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Aid and trade in water and electricity in Tsunami-affected countries: India, Indonesia, Sri Lanka, Thailand

by

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1. Introduction

The Tsunami that struck on 26th December 2004 caused massive loss of life, destruction of buildings, and disruption to the economies of the countries affected. 189,000 people were dead or missing, with another 1.1 million displaced. People all over the world donated money for emergency relief and reconstruction, followed by pledges of aid from government aid agencies and others. By December 2005 a total of $6.1billion had been given - $4.1billion by people and NGOs, and the rest by governments and other official agencies. It is one of the largest relief operations ever - part of a process of global solidarity, transferring money from other countries to finance the needs of people hit by the Tsunami. [1]

Part of this money is being spent on restoring water and electricity services, which are vital for the health and livelihoods of people, as well as economic activity. These same services, however, are also key parts of infrastructure which is crucial to economic as well as social development. Before the Tsunami struck, these sectors were already the subject of policies of liberalisation and privatisation in all four countries - and after the Tsunami, these same policies have continued to be pursued, with the active encouragement of the World Bank and the Asian Development Bank. The results have been economically and politically problematic.

Instead of the solidarity basis of the relief operation, the privatisation and liberalisation processes are based on commercial principles; instead of donations, money is invested in the expectation of a profitable return; instead of local needs being paramount, contracts determine who is paid, and how much. If things go wrong, the countries are exposed to the cost of compensation claims – which takes money out of the country, in the opposite direction to the flow of donations. But if the contracts are too favourable to the companies, local people risk paying excessive amounts to sustain profits, which also leave the country.

The Tsunami countries have actual experience of these processes (see Table 1, section 6.2).

In the year since the Tsunami struck, compensation agreed with or claimed by multinationals in respect of just three projects, in three different countries, adds up to $790 million (£457m.) - more than the combined total of all the official aid for the Tsunami emergency from the USA, Canada, UK, Germany, France, the European Union, and China (see annex 1) ; and more than the £400million donated by the British public. [2] $361 million (£209m) has already been agreed with further claims of $429 million (£248m.) still pending.

There is a political cost to these processes as well. As in the rest of the world, there has been strong resistance to privatisation in these sectors in all four countries. This resistance has contributed to at least election being lost by advocates of privatisation – in Sri Lanka, political turmoil in another – Thailand, and high levels of. Courts in three of the four countries have ruled that proposed privatisations were illegal. Nevertheless, in two of these countries - Indonesia and Sri Lanka - the development banks are demanding that governments ignore rulings by constitutional courts and introduce privatization of water or electricity.

This paper provides a survey of recent experiences in all four countries, together with a summary review of the claims by multinationals for failed private ventures.

2. India

2.1. Water

Partly due to the level of opposition, very little water privatisation had taken place in India before 2004. Some proposals have been abandoned after strong criticisms of the economic and political basis: Bangalore cancelled a planned contract with Biwater for a bulk water supply scheme from the Cauvery River after investigation of financial irregularities.[3] In Delhi, Suez subsidiary Degremont won a contract for a bulk water supply scheme, Sonia Vihar, to supply Delhi with an extra 140m gallons per day: the scheme has been criticized and opposed by local groups because it will divert water away from existing irrigation use, and lead to over-charging of users to pay Suez.[4] In November 2005 the scheme was still not functioning, as no

bulk water was being supplied and the plant was beginning to rust. As a result it threatens to become a financial liability for Delhi, because the contract with Suez-Degremont specifies a penalty that the city has to pay to the company if the plant does not function.

During 2005 Delhi's water agency the Delhi Jal Board (DJB), in close association with the World Bank, developed a reform plan which included the privatisation of water distribution in south Delhi. The World Bank not only promoted the project, it repeatedly intervened in the process of appointing a consultant, overriding the results of the tendering procedure:

> "the World Bank, which provided a $ 2.5 million loan for hiring a consultant, insisted that its own candidate Price Waterhouse Coopers, which failed to get short-listed, be accommodated. Though senior DJB officers objected, the bank got its way and made changes to the selection criteria, after the bids were opened, to get its candidate accommodated." [5]

The report by Price Waterhouse enthusiastically recommends the introduction of the private sector. It makes no mention at all of the myriad problems experienced with water privatisations, such as the failure to invest (documented even by the World Bank in 2003) and the serious risks to government finances for governments entering PPPs (documented even by the IMF in 2004 and 2005). [6]

There was a broad-based campaign against this, strengthened when documents were disclosed under right to information laws, which showed that:

> "The management of each of 21 zones would be handed over to water companies which will collect management fees, engineering consultancy fees and a bonus. Management fees alone, at $ 24,400 per month to each expert, would total more than $ 25 million a year. Each water company has been given a lot of say in deciding its own annual operating budget, and there are provisions that can be misused to make extravagant demands on the government. "There is no upper limit on operational expenses," said Kesarival [of Parivartan, the organisation which won disclosure of the documents]. And it will be the consumers who pick up the bill. Parivartan's calculation is that, if the project is accepted, a typical family may find its water bills increasing five-fold. There is a heavy emphasis on making water so expensive that poor people's access will be badly affected, despite statements that some subsidies will be maintained for the poor." [7]

Following these disclosures, and concerns expressed by leading national politicians, the city council finally agreed in November 2005 that it would abandon its application for a World Bank loan and carry out a public consultation – although in October both the DJB and the World Bank had refused to attend a public meeting on the issue.[8]

The World Bank continues to promote the role of the private sector in water supply in India. The 2005 country assistance strategy (see below), developed in collaboration with DFID, includes as a condition of aid in the water sector that public authorities should have: "Agreed to support actions to develop domestic private sector capacities for delivering urban water and sanitation services". [9]

2.2. Energy

The World Bank has been attempting to impose liberalisation and privatisation in electricity in India for a number of years by making unbundling – separation of distribution, transmission, and generation, with the expectation that generators will then compete to sell electricity to distributors - a condition of its loans for electricity development in India. [10] This policy is being resisted in a number of states, including Tamil Nadu.

India has already had difficult experiences with liberalisation and privatisation in the electricity sector. The greatest problem has been with independent power stations (IPPs), where power purchase agreements have required public authorities to buy electricity at prices which ensure long-term profitability for the power station, but which in practice are unaffordable.

The worst single problem was the Dabhol IPP set up in Maharashtra by Enron 10 years ago, which caused environmental and social damage, and tried to force the electricity authority to buy electricity at a price that guaranteed profit but was unaffordable (see section 3 for more details on Dabhol). In addition, India has also experienced problems with the privatisation of electricity distribution: in Orissa, a third of the distribution

system was privatised to the US multinational AES: after 2 years AES simply abandoned the company altogether as it was not sufficiently profitable.[11]

In 2004 the state of Tamil Nadu – covering the region of India hit by the Tsunami – was forced to pay USD $26.3million in compensation to a private company, because the state had changed the terms of a power purchase agreement for a power station which has never even been built. The planned IPP was started as a joint venture in 1996 between the Indian company Videocon, the UK company National Power, and the Swedish-Swiss company ABB.[12] In 2000, the multinational companies pulled out of the project – first ABB, then National Power.[13] In August 2000 Tamil Nadu decided to drop its original guarantee to buy all the power produced, in favour of other plants which were offering better value.[14] In 2003 Videocon announced it was giving up all its activities in the electricity sector, and specifically to drop the proposed power station in Tamil Nadu: "in view of the mounting capital costs, the project has become unprofitable and hence it decided to drop the project".[15] The Videocon plant was replaced by a plan for a new power station to be built and run by a public-public joint venture between Tamil Nadu and the Indian government's National Thermal Power Corporation.[16] But Videocon continued to claim compensation for expenses incurred and lost future profits, and in September 2004 an international tribunal in Singapore awarded the company $28 million compensation.[17] On 17 December 2004, just 9 days before the Tsunami, a court placed an attachment order on the bank accounts of Tamil Nadu Electricity Board, to ensure that the compensation was paid. This means that the electricity board loses 30% of its entire monthly cash flow to pay compensation for this failed private venture. [18]

The costs of previous failed energy privatisations have cost India's public authorities hundreds of millions of dollars in 2005. The Indian government has agreed to pay over $300million in settlement of claims for compensation over Dabhol (see below), while Tamil Nadu Electricity Board continues to lose 30% of its income to finance the compensation to another failed private power station (see above). In Andhra Pradesh, IPPs were set up as part of an attempt to liberalise the sector, heavily funded by the World Bank and DFID, who introduced the right wing think-tank Adam Smith International as consultants. The policy led to higher electricity prices, which in turn led to riots in which protestors were killed, and to economic stresses on poor farmers. [19] the consequences were still unravelling in 2005, when the state government has found itself having to renegotiate the power purchase agreements with these IPPs because the prices were fixed too high. [20]National energy policy continues to be contentious, based on a 2003 Electricity Act that provided for unbundling and liberalisation as a central part of government policy.

The international donors also continue to promote privatisation and PPPs in the sector. officially, the World Bank claims to have a neutral position on privatisation of infrastructure services, and a DFID policy paper in March 2005 stated that 'We will not make our aid conditional on specific policy decisions by partner governments, or attempt to impose policy choices on them (including in sensitive areas such as privatisation or trade liberalisation)'.

But in India, the strategies of the World Bank and DFID remain as set out in the World Bank's country assistance strategy for India, which was laid down in late 2004. [21] This document has investment in infrastructure, including the power sector, as its top priority, and is based on a formal partnership with the UK development agency, DFID:

> "At the suggestion o f DFID, the Bank and DFID India entered into a strategic partnership agreement in April 2004 that will provide a broad context to the institutions' cooperation in support of the GoI's development efforts. DFID and the Bank have worked together on direct budgetary support and power sector reform in AP and Orissa, and also co-finance (with other agencies) GoI's centrally sponsored RCH and education programs. Complementary support is also provided in rural and urban development and power sector reform." (p. 26)

The strategy paper confirms that assistance will be provided 'selectively', focussing on states which undertake "comprehensive reforms", and that encouraging privatisation is a key part of it. Privatisation is a central and recurrent aspect of this selectivity:

"The stepped up program will provide increased opportunity for collaboration across the Bank Group to promote innovative Public-Private Partnerships (PPPs) for infrastructure development - particularly in power and transport." (p. 13)

"The Bank Group has advocated complementary strategies for the state power sector as follows: Facilitating serious, long-term; private sector involvement in improving and expanding services, which in the next few years means: (i) focusing on the steps which would eventually allow the relatively commercially viable segments o f the distribution network to be privatized successfully; (ii) increasing private investment in transmission; and in parallel; (iii) developing a1temative strategies for improving services and targeting subsidies in rural areas….. Improving SEB performance, pending privatization, particularly through: (i) advancing SEB unbundling…" (p.32)

" Bank engagement in the power sector at the state level is premised on the view that…… its lending….must be linked to real progress in reform - both in terms o f improved financial performance, and in terms of irreversible structural and governance changes. …. Eventually, in states that move forward with well-designed privatization transactions and the facilitation of new entry - the Bank Group would be able to offer a variety of forms of support, depending on local needs and conditions and the response of private investors. …" (p.32)

"The analysis of the Bank Group is that in the power distribution and transmission, road, water and sanitation and solid waste sectors, involvement o f the private sector needs to be encouraged through a variety of models including public private partnerships. The Bank Group is well placed to promote PPPs by realizing strong synergies between the Bank and the IFC to support infrastructure development. The Bank can promote policy, regulatory, and institutional reforms in the infrastructure sectors to help create a more enabling environment for private investment. These reforms will be supported through the Bank's state-level adjustment lending and sector investment lending, and should help encourage private entry, mobilize private risk capital and facilitate competition. IFC will support pioneering private or public-private transactions by: i) providing equity and long-term debt; ii) using guarantees and the B-loan progam to mobilize financing from domestic and international lenders; iii) developing the local capital markets by introducing credit enhanced long term bonds and securitizations and iv) assisting domestic and foreign sponsors to pursue opportunities in the infrastructure sector" (Annex 7, p.9)

Even supporters of privatisation think that this policy fails to take account of realities and is rigidly dogmatic: "The World Bank, like a priest, simply chants the mantras of unbundling, corporatisation, privatisation, having a regulator and removal of cross subsidies while the bureaucrats see in this reform process additional jobs as regulators in their post retirement period."[22]

3. Indonesia

3.1. Pre-Tsunami background: general

Indonesia has been subject to considerable pressures for privatization for a long time. A 1995-2001 Technical Assistance Project for Public and Private Provision of Infrastructure, worth $28m, had as one of its four objectives "develop[ing] an updated strategy for public-private partnerships and suitable frameworks for private participation in provision of infrastructure services…" [23] After the currency collapse in 1997, the World Bank's rescue loans of $1.5bn involved conditionalities to privatise or prepare for privatisation 17 state-owned enterprises. The Bank used the currency crisis to force through the legal changes necessary for "a cross-sectoral framework for private participation in infrastructure to help reduce risks and costs …. Government commitment was lacking and the envisaged regulation (Presidential Decree 7 of 1998) was only issued after the crisis had struck." [24]

By 2001 privatisation was central to the World Bank's policies for Indonesia across all public services: "In infrastructure, the Bank will continue to promote privatisation and private participation through its ongoing sector projects in telecommunications, power and transport. IFC is looking for opportunities to invest in the

transport and water sectors. The Bank will seek means of promoting the private provision of social services in health and education through its sector projects and advisory activities.” [25]

The unpopularity of privatisation was noted in 2001 when it complained about the new parliamentary system in Indonesia (“…the case for moving ahead with privatisation is compelling. But what is the best way forward - especially given opposition in Parliament?” [26]) and again in 2003, when an evaluation of the loans by the World Bank observed that: “Actual privatisation has been quite slow, however, because of widespread opposition and depressed market conditions”.[27] The Bank sought to overcome resistance in 2003 with a further Private Provision of Infrastructure Technical Assistance Loan, worth $17.1m, whose objective included propaganda and re-education on “building public acceptance of private infrastructure…… The public's perception of private infrastructure delivery has been coloured by vigorous--but often poorly-informed--debate on the failings of the power, toll-road, water supply, and telecoms deals concluded during the Suharto era.” [28]

3.2. Water

Before the Tsunami the water sector in Indonesia was already the subject of many pressures for privatization. The water supply in Jakarta itself was privatized in 1997 under the Suharto dictatorship, with Suharto relatives given a share of the profits to smooth the non-competitive process. The city was divided between the French multinational Suez and Thames Water. The privatizations have not succeeded in either extending or improving the service, nor have they been profitable. In 2003, the ADB reported that “the private operator concessions in Jakarta have not been too successful in investments and efficiency improvements.”[29] Seven years into the privatization, consumers complained of poor service and frequent water disruptions, leaving Jakarta citizens with no water for days.[30] The UK government intervened successfully in 2003 to put pressure on the Indonesian authorities to allow Thames Water to make huge price increases in order to reduce its losses, and water rates were raised by 30% in January 2004.[31]

Privatisation conditionalities also came through the World Bank. In 1999 it provided a $300m Water Resources Sector Adjustment Loan (WATSAL), with the specific aim of “amending water resources legislation to provide for regional autonomy and private sector involvement in water resources development…”. One of the loan conditions was the passing of legislation to implement the new framework, and the Bank threatened to withhold the final $150m tranche in autumn 2003 when public opposition endangered the relevant legislation.[32]

3.3. Energy

Indonesia’s electricity sector was nationalised after independence under an integrated public monopoly, Perusahaan Listrik Negara-Djakarta (PLN). In 1992 the former dictator, president Suharto, decreed that the private sector could again participate in the electricity sector, and with the encouragement of the World Bank this has been developed through the introduction of IPPs, and plans for unbundling PLN and introducing further liberalisation. [33]

The IPPs were negotiated with cronies of the Suharto government, and as a result of the non-transparent and, according to many sources, corrupt, way in which the agreements were reached, provided for 50% more capacity than Indonesia actually needed. [34] The IPPs were supported by a total of 27 PPAs, under which PLN undertook to purchase 80 per cent of plant capacity for a minimum of thirty years, at prices well in excess of PLN’s selling price to end users. The currency collapse of 1998 made these prices utterly unaffordable for PLN, which was faced with bankruptcy unless it could cancel or renegotiate the agreements to reduce the cost of electricity.

PLN’s failure to cancel the agreements was the result of resistance by the multinationals involved in the IPPs, supported by their governments and multilateral agencies. The multinationals pursued claims for breach of contract, including MidAmerican Energy, which won US$573 million at arbitration[35], and Florida Power and Light, which won $241million[36].

According to the Wall Street Journal, the USA government pressured Indonesia to honour the contracts and abandon prosecutions for corruption against the companies:

> "American ambassador to Jakarta, Robert Gelbard, warned Indonesian officials in 2000 that their country would be a "pariah" if it didn't honor the power contracts, says Alwi Shihab, who was Indonesia's foreign minister. On another occasion, Ambassador Gelbard told the Indonesian press the U.S. might seize Indonesian assets if Jakarta didn't reimburse OPIC for an insurance claim on one of the deals. He warned that such a move would cause "a dramatic deterioration of the rupiah," Indonesia's currency. And in an unusual role for an ambassador, Mr. Gelbard personally negotiated with Indonesian state utility PLN to kill the corruption suit it had filed against the Paiton project [involving USA multinational Edison]."[37]

The World Bank's insurance agency, MIGA, paid $15m to Enron under 'political risk' insurance on account of a power project that was cancelled, although even MIGA accepted that to proceed with the project was not a viable policy option. According to Luis Dodoro, MIGA's general counsel and World Bank Group vice-president: "*While we understand the circumstances that led to (the Enron) project suspension, international law dictated that the cancellation be compensated*."[38] MIGA then insisted that the Indonesian authorities had to reimburse them the $15m, and as an incentive, MIGA refused to issue any more coverage for business in Indonesia until the money was paid.[39] The Wall Street Journal quotes the chief political adviser at the US embassy in the 1996-99 period as saying: "protecting the interests of major investors and creditors was at the center of the table in everything we did….. Concerns about human rights, democracy, corruption never made it onto the table at all." [40]

On all the projects which were not cancelled, Indonesia has continued buying electricity under the terms of the Suharto-era deals. The cost of the PPAs has thus been carried entirely by Indonesians, who have had to compensate some multinationals for the profits that they have lost, and pay much higher prices to sustain the profitability of the agreements which were not cancelled. The government of Indonesia agreed, in 2001, to increase prices by 24% per annum until 2005, when prices are expected to reach 7cents per kWh – sufficient to sustain a target 8% rate of return.[41]

New legislation providing for the unbundling and liberalisation and privatisation of the whole electricity sector was nevertheless pushed through the Indonesian parliament in 2002. Opponents of the law mounted a successful challenge before the Constitutional Court, which ruled in December 2004 that the law was unconstitutional and therefore void. A week later, a 'former World Bank expert' was quoted as saying that the court's ruling was "unfortunate and has potentially important consequences, most immediately for the coming infrastructure summit".[42]

In January 2005 the Indonesian government hosted an 'Infrastructure Summit', attended by over 600 potential investors – a meeting that had been arranged many months in advance. The investment requirement for the whole of Indonesia was estimated at $145 billion. Only $10billion of this investment was expected from donors, $17billion from the Indonesian government, and $30billion from Indonesian banks and financial institutions. The majority of it, $80billion, was expected to come from foreign private investors. The government proposed to raise this in two stages: 91 infrastructure projects worth $22.5 billion would be offered forbidding in February 2005, with a further $57.5 billion worth of projects in November.

To attract foreign investors, Indonesia would be expected to change the law in order to provide more certainty: *"Foreign players in the water supply sector have complained of legal uncertainty as bylaws issued by local administrations often contradict central government rulings."*[43] NGOs had similar expectations: "our government will revoke any regulation that may become an obstacle for investors to invest in Indonesia, making it easier for big water companies to come and manage our water supplies." [44]

In response to these concerns, the Indonesian government promised a "healthy" investment return of between 15 and 23 percent. [45] This profitability target is between two and three times as high as the rate of return finally achieved by the power purchase agreements (PPAs) in the electricity sector with Suharto and his cronies (see above). In November 2005 the president of Indonesia announced presidential Regulation 67/2005: according to the Jakarta Post:

> "the new regulation ensures that right from the outset the prices for infrastructure provision are set at levels adequate to cover the costs of investments and operations plus a reasonable profit margin. If this is not possible and cannot be afforded by domestic consumers, the government is required to make up the shortfall in the form of compensation or subsidies in order to ensure the financial sustainability of service provision….If the conditions require it, the government can put up equity shares, provide guarantees or tax relief; all with the objective of making infrastructure projects commercially viable." [46]

The package includes "tax exemptions and public service ….subsidies"[47], and also "provides the opportunity for private companies to propose PPP unsolicited projects." [48] (a practice which a World Bank paper has warned against because of its "*potential problems with corruption and lack of transparency.*"[49])

These longer-term infrastructure development policies are separate from the post-Tsunami aid, but the official aid contributions to the reconstruction effort in Aceh, estimated to cost over $5 billion[50], is being coordinated through a Multi Donor Trust Fund for Aceh and North Sumatra - managed by the World Bank. The World Bank's own response includes contributions from the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). These sections of the World Bank group are dedicated entirely to and exclusively to supporting the private sector. The IFC had committed small amounts of money to short-term relief, but its major impact will be on longer-term infrastructure. The IFC has established a special fund of $150m. to rebuild tourist facilities, which will be allocated to 'selected companies'. It is also preparing to support the private sector in infrastructure: "There may also be a role for private or municipal finance in reconstructing infrastructure in affected areas"; its support for municipalities will be available only through public-private partnerships, which it expects will "improve implementation and long-term financial sustainability through the involvement of the private sector".[51] The role of MIGA is to provide 'political risk insurance' to private companies. This is only of benefit to the private sector, and actually means that MIGA represents private sector interests against national governments as it has already done to damaging effect in Indonesia, on behalf of Enron (see above). [52]

4. Sri Lanka

4.1. Water

The World Bank and the ADB have been encouraging water privatization in Sri Lanka for many years. Colombo in particular has been seen by financial institutions and contractors as the "prime candidate to lead South Asia into private sector participation [PSP] in water supplies."[53] In 2001 the government approved the National Policy on Private Sector Participation in Water Supply and Sanitation, and, with World Bank support, identified several urban water supply schemes for PSP in Greater Negambo and the Kalutara to Galle Coastal Strip as pilot projects for immediate implementation. [54] A new Water Services Reform Bill introduced by parliament to facilitate PSP was successfully challenged by a coalition of NGOs and public sector trade unions, arguing it will deprive the poor of access to freshwater. In December 2003 the Supreme Court effectively blocked the bill, saying that its provisions came under the 13th amendment and therefore must be approved by all provincial councils.[55]

However, on 30th December 2004, four days after the tsunami struck, the water privatization bill was reintroduced and approved by the cabinet – in order to comply with an Asian Development Bank deadline.[56] The Sri Lankan civil society organisation, MONLAR, argued in February 2005 that:

> "The plans prepared by the Sri Lankan Government for rebuilding the nation after the tsunami on 26th December 2004, released on 15th January 2005, include a massive programme of water infrastructure development to support the process of water marketing by the private sector. The Asian Development Bank had already agreed to finance such a water infrastructure programme some time ago, on the condition that private sector was then brought in to provide the services. The ADB is now insisting that the deadlines previously set for legalising water privatisation should be met on time, in spite of the massive disaster that has destroyed the lives and livelihoods of thousands of people in the coastal regions. For this purpose, on 30th December 2004, the Government got Cabinet approval for a water resources policy and a draft bill that intends to legalise the privatisation of

> water. According to the Memorandum of Understanding between the Government and the ADB signed during the mission of ADB water specialist Thomas Panella in June 2004, the Government must table the water resources bill in Parliament by 18th March 2005, or the ADB loan will be cancelled. Similarly, the Government must proceed to implement the policy by 13th May 2005" [57]

MONLAR argues that the structure of the reconstruction plans shows a desire to promote privatisation, for example by including expenditure in areas not damaged by the Tsunami:

> "This is clearly visible in the post-tsunami water infrastructure development plans, which include both the reestablishment of present water supply schemes and the implementation of new water supply schemes…….It is extremely questionable as to whether this infrastructure is for the purpose of supporting the affected people, or whether it is actually for the purpose of providing the infrastructure necessary to attract foreign water companies to come and start marketing water in Sri Lanka. For instance, even districts that have hardly been affected at all, such as Colombo and Gampaha, have also been included in the plans." [58]

4.2. Energy

The rush of aid following the tsunami, including the deferral of debt repayments, created a necessary boost to Sri Lanka's economy. There is expected to be a surplus in the balance of payments in 2005, compared with a deficit of USD $205 million dollars in 2004; the Sri Lankan rupee, which fell over 10 percent against the dollar in 2004, gained 5.2 percent in the first quarter of 2005 to become one of the world's best performing currencies; and foreign reserves also improved to USD $3.54 billion dollars in March 2005 from USD $3.12 billion in November 2004. [59]

In May 2005 an international credit rating agency – which advises international investors of the viability of a country, and therefore how high interest rates will be for projects in that country - warned that it still expected to see 'reform policies', including privatisation of essential services:

> ""The tsunami has certainly given the country a new lease of life," said Alastair Corera, country head of Fitch Ratings."The question now is how the restructuring of sectors that need attention will be carried out." International lenders have been pressing for reforms in the country's energy sector and **privatisation** of state enterprises, two areas where the Marxist-backed government has been slow to respond due to internal rifts. "The debt deferment is not forever... the payments will kick in in about a year or two," Corera said. "If we don't have the reforms in place by then, the country is going to be in bigger trouble." [60]

In effect, investors in the post-Tsunami economic boom expect privatisation and other reforms as conditions of their continued high ratings for the Sri Lankan economy.

Sri Lanka however remains opposed to privatisation in water and electricity. The presidential election in November 2005 was won by Mahinda Rajapaksa, whose policy platform included a rejection of privatisation in these sectors. [61]

5. Thailand

5.1. Water

Privatisation of water in Thailand has been encouraged by the IMF, WB and ADB as part of conditionalities for loans following the currency crisis in 1997, but it has been consistently and successfully resisted by popular campaigns in Thailand. There is no efficiency argument for the privatisation: according to the ADB, the Metropolitan Waterworks Authority (MWA), responsible for tap water in Bangkok and vicinity, has addressed the two key issues of water utilities in Asia, namely governance and tariffs, and as a consequence "it provides good service to the people in its service area". [62] Rather, its efficiency and size made it more

attractive for private buyers, because it is a Bt100-billion water monopoly with a high turnover, high profit margins and relatively small debt.[63]

From 1998 to 2003 the WB financed consultants and a plan for corporatisation and privatisation of MWA and the Provincial Waterworks Authority (PWA), responsible for tap water in the rest of the country. 64 65 The government first backed away from the full privatisation recommended by the WB consultants, and then, faced withwidespread resistance, postponed the privatisations.[66] However in September 2004 the plan to privatise MWA and PWA (and other state companies) was revived by Prime Minister Thaksin.[67]

The prospect of privatisation has already affected the water pricing policies of both authorities. The MWA has said that no water price rises should be necessary for 2-3 years, because it is already healthily profitable: “about 15-20% is profit; so the authority is self reliance and is ready for its planned **privatisation”.**[68] During 2005, the PWA has proposed a 24.4% price rise, to cover rising costs and also because its consultants had advised that “if the authority still sells its **water** at a loss and is subsidised by the government, its shares may not be attractive to investors". [69]

At the time of writing (early December 2005) there is a political crisis in Thailand, with a media owner publicly defying the president on a number of issues, including press freedom and the planned privatisations in water and electricity [70]: there is even press discussion of the possibility of a coup.[71]

5.2. Energy

In the early 1990s Thailand set up a number of IPPs, backed by power purchase agreements which guarantee returns of 15-20%. Plans for further liberalisation were abandoned after 2001, but prime minister Thaksin decided to privatise the state power company EGAT. By 2004 civil society opposition had emerged on a number of aspects of energy policy, including the price rises resulting from the PPA contracts, and environmentalist concerns over use of fossil fuels, and the privatisation proposal was powerfully opposed by the trade union representing EGAT workers. [72] From February 2004 a series of demonstrations and strikes were organised by the union, highly the dangers of privatisation in terms of higher prices, the risk of corrupt allocation of shares to cronies, and the risk of foreign control developing through buying of shares. In March 2004 the government backed down and announced the cancellation of the EGAT privatisation plans. [73]

As with water services, the privatisation plan for EGAT was revived when Thaksin was re-elected in February 2005. The opposition to this privatisation has continued – and in November 2005, following a court case brought by opponents:

> “the Supreme Administrative Court ordered a deferment of the initial public offering of Egat shares today….the court injunction is a reminder that an over-confident leader often endures failure rather than success.” [74]

6. Corporate claims on tsunami-affected countries in water and energy sectors

6.1. Risks of privatization and PPPs

Privatisation and PPPs in water and electricity bring the real risks of projects failing to be profitable. This can happen for various reasons – currency crises altering the economics of converting local currency payments by users into dollars for shareholders and other investors; political resistance to the project, making it harder to achieve the desired rate of return on investment; changes in expected demand for a product, for example if water-intensive industries close down. In such cases, international investors try to limit their losses by claiming compensation from the governments of the countries in which they operate, because the privatisations invariably include some form of government guarantee.

These claims can be huge, because they concern the loss of profits expected over the next 20 years or more. Argentina was faced with compensation claims for over $20 billion, following the impact of its economic crisis in 2001 on the viability of numerous water and electricity privatisations.[75]

The International Monetary Fund (IMF), despite being a leading advocate of all forms of privatisation, has repeatedly warned that governments must take account of the possible costs if PPPs fail. In a policy paper approved in 2004, the IMF notes that offering government guarantees for PPPs distorts the relative benefits of choosing between PPPs and public provision, because governments promoting PPPs or privatisation do not take proper account of the potential costs of failures: "*....resort to guarantees to secure private financing can expose the government to hidden and often higher costs than traditional public financing……..proper accounting of government guarantees in budget documents is generally missing. In contrast to commercial accounting practices which require firms to include committed uncertain obligations in their balance sheets, relatively few governments disclose enough information on guarantees in their books to make possible a proper assessment of their impact on public finances"* [76] In 2005 the IMF's executive board repeated a firm warning that governments: "should assess carefully the risk associated with PPPs, and ensure that this risk is appropriately shared with the private sector, with the risk borne by the government reflected in the fiscal accounts".[77]

6.2. Overall scale of claims

The Tsunami countries themselves already face huge costs for compensation for lost profits from multinationals over previous failed private ventures in these sectors.

- Before the Tsunami, Indonesia had been required to pay $829million compensation to just three US-owned multinationals (see above).
- India has settled to pay $361million in compensation to two American multinationals (GE and Bechtel) and the USA export credit agency because of the collapse of an electricity project (Dabhol), originally set up by Enron.
- The UK company United Utilities (which runs the water and electricity companies in the North-West of England) continues to pursue Thailand with a claim for £83million ($144million) for lost profits from a failed sewerage system contract which was terminated in 1997.
- Two American multinationals are still demanding from Indonesia $285million compensation for lost profits over a cancelled electricity generating project.

Table 1. Compensation paid to or claimed by multinationals for failed water and energy projects in Tsunami-affected countries

	Claims paid before 2005	Claims settled in 2005	Outstanding claims 2005	(A) Total paid	(B) Total paid or claimed 2005
India		361		**361**	**361**
Indonesia	829		285	**829**	**285**
Sri Lanka					
Thailand			144		**144**
TOTAL USD $ millions	**829**	**361**	**429**	**1190**	**790**
TOTAL GBP £ millions	***480***	***209***	***248***	***689***	***457***

6.3. India: Dabhol compensation

The Dabhol power project was started by Enron in 1992. It involved a huge (2,000 megawatt) gas-fired independent private power station (IPP), and finance was provided by the USA's export credit agency,

OPIC. From the outset there were allegations of corruption, opposition from local communities whose environment was being destroyed by the project, and doubts about the economic value of the power station. Enron's treatment of protestors was so brutal that Amnesty International wrote a report on the company – the first time ever that Amnesty had reported on a company rather than a nation state. The economics turned out to be impossible, with the Maharashtra state electricity board committed to paying for electricity at a price it could not afford because of a long-term power purchase agreement (PPA). [78] Subsequently Enron sold its remaining shares to two other USA-based multinationals, General Electric and Bechtel.

By the end of 2004 OPIC, GE, and Bechtel were claiming damages of over USD $6 billion (USD $6,000 million) from the Indian government because of their losses over Dabhol [79]: OPIC argued that India had deliberately engineered problems in order to confiscate assets without compensation: "The concerted actions of the Indian government have effectively deprived Dabhol Power Company (DPC) and its investors and lenders of their fundamental rights, interests, use, benefits and control of their investments in the Dabhol project in violation of GoI's obligations under public international law". After negotiations, in July 2005 the Indian government settled to pay OPIC USD $98million, GE and Bechtel USD $145 million each for their 85% share in Dabhol, and Bechtel a further USD $15 million for money owed to it as construction contractor. GE and Bechtel had paid Enron USD $20.4 million for 65% of the shares in April 2004.

The total value of compensation paid should therefore exclude the amount owing Bechtel as contractor, and the true market value of 85% of the Dabhol shares in 2004, which was USD $26.8 million (based on the Enron sale of 65% of the shares for $20.4m.) – a net total of USD $361 million. [80]

Table 2. India: corporate compensation paid in 2005 for failed Dabhol PPP

	Compensation agreed for failed contracts
$m	
Companies (1)	263
ECAs/MIGA	98
TOTAL	361

(1) Calculated from $305m actually agreed less $15m contractor dues to Bechtel and $26.8m value of equity based on price paid by GE/Bechtel to Enron in 2004.

6.4. Indonesia

Under the Suharto dictatorship Indonesia agreed to a number of independent power producers (IPPs) building new power stations, without competitive tender, backed by government guarantees to purchase the electricity produced, at prices which were excessively high, but ensured a profit for the IPPs, and for the relatives and cronies of the dictator who were often partners in the IPPs (see above).

The last outstanding claim is by a company called KBC, jointly owned by two USA companies - Caithness Energy and Florida Power & Light Co- in partnership with a son-in-law of a Suharto official. This is demanding compensation for lost profits resulting from the cancellation of a geothermal project, for sums between £241m. and $300m.[81] The case has been pursued in the courts and arbitration panels in many countries, including Singapore, Switzerland and the USA: a USA court froze $500 million of Indonesian oil proceeds in New York banks to help secure KBC's compensation claims. [82]

6.5. Thailand

In 1993 one of the newly privatised English water companies, North West Water, signed a £93 million contract with the city council of Bangkok, the Bangkok Metropolitan Authority, to develop a new sewerage and wastewater treatment system for the city. Like much of the other international ventures of the privatised

water companies, it was an expensive failure. By 1997 North West Water (now part of United Utilities) announced that the contract had collapsed, and that:

> "the Board has concluded that, in the interests of financial prudence it should make an additional provision on the contract. Accordingly, in our 1996/97 results the provision against loss for Bangkok, including legal costs for recovery, will be increased by £83 million. This provision anticipates no recovery of the above additional costs from the project." [83]

This provision was on top of £7million already written off by the company in 1996, so a total of £90million had been written off. The effect of this is that United Utilities accounts have assumed, since 1997, that the company simply lost £90million on the Bangkok contract.

8 years later United Utilities is still pursuing claims for compensation from Bangkok. According to the latest set of accounts the relevant subsidiary of United Utilities is "party to arbitration proceedings in Thailand… ….[with] total claims against the BMA of approximately 6 billion Baht (approximately £83 million)…… the arbitration process has stalled following the arbitrators' failure to agree on the appointment of a third arbitrator. NOSS will continue to monitor the situation but, presently no hearings are scheduled". [84] This information does not appear in the annual report for 2005 published for UK investors, but is detailed in the report for USA investors. [85] In previous years, information about the lawsuit was included in the UK version of the annual report and accounts as well. [86]

If its claims were successful the shareholders of United Utilities would get a windfall of £88 million, paid for by the citizens of Thailand - equivalent to 30% of all the donations made by British people for tsunami relief.

Annexe 1. Overview of post-Tsunami aid

Total Humanitarian Assistance per Donor as at 09/12/2005 OCHA

Donor	**Commitments/ contributions $ USD**	**% of total**	*Uncommitted pledges $ USD*
Private	4,127,818,551	67.1	*53,250,000*
Aid from governments:			
Japan	502,579,970	8.2	*0*
United Kingdom	136,128,698	2.2	*13,364,408*
United States	134,107,148	2.2	*217,776,074*
Germany	129,651,389	2.1	*0*
Canada	116,487,566	1.9	*0*
European Commission	98,842,102	1.6	*68,992,664*
Norway	81,924,526	1.3	*1,832,061*
China	62,248,729	1.0	*1,600,000*
France	60,359,661	1.0	*27,890,183*
Italy	57,864,154	0.9	*1,206,273*
Denmark	44,119,185	0.7	*0*
Netherlands	41,666,548	0.7	*0*
United Arab Emirates	41,430,427	0.7	*270,000*
Sweden	41,370,476	0.7	*6,466,126*
Australia	36,398,508	0.6	*8,046,409*
Finland	32,726,978	0.5	*482,509*
Greece	31,009,201	0.5	*0*
UN allocations of funds	30,464,876	0.5	*0*
New Zealand	27,079,695	0.4	*1,183,118*
Switzerland	26,361,383	0.4	*0*
Qatar	25,000,000	0.4	*0*
India	23,000,000	0.4	*0*
Ireland	22,357,836	0.4	*8,767,866*
Spain	21,971,308	0.4	*0*
Others	196,613,478	3.2	*207,728,714*
Grand Total:	**6,149,582,393**	**100**	*618,856,405*

Source: OCHA Table 7: INDIAN OCEAN - Earthquake/Tsunami - December 2004.
Total Humanitarian Assistance per Donor (Appeal plus other*) (carry over not included) as of 09-December-2005 http://www.reliefweb.int/fts *(Table ref: R24)*
http://ocha.unog.ch/fts/reports/daily/ocha_R24_A669___05120821.pdf

Notes

[1] Full details of donations are set out at Annex 1, below. This information is taken from information on the Tsunami on Reliefweb, the website of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) at http://www.reliefweb.int/rw/dbc.nsf/doc108?OpenForm&emid=TS-2004-000147-LKA&rc=3#show . Estimates of the full cost of reconstruction, and economic damage, published by the Reality of Aid website, at http://www.realityofaid.org/rchecknews.php?table=rc_jun05&id=1

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