).

84. *Id.* § 2, ¶ A (b).

85. *Id.* § 2, ¶ A (c) (1-2).

86. *Id.* § 2, ¶ B.

87. A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation, and Protection of Water Resources [THE WATER CODE OF THE PHILIPPINES], Presidential Decree No. 1067 (1976).

88. *Id.* art. 3, ¶ a.

89. *Id.* art. 3, ¶ c.

90. Office of the President, Amending Executive Order No. 124, Dated 30 January 1987, Reorganizing the Department of Public Works and Highways,

all of the powers of the NWRC to the NWRB.<sup>91</sup> Presently, it is the NWRB that oversees the regulation and monitoring of water utilities through five main management models:

- (1) management by local government units;<sup>92</sup>
- (2) water districts;<sup>93</sup>
- (3) rural water and sanitation associations;<sup>94</sup>
- (4) cooperatives;<sup>95</sup> and
- (5) private small water utilities.<sup>96</sup>

Development, utilization, and protection of water resources were also bolstered by the enactment of other laws such as the 1977 Environmental Code.<sup>97</sup> Accordingly, water distribution falls within the regulation of various government agencies, such as the Metropolitan Waterworks and Sewage System (MWSS), the Local Water Utilities Administration (LWUA), the Department of Local and Interior Government (DILG), the Department of Environment and Natural Resources (DENR), and the Department of Health (DOH).<sup>98</sup> These agencies are supervised by the NWRB in their functions related to water.<sup>99</sup>

*B. Privatization in the Metro: A Look at the Metropolitan Waterworks and Sewerage System*

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Redefining its Powers and Functions, and for Other Purposes, Executive Order No. 124-A (1987).

91. *Id.* § 1 (c).

92. See Rolando G. Tungpalan, Small Towns Water Supply in the Philippines (Slideshow Presented to the Water and Sanitation Program Small Towns Workshop in Vienna, Austria on June 8, 2009) 4, available at [http://www.wsp.org/sites/wsp.org/files/Tungpalan\\_-\\_EAP\\_Philippines.pdf](http://www.wsp.org/sites/wsp.org/files/Tungpalan_-_EAP_Philippines.pdf) (last accessed Dec. 31, 2014).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. Philippine Environment Code [PHILIPPINE ENVIRONMENT CODE], Presidential Decree No. 1152 (1977).

98. *Id.*

99. National Water Sector Apex Body, Philippines: National Water Resources Board (A Country Paper by the National Water Resources Board) 2, available at <http://www.pacificwater.org/userfiles/file/IWRM/Philippines.pdf> (last accessed Dec. 31, 2014).

Privatization of water utilities involves the transfer of water operations utilities from the State to the private sector.<sup>100</sup> In the Philippines, the landmark move in the privatization of water is best illustrated by the case of the MWSS — a government-owned and -controlled corporation<sup>101</sup> (GOCC) that provides water and sanitation services to the National Capital Region or Metropolitan Manila.<sup>102</sup>

The MWSS was created by Republic Act (R.A.) No. 6234,<sup>103</sup> which states that such agency will be in charge of “proper operation and maintenance of waterworks to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes[.]”<sup>104</sup> Under this law, the MWSS is given jurisdiction, supervision, and control over all waterworks sewerage system in certain territories, including the Cities of Manila, Pasay, and Quezon in Metropolitan Manila and the Province of Cavite, among others.<sup>105</sup> Some of the powers of the MWSS include the power to construct, maintain, and operate waterworks for the purpose of supplying water,<sup>106</sup> sanitary sewerages,<sup>107</sup> and artesian wells and springs.<sup>108</sup> MWSS also has the power “to approve, regulate[,] and supervise the establishment, operation[,] and maintenance of waterworks and deep wells within its jurisdiction operated for commercial, industrial[,] and governmental purposes[.]”<sup>109</sup> It also has the power “to approve and regulate

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100. Sarah I. Hale, *Water Privatization in the Philippines: The Need to Implement the Human Right to Water*, 15 PACIFIC RIM L. & POLICY J. 765, 766 (2006) (citing Mark Baker, *Privatization in the Developing World: Panacea for the Economic Ills of the Third World or Prescription Overused?*, 18 N.Y.L. SCH. J. INT’L & COMP. L. 233 (1999)).

101. See Matikas Santos, *Governance Commission urged to closely monitor GOCC operations, expenses*, PHIL. DAILY INQ., Sep. 17, 2012, available at <http://newsinfo.inquirer.net/272290/governance-commission-urged-to-closely-monitor-gocc-operations-expenses> (last accessed Dec. 31, 2014).

102. MWSS, *About*, available at [http://mwss.gov.ph/?page\\_id=149](http://mwss.gov.ph/?page_id=149) (last accessed Dec. 31, 2014).

103. An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes, Republic Act No. 6234 (1971).

104. *Id.* § 1.

105. *Id.* § 2 (b).

106. *Id.* § 3 (f).

107. *Id.* § 3 (g).

108. *Id.* § 3 (i).

109. R.A. No. 6234, § 3 (n).

the establishment and construction of waterworks and sewerage systems in privately-owned subdivisions within its jurisdiction.”<sup>110</sup>

However, a water crisis in the early 1990s<sup>111</sup> prompted the passage of the National Water Crisis Act of 1995.<sup>112</sup> Through this law, the Philippine Government was engaged to “address the issues relevant to the water crisis including, but not limited to, supply, distribution, *privatization of [S]tate-run water facilities*, the protection and conservation of watersheds[,] and the waste and pilferage of water[.]”<sup>113</sup> The intent of the law was to address particular problems that plagued the MWSS, such as the failure to supply water to one-third of its intended population coverage and a service percentage of only eight percent of its intended population coverage for sewage.<sup>114</sup>

As a result, former President Fidel V. Ramos promulgated E.O. No. 311<sup>115</sup> — which paved the way for the privatization of the MWSS.<sup>116</sup> Through E.O. No. 311, former President Ramos was authorized “to enter into negotiated contracts for projects to be implemented under the Build-Operate-Transfer [ ] schemes”<sup>117</sup> and “to revamp the executive leadership and reorganize the [MWSS], *including the privatization of any or all of its segments, operations[,] or facilities*, if necessary[,] to make them more effective and innovative to address the looming water crisis.”<sup>118</sup> This led to discussions regarding the concessions given to the MWSS.

In 1997, the operations of MWSS were split into west and east zones and were subsequently managed by two independent consortiums — Maynilad Water Services, Inc. (Maynilad) and Manila Water Company (Manila

110. *Id.* § 3 (p).

111. Water for the People Network Asia, *Water Privatization in the Philippines: Creating Inequity in People’s Access to Sufficient and Potable Water* (Paper Contribution to the OCHR) 2, *available at* <http://www2.ohchr.org/english/issues/water/contributions/civilsociety/WaterforthePeopleNetworkAsia.pdf> (last accessed Dec. 31, 2014).

112. An Act to Address the National Water Crisis and for Other Purposes [National Water Crisis Act], Republic Act No. 8041 (1995).

113. *Id.* § 2 (emphasis supplied).

114. See MARK DUMOL, *THE MANILA WATER CONCESSION: A KEY GOVERNMENT OFFICIAL’S DIARY OF THE WORLD’S LARGEST WATER PRIVATIZATION* 5 (2000).

115. Office of the President, *Encouraging Private Sector Participation in the Operations and Facilities of the Metropolitan Waterworks and Sewerage System*, Executive Order No. 311 (1996).

116. *Id.* whereas cl., ¶ (a).

117. *Id.*

118. *Id.* whereas cl., ¶ (b) (emphasis supplied).

Water), respectively.<sup>119</sup> Today, the Manila Water has installed 889,448 water service connections to more than 6.2 million customers to its concession areas in Manila's East Zone.<sup>120</sup> Maynilad also reported a total of 1,035 district metered areas throughout Manila's West Zone.<sup>121</sup>

### *C. Privatization in the Rural Areas*

Privatization outside Metropolitan Manila is a different story. Instead of the Maynilad or the Manila Water, local water districts flourish under local governments. These water districts provide for the supply of water and sewage. The framework of local water districts is contained in the Provincial Water Utilities Act<sup>122</sup> which provided for

[t]he creation, operation, maintenance, and expansion of reliable[,] [ ] economically[-]viable[,] and sound water supply and wastewater disposal systems for population centers of the Philippines is hereby declared to be an objective of national policy and high priority. *For purposes of achieving said objectives, the formulation and operation of independent[ ] [and] locally[-]controlled public water districts is found and declared to be the most feasible and favored institutional structure. To this end, it is hereby declared to be in the national interest that said district be formed and that local water supply and wastewater disposal systems be operated by and through such districts to the greatest extent practicable.*<sup>123</sup>

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119. See Roberta F. Estimo, *The Curse of the MWSS Water Utility Privatization in the Philippines: Private Mismanagement and Workers' Woes* (A Background Paper for the People's Forum on ADB, Kyoto, Japan dated May 6, 2007) 1, available at [http://www.waterjustice.org/uploads/attachments/5\\_ADB\\_Water-privatization\\_maynilad\\_estimo\\_kyoto\\_apro7\\_eng.pdf](http://www.waterjustice.org/uploads/attachments/5_ADB_Water-privatization_maynilad_estimo_kyoto_apro7_eng.pdf) (last accessed Dec. 31, 2014).

120. See GMA News Online, *Manila Water reports almost 900k water connections in 15 years*, available at <http://www.gmanetwork.com/news/story/284792/economy/companies/manila-water-reports-almost-900k-water-connections-in-15-years> (last accessed Dec. 31, 2014).

121. See Maynilad, *Maynilad establishes 904 DMAs; repairs over 140,000 leaks*, available at <http://www.mayniladwater.com.ph/news-article.php?id=309> (last accessed Dec. 31, 2014).

122. *Declaring A National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of Such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting Said Administration Such Powers as are Necessary to Optimize Public Service from Water Utility Operations, and for Other Purposes* [Provincial Water Utilities Act], Presidential Decree No. 198, as Amended (1973).

123. *Id.* § 2 (emphasis supplied).

Other than the LWUA, local governments are also empowered by the Local Government Code,<sup>124</sup> subject to existing laws, to “provide for the establishment, operation, maintenance, and repair of an efficient waterworks system to supply water for the inhabitants[.]”<sup>125</sup> Thus, the *Sangguniang Bayan* — the legislative body of a municipality — may allow for the establishment of such waterworks systems in accordance with the policies set forth by governing bodies such as NWRB and LWUA.

At present, water districts are organized either under the Philippine Association of Water Districts (PAWD)<sup>126</sup> or under the Philippine Water Works Association (PWWA).<sup>127</sup> The PWWA acts as the umbrella organization of government and private agencies and individuals in water supply development.<sup>128</sup> The PAWD, on the other hand, is the umbrella organization of all duly organized water districts in the Philippines.<sup>129</sup>

The nature of local water districts was first explained in *Baguio Water District v. Trajano*,<sup>130</sup> wherein the Supreme Court declared that the water district is a corporation created pursuant to P.D. No. 198 — a special law.<sup>131</sup>

This was revisited once more in *Davao City Water District v. Civil Service Commission*.<sup>132</sup> The main issue in that case was whether the local water districts formed and created pursuant to the provisions of P.D. No. 198, as amended, are GOCCs with original charters.<sup>133</sup> GOCCs with original charters are those that are “created by a special law and not under the Corporation Code of the Philippines.”<sup>134</sup> It was argued by the water districts that they are corporations — despite the fact that they are not organized

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124. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE], Republic Act No. 7160 (1991).

125. *Id.* § 447, ¶ a (5) (vii).

126. See generally Philippine Association of Water Districts, PAWD History, available at <http://pawd.org.ph/history> (last accessed Dec. 31, 2014).

127. See Philippine Water Works Association, Philippine Water Works Association (PWWA), available at <http://philippinewaterworks.wordpress.com/2011/12/14/hello-world/> (last accessed Dec. 31, 2014).

128. *Id.*

129. Philippine Association of Water Districts, About Us, available at <http://pawd.org.ph/about-us> (last accessed Dec. 31, 2014).

130. *Baguio Water District v. Trajano*, 127 SCRA 730 (1984).

131. *Id.* at 733.

132. *Davao City Water District v. Civil Service Commission*, 201 SCRA 593 (1991).

133. *Id.* at 599.

134. *Id.* at 601.

under the Corporation Code of the Philippines<sup>135</sup> but were created pursuant to a special law.<sup>136</sup> The Supreme Court explained that P.D. No. 198 is the source of authorization and power to form and maintain a water district.<sup>137</sup> P.D. No. 198 also provides for the qualifications of the Board of Directors, the manner of appointment and nominations, the terms of office, the manner of filling up vacancies, and the compensation and personal liability of the members of the Board of Directors.<sup>138</sup> The Supreme Court also pronounced that these provisions are similar to those contained in other corporate charters and concluded that P.D. No. 198 is, in fact, the charter of the water districts and “the very law which gives a water district juridical personality.”<sup>139</sup> Based on the foregoing, water districts are clearly not private companies but GOCCs with original charters.<sup>140</sup>

In summary, the Philippine framework is comprised of several players: the NWRB, the LWUA, and the privatized water systems in and out of the Metropolitan Manila. Management of water districts falls within the ambit of the NWRB. On the other hand, local water districts fall under the management of the LWUA. Apart from this, local water districts have ties with local government units. This shows that there is a complex regulatory system wherein accountability for management and regulation is distributed to more than one agency or unit.

#### *D. Advantages and Disadvantages of Privatization*

Water privatization, in general, has a number of advantages and disadvantages. A clear advantage in privatizing water utilities is the infusion of more capital into water infrastructure development.<sup>141</sup> Capital infusion by transnational corporations, international financial institutions, and official development aid from developed countries has been very instrumental in the development of water infrastructure to address water shortage.<sup>142</sup> Unfortunately, transnational corporations and international financial institutions would finish its projects, without giving due regard to the needs

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135. The Corporation Code of the Philippines [CORPORATION CODE OF THE PHILIPPINES], Batas Pambansa Blg. 68 (1980).

136. *Davao City Water District*, 201 SCRA at 599.

137. *Id.* at 602-04.

138. *Id.*

139. *Id.* at 605.

140. *Id.* at 606.

141. Water for the People Network Asia, *supra* note 111, at 12-19.

142. *Id.*



and welfare of others.<sup>143</sup> For instance, the construction of dams to provide water to metropolitan areas has led to the flooding of rice fields — affecting the livelihood of subsistence farmers.<sup>144</sup>

Privatization is also seen as a more effective governance mechanism. It is well-recognized that business corporations, given their profit-driven nature, would adopt the most cost-efficient and the most cost-effective means of water distribution.<sup>145</sup> Such means would definitely benefit the general public — at least in terms of availability of water. However, this efficiency comes at a price. Highly efficient distribution systems may also mean higher water bills that the poor cannot afford to pay for.<sup>146</sup> Because of this, waterline disconnections among poor families have become prevalent; thus, resulting to less access to water.<sup>147</sup> A reversion from private to public operations has also been proven to be difficult because the contracts awarded to the private companies have to be respected by the Philippine Government.<sup>148</sup>

The impact of water privatization in the Philippines reflects these advantages and disadvantages. Under the framework of the MWSS privatization, the impact may be seen in terms of the internal structure and the public at large.

The privatized MWSS structure has a number of efficiency gains: (1) meter replacements were accelerated; (2) repair services became more prompt; and (3) more measures have been adopted to reduce illegal connections.<sup>149</sup> Better services, such as programs in poorer neighborhoods,

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143. See Georgia A. Velasco, *Philippine Government Policies and its Impact on the Cordillera People*, available at <http://www.icbe.eu/categories-listings/20-1st-icbe-assembly/48-philippine-government-policies-and-its-impact-on-the-cordillera-people> (last accessed Dec. 31, 2014).

144. *Id.*

145. *Id.*

146. See Coalition of Water Justice Groups for Water Social Forum, *Top 10: Why Privatization Fails* (An Unpublished Paper Submitted to the 2007 World Social Forum), available at [http://www.waterjustice.org/uploads/attachments/whywaterprivatisationfails\\_PDF.pdf](http://www.waterjustice.org/uploads/attachments/whywaterprivatisationfails_PDF.pdf) (last accessed Dec. 31, 2014).

147. *Id.*

148. *Id.*

149. See Christina David, *MWSS Privatization: Implications on the Price of Water, the Poor, and the Environment* (Philippine Institute for Development Studies, Discussion Paper Series No. 2000-14) 19, available at <http://www.ircwash.org/sites/default/files/David-1998-MWSS.pdf> (last accessed Dec. 31, 2014).

were also initiated by the privatized water systems.<sup>150</sup> Furthermore, by collaborating with the private sector, water utilities were able to work with bigger budgets because of the infusion of more financial resources.<sup>151</sup>

However, the privatization of the MWSS has led to drastically increased prices.<sup>152</sup> Between August and January 1997, Maynilad registered a price increase by as much as 357.6% while Manila Water Company registered an increase by as much as 414.4%.<sup>153</sup> Maynilad also became prey to mismanagement in the early 2000s, which resulted in the appearance of manganese in the drinking water, increase of debts, placement of unfit management officers, and unrest in the labor force.<sup>154</sup> Manila Water was also plagued with water rate increases and anti-labor practices.<sup>155</sup>

In sum, privatization in Metropolitan Manila led to improvements in water coverage, availability, and quality, but this was accomplished in the backdrop of a vast increase in water prices.<sup>156</sup>

The effect of privatization to the poor, in particular, is characterized as uneven.<sup>157</sup> It has also led to the depletion of freshwater resources and, consequently, to an increase in freshwater rates.<sup>158</sup> But given that private companies that use freshwater for their industry can afford higher rates compared to the poor communities, the latter's access to affordable freshwater necessary to sustain daily life is seriously hampered.<sup>159</sup>

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150. See Pei Lin Grace Chia, et al., *Water Privatization in Manila, Philippines: Should water be privatized? A Tale of Two Water Concessions in Manila* (An Unpublished Project for the INSEAD Economics and Management in Developing Countries) 5-6, available at [http://www.circleofblue.org/waternews/wpcontent/uploads/2012/06/Insead\\_Water\\_Privatization\\_Manila\\_Philippines.pdf](http://www.circleofblue.org/waternews/wpcontent/uploads/2012/06/Insead_Water_Privatization_Manila_Philippines.pdf) (last accessed Dec. 31, 2014).

151. Velasco, *supra* note 143.

152. Water for the People Network Asia, *supra* note 111, at 2.

153. *Id.*

154. Estimo, *supra* note 119.

155. *Id.*

156. Chia, et al., *supra* note 150, at 6.

157. Sara Westman, *Treasuring Every Drop: Water Privatization and the Urban Poor* (Report from a Minor Field Study, Manila Philippines, Nov. 2005) ii, available at [http://www.lumes.lu.se/database/alumni/04.05/theses/sara\\_westman.pdf](http://www.lumes.lu.se/database/alumni/04.05/theses/sara_westman.pdf) (last accessed Dec. 31, 2014).

158. Water for the People Network Asia, *supra* note 111, at 2.

159. *Id.* at 19.

In the long run, the low level of access to water has proven to be detrimental to the health and productivity of people in poor communities.<sup>160</sup> The case of Benguet Corporation in Itogon, Benguet illustrates this problem.<sup>161</sup> The said mining firm, which holds 65 water appropriation permits for freshwater resources, is being blamed by the residents for the decreasing availability of freshwater in the place.<sup>162</sup>

Privatization, as a scheme and framework, was seen as a solution to ensure that the general public would have better access to quality water essential for everyday life. However, given the advantages and disadvantages discussed in this Article, it bears stressing that while privatization, which incorporates private sector investment into the water industry, is important, there is still a need to approach the problem of water security in such a way that accountability and transparency in the provision of water would be ensured.

#### V. A HUMAN RIGHTS-BASED APPROACH TO WATER SECURITY

A possible way of addressing the problems previously discussed is through the human rights-based approach. The human rights-based approach to development is one that

sets the achievement of human rights as an objective of development. It uses thinking about human rights as the scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action. In all of these, it is concerned not just with civil and political rights [ ], but also with economic, social, and cultural rights.<sup>163</sup>

The human rights-based approach places paramount importance to the principles of liberty, equality, and empowerment.<sup>164</sup> It also promotes human-centered development, which regards the human person as the most important stakeholder in discussing development issues.<sup>165</sup> Approaching

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160. Westman, *supra* note 157, at 19.

161. Water for the People Network Asia, *supra* note 111, at 2.

162. *Id.*

163. Emilie Filmer-Wilson, *The Human Rights-Based Approach to Development: The Right to Water*, 23 NETHERLANDS Q. ON HUM. RTS. 213, 216 (2005) (citing Overseas Development Institute, *What Can We Do With a Rights-Based Approach to Development? (A Briefing Paper Published by the Overseas Development Institute, Sep. 1999)* 1, available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2614.pdf> (last accessed Dec. 31, 2014)).

164. *Id.*

165. *Id.*

development issues from a human rights perspective informs people of their legal rights and entitlements and empowers them to achieve those rights.<sup>166</sup> Rather than seeing people as passive recipients of aid, this approach puts the individual at the center of development.<sup>167</sup> It employs an empowering process which not only helps individuals but also enables them to be active stakeholders in their own issues and involves them in charting the path of their own development.<sup>168</sup>

Addressing development issues such as water security, a human rights-based approach would increase accountability and transparency since this “approach has implications for a range of actors concerned[,] directly or indirectly[,] with water issues.”<sup>169</sup> This is because on the one hand,

[g]overnments, as primary duty-bearers, must take concrete steps to respect, protect[,] and [fulfill] the right to water and other water-related rights and to ensure that anyone operating within their jurisdiction [—] individuals, communities, civil society, and the private sector [—] do the same. This means paying attention to these rights also in processes, ensuring the right of beneficiaries to participate in decision-making that affects them[,] and guaranteeing transparency so that individuals have access to information and are able to understand, interpret, and act on the information available to them.<sup>170</sup>

On the other hand, individuals who are considered claim-holders and are given the right to seek the fulfillment of human rights, such as the right to water and to water security, should take an active role, usually through civil society, in ensuring the fulfillment of their rights.<sup>171</sup> The human rights-based approach does not make the individual a mere bystander; it simply places a heavier burden upon the State to ensure the respect, protection, and fulfillment of human rights.

The human rights-based approach further “promotes national and international systems based on economic equity, equitable access to public resources, and social justice.”<sup>172</sup> In addition,

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166. *Id.*

167. *Id.*

168. See Belinda U. Calaguas, *The Right to Water, Sanitation and Hygiene and the Human Rights-Based approach to development* (A Briefing Paper by WaterAid dated July 1999) 17, available at <http://www.righttowater.info/wp-content/uploads/humanrights.pdf> (last accessed Dec. 31, 2014).

169. WORLD HEALTH ORGANIZATION, *THE RIGHT TO WATER*, *supra* note 29, at 10.

170. *Id.*

171. *Id.*

172. Calaguas, *supra* note 168, at 6.

[a] central feature of the human rights-based approach is the notion of accountability, which in practice requires the development of adequate laws, policies, institutions, administrative procedures[,] and practices, and mechanisms of redress. This calls for the translation of the internationally recognized right to water into locally[-]determined benchmarks for measuring progress, thereby enhancing accountability.<sup>173</sup>

Other than improving accountability at the domestic level, the human rights-based approach allows for the increase of State accountability in international law. While there is no body that focuses particularly on the rights to water and to water security, the existing U.N. human rights mechanisms and bodies, such as the UNCESCR, may be utilized to ensure State compliance with these human rights.

The human rights-based approach also “[recognizes] and promotes non-discrimination and equality between men and women[.]”<sup>174</sup> It “promotes equal opportunities and choices for all so that everyone can develop their own unique potential and have a chance to contribute to development and society.”<sup>175</sup> As such, fulfilment of the human rights to water and to water security entails the eradication of all forms of barriers towards the enjoyment of these rights. These barriers include those brought about by economic standing and socially-constructed gender roles.<sup>176</sup>

Given that the right to water and to water security are human rights, analyzing such issues through a human rights lens would facilitate the process of demanding such rights from the State. This would lead States to adopt the “respect, protect, and fulfill” framework in relation to water and water security. Further, adopting a human rights-based approach in addressing water security would lead to more sustainable human development outcomes. Where individuals are educated, healthy, and empowered, there would be less reliance on the State for water accessibility. Finally, it introduces an overarching imperative which binds individuals, States, and other international entities to respect the right to water and to water security as human rights. This highlights the importance of water security in the whole scheme of full enjoyment of human rights and the attainment of full human development.

## VI. GENDER EQUALITY IN WATER SECURITY

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173. WORLD HEALTH ORGANIZATION, THE RIGHT TO WATER *supra* note 29, at 10.

174. Calaguas, *supra* note 168, at 6.

175. *Id.*

176. *Id.* at 16.

Integral to the human rights-based approach are the principles of non-discrimination and equality. The approach, thus, plays a complementary and mutually reinforcing role with the principles of gender mainstreaming — both principles have the goal of achieving equality.<sup>177</sup> In this case, the right to water must be enjoyed without discrimination and equally between men and women.<sup>178</sup> This principle is exemplified by Articles 2 and 3 of the ICESCR.<sup>179</sup> Non-discrimination plays an important part in the component of accessibility with regard to the right to water. In the General Comment No. 15, State-parties are reminded that they have the obligation to ensure that “women are not excluded from decision-making processes concerning water resources and entitlements.”<sup>180</sup> It also takes its discussion from another international human rights instrument, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>181</sup> In the CEDAW, it is stipulated that women have the right “to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, and water supply, transport[,] and communication.”<sup>182</sup>

In addition to General Comment No. 15 and the CEDAW, there is also an increasing recognition that women play an important role in water supply management.<sup>183</sup> It has been noted that

[t]he importance of involving both women and men in the management of water and sanitation and access-related questions has been recognized at the global level, starting from the 1977 [U.N.] Water Conference at Mar del Plata, the International Drinking Water and Sanitation Decade (1981–[19]90)[,] and the International Conference on Water and the Environment in Dublin (January 1992), [all of] which explicitly [recognize] the central role of women in the provision, management[,], and safeguard[ ] of water. Reference is also made to the involvement of women in water management in [Chapter 18 of] Agenda 21 ... and the Johannesburg Plan of

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177. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 18 (2006).

178. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 13.

179. *See* ICESCR, *supra* note 21, arts. 2–3.

180. *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, *supra* note 25, ¶ 16 (a).

181. *Id.* ¶ 4. *See also* Convention on the Elimination of All Forms of Discrimination Against Women, signed Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

182. *Id.* art. 14, ¶ 2 (h) (emphasis supplied).

183. United Nations, Gender and Water, available at <http://www.un.org/waterforlifedecade/gender.shtml> (last accessed Dec. 31, 2014).

Implementation. Moreover, the resolution establishing the International Decade for Action, 'Water for Life' (2005-2015), calls for women's participation and involvement in water-related development efforts.<sup>184</sup>

In many cases, women are water users and livelihood managers.<sup>185</sup> Their work is characterized by responsibility in sanitation and hygiene, preventive maintenance, and repair of sanitation facilities.<sup>186</sup> A statement by the U.N. Entity for Gender Equality and the Empowerment of Women states that "[w]hen water supplies are not readily accessible, it must be carried from its source and women and girls continue to bear the primary responsibility [of] water collection."<sup>187</sup> Research suggests that other cases of gender inequality, particularly in fetching water, include women and girls from low-income countries, such as in sub-Saharan Africa, spending 40 billion hours a year collecting water — the equivalent of a year's worth of labor by the entire work force in France.<sup>188</sup> Also, "[i]n rural Benin, girls aged [six to] 14 spend an average of one hour a day collecting water compared with [the] 25 minutes [spent by] their brothers."<sup>189</sup>

It has also been noted that "[t]he differences and inequalities between women and men influence how individuals respond to changes in water resources management. Understanding gender roles, relations, and

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184. United Nations Department of Economic and Social Affairs, Gender, and Water, *available at* <http://www.un.org/waterforlifedecade/gender.shtml> (last accessed Dec. 31, 2014) [hereinafter United Nations Department of Economic and Social Affairs, Gender, and Water] (citing United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992, *Agenda 21*, ch. 18, U.N. Doc. A/CONF.151/26 (Vol. I) (June 1992) & World Summit on Sustainable Development, Johannesburg, S. Africa, Aug. 26-Sep. 4, 2002, *Draft of implementation of the World Summit on Sustainable Development*, U.N. Doc. A/CONF.199/L.1 (June 26, 2002)).

185. See ROBINA WAHAJ, ET AL., INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT, GENDER AND WATER: SECURING WATER FOR IMPROVED RURAL LIVELIHOODS, THE MULTIPLE-USES SYSTEM APPROACH 3 (2007).

186. *Id.*

187. Lakshmi Puri, Deputy Executive Director of U.N. Women, Gender Perspectives on Water and Food Security, Remarks at the 2012 World Water Week in Stockholm, Sweden (Aug. 31, 2012), transcript *available at* <http://www.unwomen.org/en/news/stories/2012/8/gender-perspectives-on-water-and-food-security> (last accessed Dec. 31, 2014).

188. See Winnie Byanyima & Magdy Martinez-Soliman, *Foreword to UNITED NATIONS DEVELOPMENT PROGRAMME, RESOURCE GUIDE ON GENDER AND CLIMATE CHANGE* iii (2009).

189. United Nations Department of Economic and Social Affairs, Gender, and Water, *supra* note 184.

inequalities can help explain the choices people make and their different options.”<sup>190</sup> For instance, water sources in communities, where a big number of women and girls fetch water, should be constructed in places where women can easily have access to it. The water source should be placed in an area that can be accessed by pregnant women, without compromising their health and those of their children. It should also be placed in an area easily accessible to infant-nursing women.

The involvement of “both women and men in integrated water resources initiatives can increase project effectiveness and efficiency.”<sup>191</sup> On the contrary, “[w]ithout specific attention to gender issues and initiatives, projects can reinforce inequalities between women and men and even increase gender disparities.”<sup>192</sup> Hence, the participation of women in the design, implementation, and evaluation of projects is integral in ensuring that women’s issues related to water resource management are brought forth.

Equally important is the increased appreciation of communities, civil society groups, governments, and international agencies of gender issues related to projects that deal with water. Due consideration must be given to the particular situation and issues of women and girls in the localities where projects will be undertaken.

It should be recognized that “women are, *in fact*, primary stakeholders in the water and sanitation sectors [ ] and are the primary providers of water for domestic consumption.”<sup>193</sup> It must also be noted that women are “responsible for health, hygiene, sanitation[,] and other productive activities at the household level.”<sup>194</sup> Thus, “[l]ack of access to water and sanitation directly affects women’s health, education, employment, income[,] and empowerment. The gendered dynamics of water and sanitation underscore the closer inter-linkages between poverty, gender[,] and sustainable development.”<sup>195</sup> As such, there is really a need to mainstream gender issues in policy development and project design in the water sector.

## VII. ENSURING WATER SECURITY: ITS IMPORTANCE TO SUSTAINABLE DEVELOPMENT

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190. *Id.*

191. *Id.*

192. *Id.*

193. UNITED NATIONS DEPARTMENT FOR ECONOMIC AND SOCIAL AFFAIRS, GENDER-DISAGGREGATED DATA ON WATER AND SANITATION UNITED NATIONS 4 (2009) (emphasis supplied).

194. *Id.*

195. *Id.*



In the discussion of entitlement to water and to water security as legally-demandable rights, it should not be forgotten that the *raison d'être* stems from the very fact that water is a source of life on earth. More than ensuring access and availability of adequate amount of water of appropriate quality for the public, regulatory frameworks should also take into account that it is not only this generation that needs water to sustain life, but future generations as well.

The principle of intergenerational responsibility underlies the definition of sustainable development.<sup>196</sup> The World Commission on Environment and Development (Brundtland Commission) defines “sustainable development” as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>197</sup> This definition encompasses two key concepts — needs and limits.<sup>198</sup> In achieving sustainable development, the needs of the present generation must be met; more so, the essential needs of the poor should be given priority. The limits of the earth’s ability to meet present and future needs must also be considered in relation to the current state of technology and social organization.<sup>199</sup>

As early as 1972, the Declaration of the U.N. Conference on the Human Environment has acknowledged that “[t]he natural resources of the earth, including the air, *water*, land, flora and fauna[,] and especially representative samples of natural ecosystems[ ] must be safeguarded for the *benefit of present and future generations* through careful planning or management, as appropriate.”<sup>200</sup> Further, in 1998, the Expert Group Meeting on Strategic Approaches to Freshwater Management of the U.N. (Expert Group) made their discussions premised upon the recognition that “water is fundamental to sustainable development and a basic component of national and regional

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196. See Unite for Children, UNICEF’s Key Messages for Rio+20 (An Unpublished Paper Submitted to the UNICEF), available at [http://www.unicef.org/about/execboard/files/Revised\\_Rio20-Key\\_Msgs-Eng\\_4April2012.pdf](http://www.unicef.org/about/execboard/files/Revised_Rio20-Key_Msgs-Eng_4April2012.pdf) (last accessed Dec. 31, 2014).

197. World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future*, ch. 2, ¶ 1, U.N. Doc. A/42/427, (Aug. 4, 1987) [hereinafter Brundtland Commission Report].

198. *Id.*

199. *Id.*

200. United Nations Conference on the Human Environment, June 5–16, 1972, *Declaration of the United Nations Conference on the Human Environment*, princ. 2, U.N. Doc. A/CONF.48/14/Rev. 1 (June 16, 1972) (emphases supplied).

ecosystems.”<sup>201</sup> The Expert Group also recognized that “[i]n many parts of the world, current patterns of development and use are not sustainable [—] environmentally, socially[,] and economically.”<sup>202</sup>

It bears stressing that for countries that have fragile ecosystems, like the Philippines,<sup>203</sup> it is of paramount importance to adopt a sustainable development framework. This is critical in the Philippines because many of the poor and vulnerable depend on the environment for their daily sustenance.<sup>204</sup>

Fortunately, the principles of intergenerational responsibility and sustainable development are recognized in the Philippine legal system.<sup>205</sup> The Constitution provides that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”<sup>206</sup> It is noticeable that nowhere in the provision are the said principles explicitly mentioned.

Yet, in 1993, the Philippine Supreme Court, through the landmark case of *Oposa v. Factoran, Jr.*,<sup>207</sup> pronounced that the above-quoted constitutional provision is self-executory.<sup>208</sup> This decision hinged on the recognition of the twin concepts of intergenerational responsibility and intergenerational justice.<sup>209</sup> Specifically, the Court upheld the legal standing of a group of minors to file a class suit on behalf of their generation and of generations to come “based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.”<sup>210</sup>

Given the importance of water to the lives of humans and to the bigger ecosystem, it must be secured in order to attain sustainable development. Policies and legal systems that recognize the need for sustainable

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201. Expert Group Meeting on Strategic Approaches to Freshwater Management, Harare, Zimbabwe, Jan. 27–30, 1998, *Report of the Expert Group Meeting on Strategic Approaches to Freshwater Management*, annex I, ch. I, ¶ 43.

202. *Id.*

203. See Ellalyn de Vera, *Coral reef ecosystem rehab launched*, MANILA BULL., Aug. 25, 2013, available at <http://www.mb.com.ph/coral-reef-ecosystem-rehab-launched> (last accessed Dec. 31, 2014).

204. *Id.*

205. See *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993).

206. PHIL. CONST. art. II, § 16.

207. *Oposa*, 224 SCRA.

208. *Id.* at 817.

209. *Id.* at 803.

210. *Id.*

development are essential.<sup>211</sup> A healthy ecosystem fosters survival and, ultimately, supports and maintains life on earth.<sup>212</sup> Water must also be secured for the needs of human beings. Securing water has immense ramifications on irrigation and food security and on human requirements for domestic and hygienic purposes.<sup>213</sup> But most importantly, water security is important because humans need to consume water to live.<sup>214</sup>

As aptly put by the Brundtland Commission, “[t]he satisfaction of human needs and aspirations is the major objective of development.”<sup>215</sup> The basic needs of humans such as food, water, clothing, and shelter must first be met before people, especially those in developing countries, could even think of their aspirations for a better quality of life.<sup>216</sup> If the poor do not have access to a basic resource such as water, they will not be able to even come close to their legitimate aspirations for a better life. Yet, in ensuring that the public has access to water in such quality they need, States must also keep in mind that development policies must also consider that the right of future generations to water security is not impaired.

### VIII. CONCLUSION AND RECOMMENDATION

Water security is a human right that must be ensured by the State. This is based on the premise that the right to water is a human right.<sup>217</sup> Given the interrelatedness of human rights, the lack of water or the inability to secure it, would lead to violations of other human rights. In the same way that States have the obligation to respect, protect, and fulfill human rights, States should have the same obligation as regards water security — bearing in mind the principle of progressive realization. While the public sector, through the government, has the primary obligation to ensure this human right, the private sector also has an important role.

Despite the prevalence of privatization, the government is still duty-bound to exercise regulatory functions over privatized public utilities since these are businesses imbued with public interest. If these privatized public utilities fail in providing the services, which should have otherwise been

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211. Brundtland Commission Report, *supra* note 197, ch. 1, ¶¶ 31-34.

212. *Id.* ch. 6, ¶ 11.

213. *Id.* ch. 5, ¶¶ 63-65.

214. See Michael N. Sawka, et al., Human Water Needs (A Paper Describing Why Water Consumption is Essential to the Human Body) 31-32, available at [http://www.cism-milspport.org/eng/004\\_SPORT\\_AND\\_SCIENCE/articles-and-pdfs/004-hydration.pdf](http://www.cism-milspport.org/eng/004_SPORT_AND_SCIENCE/articles-and-pdfs/004-hydration.pdf) (last accessed Dec. 31, 2014).

215. *Id.* ch. 2, ¶ 4.

216. *Id.*

217. U.N.-Water Decade Programme.

provided by the government, it is ultimately the general public that would suffer. Thus, there is a need to reassess and reinvigorate the public-private sector engagement in water security.

In coming up with policies to address the problem of water, a human rights-based approach must be adopted. This approach ensures that while the public utilities run by the private companies also have responsibilities to the general public, the individuals can always demand fulfillment of this human right from the State. Unregulated privatization may lead to a violation of human rights, since the State, which is the primary duty-bearer, passes on its human rights obligations to the private sector alone. Government regulation in privatization recognizes the fact that it is still the State that is responsible for the compliance of its obligations as regards human rights.

Further, gender issues and sustainable development should be mainstreamed in the policies that relate to water security. This ensures that the concerns and needs of the poor and vulnerable groups in society are adequately addressed. It also underscores the need to have policies that also consider the needs of present and future generations, considering the current state of technology and social organization. Water security, as a human right, is inextricably linked to sustainable development in that ensuring this human right is a means to achieving full human development, in the same way that the attainment of full human development would mean that humans would enjoy the full range of human rights.

As accurately expressed by the World Bank Group —

Water supply and sanitation sector strategies should create the conditions for the sustained expansion of access to services of adequate quality, thereby contributing to poverty alleviation, improved health outcomes, and sustainable economic growth. The major elements of these strategies, such as private participation, tariff policy, or the reform of public sector utilities, are not ends in themselves. Rather, by improving the economic efficiency and financial viability of service providers and the environmental sustainability of service provision, they seek to contribute to these goals.

These strategies have to be adapted to conditions that differ from country to country[.], as well as to the specific situations that service providers face within each country. Important factors include income levels, the population density and size of the area served, and the existing structure for service provision[.]

...

Policies need also to address the broad institutional framework for service delivery [ ] and ensure effective coordination between the institutions responsible for providing water and sanitation services.<sup>218</sup>

In some countries, responsibilities for sanitation provision in particular are often shared across several ministries.<sup>219</sup> After all, “[e]ntities responsible for asset management and service provision may not be the same as those responsible for financing and executing investments.”<sup>220</sup>

#### *A. Towards a Revitalized Public-Private Sector Partnership*

As can be gleaned from the discussions in this Article on the Philippine regulatory framework, a number of government agencies have particular functions related to the water sector. Such structure may create overlapping functions among the agencies that may hamper smooth operations of water utilities and, in turn, affect both efficient water distribution and protection of water systems and resources.

The *creation of one centralized national government agency* in charge of all functions related to the water sector is necessary. This agency should be placed within the structure of the DENR, since water is a natural resource that is consumed by humans. Among the main functions of this proposed national agency for the water sector should include, at the minimum:

- (1) Creation of policies towards the sustainable use and protection of water systems resources and ensuring participation of relevant local stakeholders in policy development;
- (2) Setting standards for and ensuring increased access to water, water quality and availability, and efficient distribution of water to households, communities, and industries;
- (3) Adoption of streamlined processes for privatization of water utilities at the local level; and
- (4) Supervision over all water utilities operating in the country.

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218. The World Bank Group & Water Supply & Sanitation Sector Board, Public and Private Sector Roles in Water Supply and Sanitation Services (Operational Guidance for World Bank Group Staff) 2-3, *available at* <http://siteresources.worldbank.org/INTWSS/Publications/20249486/Guidance%20note%20Public%20and%20Private%20Sector%20Roles%20in%20Water%20Supply%20and%20Sanitation%20Services%20Apr%2004.pdf> (last accessed Dec. 31, 2014).

219. *Id.* at 3.

220. *Id.*

The proposed central government agency should also be clothed with quasi-judicial functions to adjudicate all disputes related to water access, quality, availability, and distribution, including processes related thereto. This would make it more effective in discharging its duties and achieving its goals.

Recognizing the importance of private sector involvement in the water industry, the new structure would allow for privatization at the local level. This would take advantage of the benefits of privatization, such as efficient distribution system and better water quality. This set up would also allow for the privatization of water districts, which are common in areas outside the metropolis. The local governments supervising the local water utilities would have direct supervision over local water utilities, whether privatized or not, following the policies and standards set by the proposed central government agency. This decentralization would allow for a more effective governance structure given that local government units would have better understanding of issues and concerns particular to their respective jurisdictions.

Finally, the overarching policy that the government agency, local government units, and water utilities should adopt is one that promotes transparency and accountability. The streamlined and decentralized structure proposed herein should allow less room for slow bureaucratic processes, which would in turn lessen corruption at various levels of the government. This would greatly advance the cause of furthering the human right to water security.

Towards the end, government policies and structures should ensure that water security is enjoyed by all individuals and communities on the basis of equality and non-discrimination. The participation of relevant stakeholders, especially those who are most affected and marginalized, should also be ensured in making decisions that affect them. Ultimately, the State should recognize that it is primarily responsible for the respect, protection, and fulfillment of the human right to water security. It should ensure that laws and structures are in place to comply with these State obligations.