The Controversial Casecnan Project

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Executive Summary

The Citizens' IPP Review Commission is urging the Arroyo government to rescind the contract of the National Power Corporation with the National Irrigation Administration for the purchase of Casecnan electricity, and the contract of the National Irrigation Administration with the CE Casecnan Water and Energy Company, Inc. The contracts are grossly disadvantageous to the government and the people, and give undue advantage to one American company whose officer enjoyed close ties with then President Fidel V. Ramos. These contracts would not have been approved by the Investment Coordinating Committee for lack of technical merits. But it was approved at the instruction (behest) of then President Ramos. In the process, the law on BOT projects was violated, as well as the Constitution, which forbids non-Filipino entities from controlling the country's water resources. The lives of the host communities have not improved. Instead they have been negatively influenced by corrupt practices, offers of amounts of money never before seen by the local residents as a result of which the money has quickly disappeared, and the false promises of a company that cares little about their welfare.

The Project and the Companies Involved

In June 1995 the Ramos government, through the Investment Coordinating Committee (ICC), approved a Build-Operate-Transfer (BOT) project involving the National Irrigation Administration (NIA) and the CE Casecnan Water and Energy Co., Inc. The project would require the diversion each year of 802 million cubic meters of water from the Casecnan and Taan rivers in Nueva Vizcaya to the Pantabangan reservoir, through a tunnel constructed by the company. The water delivered to the dam would be used to irrigate rice fields in Nueva Ecija. In addition, a 150 megawatt (MW) run-of-the-river hydroelectric power plant, expected to generate 425 gWh (gigawatt-hours, or million kilowatt-hours) of energy per year, was built at the end of the tunnel leading to the Pantabangan reservoir. NIA promised to pay a water delivery fee each year for 20 years for the 802 million cubic meters of water the company estimated it could deliver each year. It also promised to purchase 19 million kilowatthours (kWh) every month from CE Casecnan at a price quoted in US dollars. NIA then turned around and entered into an agreement with the National Power Corporation in which the NPC committed itself to a monthly purchase of 19 million kWh from NIA at a higher price, also in US dollars.

The original objectives of the Project are:

- To enhance the capacity of the Pantabangan Reservoir to irrigate some 50,000 hectares of riceland in Central Luzon valley to produce more than 460,000 tons of palay per year.
- To generate an additional 140 MW of electricity for the Luzon grid.
- To optimize the existing Pantabangan and Masiway electricity generating facilities in Nueva Ecija. (Per government records, the eventual addition of Casecnan waters to the Pantabangan Reservoir and Masiway facilities was already contemplated at the time of the latter's construction 20 years ago.)

The Project was estimated to cost more than one billion pesos or US$400 million. Its major components are as follows:

- two small diversion weirs in Casecnan and Taan/Denip Rivers;
- underground tunnel (approximately 6.3 meters in diameter and 25 km. long) from the weirs to the Pantabangan Reservoir;
- an underground hydroelectric powerhouse at Manablon (140 MW);
- a new 4-km access road from the Pantabangan Reservoir area to the location of the in-stream diversion structures near the intersection of the Casecnan and Taan/Denip Rivers; and
- a switchyard and transmission line near the Pantabangan Reservoir.

The project site is located in Pelaway, municipality of Alfonso Castañeda, Nueva Vizcaya, where two runoff weirs and intake structures were constructed along the Casecnan and Taan Rivers. The underground transbasin tunnel runs across Nueva Ecija at the end of which an underground hydroelectric powerhouse with a capacity of 140 MW was built. A tailwaters discharge tunnel will convey the water from the powerhouse into an underground outfall to be located in the Pantabangan Reservoir.

The company involved is a consortium of two major American firms, the California Energy Co. and its sister company Peter Kiewit. California Energy is the largest independent geothermal power company in the world. It has three existing Build-Operate-Transfer (BOT) contracts with the Philippine National Oil Company-Energy Development Corporation for the Leyte Geothermal Plant. Peter Kiewit, which owns 34% of California Energy, has been involved in dam and power plant construction in the US. It is also involved in coal mining and telecommunications. Each of these firms has a minimum 35% stake in CE Casecnan Water and Energy Co., Inc. In addition there are two minority shareholders with a maximum share of 15% each. These are the La Prairie Group of Companies and the San Lorenzo Ruiz Builders and Developers Group, Inc. The former provides contract services to mining and oil companies in Western Canada. San Lorenzo Ruiz Builders is the only Philippine stockholder. It is a real estate developer owned by the Violago family.

Brief Project Background and Chronology

Plans were already underway for the construction of the Casecnan Dam during the Marcos administration at the same time that the Pantabangan Dam was being planned. Only the Pantabangan Dam pushed through. Under the Aquino administration, the Casecnan Dam project was shelved once again. Instead, a dam project was carried out in Balug-balug, Tarlac. Finally, with the Ramos administration, the Casecnan Dam project found approval.

- August 1987 – Then President Corazon C. Aquino promulgated Executive Order 136 establishing the Casecnan river as Watershed Forest Reserve. The watershed covers 57,930 hectares of land within the Bugkalot Ancestral Domain distributed in two major watersheds: the Casecnan and Taan rivers. The Casecnan watershed is one of the last remaining substantial sources of irrigation water for the Central Luzon Valley.

- January 1983 – the National Irrigation Authority (NIA) proposed The Casecnan Transbasin Diversion Project (CTDP).

- 1992 – The CTDP was renamed the Casecnan Phased Transbasin Project and was later changed to the Pantabangan Multipurpose Enhancement Program (PMEP).

- May 1993 – Then President Fidel V. Ramos directed NIA to seek out investors to fund and build the project under the BOT program.

- 22 February 1994 – President Ramos issues a memorandum to several government departments and agencies instructing them to fast track the processing of the project. The departments and agencies are: Department of Agriculture (DA), Department of Energy (DoE), Department of Environment and Natural Resources (DENR), Department of Finance (DoF), National Economic Development Authority (NEDA), Office of the Government Corporate Counsel (OGCC), National Power Corporation (NPC) and the National Irrigation Administration (NIA).

- 31 May 1994 – CE Casecnan through the Casecnan Water and Energy Consortium (CWEC) submits an unsolicited project proposal to NIA.

- 2 November 1994 – President Ramos issues another memorandum to the same government departments and agencies to fast track the processing of the project.

- March to May 1995 – The unsolicited project proposal is deliberated upon by the Investment Coordinating Committee (ICC), an interdepartmental body that approves all projects undertaken by the national government, including BOT projects. The secretariat of the ICC is headed by NEDA. Although the technical committee of the ICC does not favorably endorse the project, it passes on the proposal to the cabinet committee of the ICC to decide on the proposal. The reason given by the technical committee for doing so is the memorandum issued by the President.

- 28 April 1995 – the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR) grants the Environmental Compliance Certificate (ECC) to what is now known as the Casecnan Multi-Purpose Irrigation and Power Project (CMIPP), a modified scheme of the previous proposals.

- 5 May 1995 – The cabinet committee of the ICC approves the project in principle subject to a long list of conditions, after discussing the contentious issues surrounding the project. In the committee Agriculture Secretary Roberto S. Sebastian, whose father is reportedly a good friend of one of the officers of California Energy, argues strongly in favor of the project.

- 6 June 1995 – The ICC cabinet committee again reviews the project and creates a negotiating panel to sit down with CWEC and work on more favorable terms for the government. Also, this is the first time that the matter of public (Region II) opposition to the project is raised and discussed (as recorded in the minutes). The ICC again approves the project in principle; its list of conditions is considerably shorter.

- 15 June 1995 – The ICC technical committee reviews the results of its renegotiated terms with CWEC. Both NEDA and NPC agree that water from the Casecnan and Denip Rivers may not be enough to produce 801.9 million cubic meters of water a year, as claimed by the proponents together with the NIA and the DA. Consequently there are similar doubts about the accuracy of the consortium's claim of being able to generate 425 gWH of electrical energy yearly.

- 20 June 1995 – The ICC cabinet committee reviews the project as renegotiated. It makes additional changes and approves the project "in its present design". The only remaining condition for the contract to become effective is the endorsement of the project by Regional Development Councils II and III.

- CMIPP is one of the flagship programs of the Ramos administration that would harness the water resources of the Cagayan Valley to augment the power and irrigation needs of Central Luzon. Full implementation is delayed due to the concerted opposition from the local communities and the Catholic clergy in Region II citing it as a case of 'development aggression'.

- 23 June 1995 – Department of Justice issues Opinion no. 62, series of 1995, concluding that no direct subsidy would be involved when NIA guarantees to purchase a fixed amount of water and electricity from CE Casecnan. Despite the project being an unsolicited one, the DoJ opinion says the NIA guarantee is valid because it's not a direct one.

- 26 June 1995 – NIA and CE Casecnan Water and Energy Company, Inc. sign an "Amended and Restated Casecnan Project Agreement".
- 30 June 1995 – NIA and NPC sign a Power Purchase Agreement wherein NPC agrees to purchase from NIA a minimum of 19 kWh of electricity each month, at a price in US dollars that is higher than what NIA will pay CE Casecnan.
- 11 July 1995 – The NEDA board approves the project.
- 31 July 1995 – RDC II favorably endorses the project.
- September 2001 – After a delay of nearly two years, President Gloria M. Arroyo switches on the valves that divert water from the Casecnan and Taan rivers to the Pantabangan reservoir, through the tunnel of CE Casecnan.

Controversy 1: Violation of the BOT Law—though Unsolicited, Involves Direct Subsidies

This project is an unsolicited project. By this is meant that the government did not earmark this project as a priority, and therefore did not issue a call for interested parties to submit a bid. When a project is unsolicited, it does not go through a bidding process. For this reason, the amended BOT law and its Implementing Rules and Regulations prohibit the granting of any direct subsidy whatsoever towards any unsolicited proposal. Nor must the government extend any guarantee. (Sec. 4A of the amended BOT law, and Sec 11.1.[b] of the law's IRR) The Casecnan project, being an unsolicited proposal, should not have been given any guarantees. But it was. The National Irrigation Administration committed itself to pay for 801.9 million cubic meters of water every year, whether or not the amount was actually delivered. The NPC also committed itself to purchase 19 million kWh of power every month, whether or not this was actually generated. In order to skirt the prohibition involving unsolicited proposals, the ICC asked the Department of Justice to issue an opinion regarding the payments of the NIA and NPC. As expected, the Department of Justice opined that no direct subsidy was involved. (DOJ Opinion no. 62, series of 1995, 23 June 1995) Having obtained its legal loophole courtesy of then Justice Secretary and now Vice President Teofisto Guingona, the ICC approved the project with all its guarantees.

The Guingona opinion merely focused on the budgetary support that NIA would require in order to meet its guaranteed purchase of water and electricity from CE Casecnan. The Guingona opinion, in fact, never dealt with the guarantee itself that NIA gave. Opinion 62, series of 1995, acknowledges the following: "...[W]e understand that the required budgetary support ... is required to enable NIA to comply with its undertaking to pay water delivery fees...."

Yet the Guingona opinion unabashedly and faultily concludes: "Clearly the purposes for which the budgetary support is required do not qualify it as a 'direct subsidy' to the project proponent, hence, such budgetary support does not fall within the prohibition in Section 4-A of the Amended BOT Law." By keeping its narrow focus and by overlooking NIA's "undertaking to pay water delivery fees", the DOJ paved the way for the controversial project to take place.

Then Budget Undersecretary Emilia T. Boncodin had in fact argued at one meeting of the ICC (2 May 1995) that "from a legal point of view, subsidies are direct if budgetary appropriations are made for the project to enable the proponent to pay for its obligations." (Minutes of Special ICC Cabinet Committee Meeting, Manila, 2 May 1995) As contained in paragraph 28 of said Minutes, the ICC concluded that:

> "Consistent with the provisions of the Amended BOT Law and its Implementing Rules and Regulations, the ICC decided that as a policy, a BOT project which will involve the outlay of taxpayers' money cannot qualify as an unsolicited BOT proposal. However, the Committee was of the view that this need not necessarily be invoked for the [Casecnan] project."

It seems that political considerations weighed heavily on the decision of the ICC not to invoke this policy, despite its clear applicability with regard to the Casecnan project.

In a subsequent special meeting of the ICC Cabinet Committee, then Budget Undersecretary Boncodin further argued that the guarantees provided by NIA for the Casecnan project are in effect obligations of the national government because "NIA cannot be expected to generate enough revenues to pay for its obligations." (Item 11, Minutes of the Special ICC Cabinet Committee Meeting, Manila, 20 June 1995)

Controversy 2: Cronyism, Ramos Style

A key officer of California Energy is a retired American general, Donald M. O'Shei, Sr. His friendship with President Ramos supposedly began at West Point, the US military academy where they both studied. A separate news report suggests the link between President Ramos and Mr. O'Shea to be Secretary Roberto S. Sebastian's father, a general in the Philippine Army under whom President Ramos served as a military aide in his early days in the armed forces. President Ramos issued at least three memoranda to the departments and agencies of the Investment Coordinating Committee, ordering them to "fast-track" this unsolicited proposal. Secretary Sebastian did not inhibit himself during the deliberations of the Investment Coordinating Committee. On the contrary, Secretary Sebastian argued strongly in support of the project even in the face of serious doubts and questions raised by other members of the Ramos Cabinet or their representatives, at the ICC meetings.

Then NEDA Deputy Director General Dante Canlas, who now heads the economic planning agency, is recorded in the minutes of the ICC meeting of 5 May 1995 as having posed the question "whether or not the national government is ready to categorically subsidize an economically unviable project." To which question, then Agriculture Secretary Sebastian, according to the same minutes, "opined that the government, per his perception, is willing." Perhaps Messrs. Canlas and Sebastian actually meant President Ramos when they were each referring to the national government.

Controversy 3: ICC Approval despite Insufficient Technical Merits

The Technical Committee of the Investment Coordinating Committee decided it could not favorably endorse this project to the Cabinet Committee of the ICC. But because then President Ramos clearly favored the project, and because he had instructed the ICC to fast-track the project, the Technical Committee left it to the Cabinet Committee of the ICC to review and decide on the project. The Cabinet Committee, despite the unfavorable review of the technical working group and despite heavy questioning from some members of the Ramos Cabinet, eventually approved the project on 20 June 1995.

The Technical Committee could not approve the project because it had many questions about the project that NIA could not sufficiently and satisfactorily answer. There were basic disagreements about the financial viability of the project. The technical working group's estimate was a negative internal rate of return. There were basic disagreements between NEDA and the NPC on the one hand, and NIA and the Department of Agriculture on the other, about the volume of available water from the Casecnan and Taan rivers. The NPC was certain that the tunnel (capacity of 80 cubic meters per second) was bigger than the volume of water the rivers could provide. NIA disagreed, although its hydrological estimates were based on past historical figures that were more than 20 years old. The uncertainty over crucial technical aspects was compounded by the risks that the government was being asked to absorb by the unsolicited proposal of California Energy.

Controversy 4: Overpriced Water and Power

The water delivery fee has an escalation adjustment for inflation. Starting at a rate of $0.029 per cubic meter, the fee will be increased by 7.5% each year for the first five years. Official inflation statistics show that the average annual inflation rate in the Philippines between 1996 and 2000 was 7.2%. (National Statistics Office) Because the water delivery fee is quoted in US dollars, the more appropriate inflation rate to look at is that of the US. Over the same period the average inflation rate in the US was only 2.5%. (US Bureau of Labor Statistics) In effect, the company already gained a real increase in water rates even while it was building the tunnel, without the government ever being certain that the company would actually be able to deliver the guaranteed volume of 801 million cubic meters of water.

The water delivery fee will also be automatically adjusted upwards by $0.00043 per million US dollars of certain taxes paid by the company. These include: taxes and import duties on all equipment, structures, spare parts, taxes on construction and related services, and stamp taxes and registration fees payable on all documents related to financing of the Project. This adjustment is further escalated by 7.5% per annum up to five years maximum.

The price that NIA promised to pay for 19 million kWh of electricity per month is 15.96 US cents per kWh. However, in its Power Purchase Agreement with the NPC, NIA sells the same electricity to NPC for a price of 16.5 US cents per kWh. Compared with hydroelectric facilities of NPC, this price is very steep. Compared with power purchase agreements between NPC and other independent power producers, this is also among the highest.

Controversy 5: Unfair Absorption of Risks by the Government

CE Casecnan will receive at least $33.4 million a year from the NIA whether or not it actually delivers the contracted volume of water to the Pantabangan Dam. CE Casecnan will receive US$36.4 million a year in energy fees from the NPC through NIA, whether or not its plant actually generates 19 million kWh of electric power a month and delivers such to NPC. There is nothing in the contract to compel CE Casecnan to meet its deliveries of water and energy to NIA and NPC, or to penalize CE Casecnan in case it fails to meet its obligations. On the contrary, CE Casecnan will continue to earn about $70 million a year even without fulfilling its delivery obligations.

With the guarantees it obtained from the Ramos government, CE Casecnan then approached the foreign banks to borrow $371.5 million for the project. At that time (September 1995) its shareholders' capital contribution was just $0.55 million. The company told the banks that by end-November 1995 it would make a total capital contribution of $123.8 million. In February 1996 the company admitted it borrowed nearly half a billion dollars for the project. The guarantees obtained from the Ramos government precisely enabled CE Casecnan to borrow three-fourths of the capital it needed for the project. Without these guarantees, CE Casecnan would not have been able to borrow $907 for every dollar of its initial equity infusion.

By July 1998, Standard and Poor's, a credit rating agency, upgraded the company's rating on senior secured debt to BB+ from BB. This is the same level as the Philippines' foreign currency rating. (*Business World*, 15 July 1998) Once again, the government guarantees paved the way for the improved credit rating of the company, on par with the Philippine government.

The national government agreed to absorb the following commercial risks that should have been borne by California Energy and its partners in CE Casecnan.

- ✧ The government was to assume the risk that the hydrological projections (volume of water flows, and subsequently, amount of electricity generated) would be way off mark. In fact, per CE Casecnan's own reckoning, there is only a 50% chance that the volume of 802 million cubic meters would be met.
- ✧ The government was to pay for water, a natural resource, and the hydropower derived from it, in US dollars. Thus the risk of the peso devaluing against the dollar is being borne by the government. When this project was being discussed in 1995, the estimated annual water delivery fees that NIA would pay the company amounted to P600 million. At today's exchange rate the fees have soared to P1.2 billion a year. Similarly, the peso cost of the hydroelectric power NPC is committed to purchase from the company has gone up from P4 per kWh to P8 per kWh.
- ✧ The cost of laying the transmission lines between the run-of-the-river power plant and the Luzon grid would be for NPC's account.
- ✧ Right of way and cost of upgrading irrigation facilities in Nueva Ecija would be for the account of NIA.
- ✧ The government would reimburse the company its tax payments. If the government fails to reimburse the company by a certain time period as stated in the contract, the

company would be allowed to raise water delivery rates using the following formula: $0.0006174 for every million US dollars of taxes CE Casecnan actually paid. In early 2001, the Arroyo government in fact had to grapple with this headache. The company was claiming a reimbursement of $45.6 million in tax payments, which, if charged to the government as water delivery fees, would balloon to over $500 million. (*Business World*, 17 April 2001) The Arroyo government decided to pay the company directly, and factored this into its P145-billion deficit target for 2001. (*Business World*, 23 April 2001)

- In the event of such natural disasters as an earthquake, drought, etc. the government would still have to pay the proponent for water and electricity it can't deliver, if not buy out the company.
- Furthermore, the buyout provision would require the government to pay CE Casecnan, in US dollars, the present value of the remaining fees due to Casecnan. However, the fees even presume there will be excess energy delivered even though there is nothing to compel the company to deliver the minimum guaranteed volumes of water and power. If the government were to buy out CE Casecnan in 2002, the amount it would have to pay per the contract far exceeds the cost of the project.
- In case of a dispute, the contract requires both parties to seek arbitration in Singapore, following the rules of conciliation and arbitration of the International Chamber of Commerce. NIA is required to continue paying its fees to CE Casecnan even while a dispute is undergoing resolution via arbitration. NIA also agrees to waive immunity from suit, execution, attachment or other legal process in any jurisdiction.

Controversy 6: Possible Violation of the Constitution

The National Water Resources Board, in granting water rights resolution to the NIA for the Casecnan project, is supposed to have issued a conditionality regarding the "constitutionality of CE Casecnan Water and Energy Company, Inc., in engaging in a resource extractive activity." The NWRB was referring to the provision in our Constitution that requires at least 60% Filipino ownership in the extraction of natural resources. NIA, represented by then Administrator Apolonio V. Bautista, argued that no franchise was needed by NIA for water extracted from the Casecnan and Denip rivers for energy production and irrigation purposes. (Item 6, Minutes of the Special ICC Cabinet Committee Meeting, Manila, 6 June 1995)

Despite this conditionality, an occular inspection of the diversion weirs in Pelaway will show that CE Casecnan, an American company with a maximum of 15% Filipino ownership, controls the flow of water at those weirs. It is this American company, not the NIA nor the DENR and least of all the NWRB, that decides how much water gets diverted through the tunnel and how much water will flow upstream towards Quirino and Cagayan provinces. This is a crucial matter especially in the dry months of the year, and most especially in times of drought brought about by the El Niño phenomenon.

Controversy 7: ICC Approval despite Perceived Environmental Hazards

Perhaps as another indication of the immense political pressure on it to approve this project, the ICC merely required CE Casecnan's compliance with an environmental compliance certificate (ECC) rather than undertake its own environmental impact assessment of the project.

The Company was able to secure a highly limited ECC that did not take full account of the impact of the project on farming communities in the host and neighboring areas. Instead the DENR named the primary impact area as the place where the diversion weirs were to be constructed. The area where the exit tunnel was to emerge and find its way to the Pantabangan reservoir was identified as a secondary impact area, although its water was to be badly affected by the chemicals used by the company during tunnel boring and construction. Not at all mentioned were the areas upstream along the riverbanks that would definitely be affected by the diversion of water.

Thus it was able to secure an ECC in April 1995 despite questions being raised about the project's impact on the environment. The contract, in fact, placed the responsibility for watershed management in the hands of the NIA, when the line agency responsible for watershed management is the Department of the Environment and Natural Resources. It was only in November 1995 that a memorandum of agreement between NIA and the DENR was signed regarding watershed management. Yet in a House of Representatives committee meeting on the Casecnan project held on 29 May 1997, NIA and DENR officials pointed at one another for accountability of tree-cutting in the area. Neither agency could inform the committee on the volume of trees cut and the disposition of the logs. (*BusinessWorld*, 2 June 1997)

A year earlier, local residents in the project site had warned of illegal logging of narra in the area. (*BusinessWorld*, 25 July 1996)

Another issue with regard to the ECC is that it does not effectively assert the land tenurial rights of the indigenous peoples residing therein. This is ironic considering that the company actually identified the Bugkalots as the primary community to be impacted by the project, although there were non-Bugkalots in the area who were also affected by the same—some, in fact, to a more negative degree. The Bugkalots were the community the company reached out to, perhaps, not always in a charitable sense.

Despite the clamor of Bugkalots and environmental non-governmental organizations (NGOs), the DENR under then Secretary Victor Ramos refused to review the ECC. (*BusinessWorld*, 23 May 1996)

The Makings of an Ecological Disaster

Ecological fragility is also a major concern in the area. During the construction phase, river water coming from the Adit (exit tunnel) 3 was grayish and chalky. The water connects with the tributaries and traverses along rice paddies. Residents in Abaya, Dupax del Norte, complained of itchiness after bathing in the river. They think this was due to chemicals, crude oil and other substances being used by the Company that it simply dumped into the river. Some rice fields have been turned into makeshift dumpsites.

Residents had earlier aired their concern before the Company, the river becoming heavily silted due to the reckless dumping of waste material. The Company had assured them that it would erect 'depensa' (walls) by the riverbanks to keep the gravel from getting into the river. Again this was just another of their many empty promises as evidenced, years after the construction of the project, by the soil waste abandoned along access roads and makeshift dumpsites near the exit tunnels (adits).

At the Abaya construction site, nine makeshift dumpsites can be seen along the access roads. These all have a tendency to move downward towards the river especially when the strong rains come that would cause landslides and erosions that would further cause heavy siltation of the river.

Some residents have also been convinced by the Company to allow their rice fields to be used as dumpsites for a fee. The fee ranges from P18,000 to P45,000. CE Casecnan promised to restore the topsoil after the Project is completed to enable the farmer to resume tilling the land. But the full extent to which the rice fields have been destroyed by the dumping of waste will be known much later. And the farmer who may have been convinced that P45,000 was a good price for dumped waste, is finding himself without land on which to plant food for his family. The entry of CE Casecnan into the area has not brought sustainable employment or livelihood. With his farm now a wasteland, the displaced farmer is resorting to rattan and other tree-cutting to "sustain" himself and his family.

Controversy 8: ICC Approval without Social Impact Analysis

The approval of the ICC was simply conditioned on the endorsement of the project by the Regional Development Councils of Regions II and III. RDC III readily assented, as its farmers were supposed to benefit from the irrigation water. RDC II originally objected to the project, but eventually gave a conditional endorsement in July 1995. The conditional endorsement was premised on the supposed benefits the company was claiming it would bring to the host communities. With the ok of RDC II, the company hurdled the last obstacle to the project.

The ICC did not undertake its own social impact analysis of the project. The FDC has found, as a result of field visits to the two main project sites, that the host communities themselves can name few if any benefits. This has been verified by other group's visits to the areas affected by the project, as reported in the major dailies.

The Company saw it fit to coordinate with the communities' leaders and put up the Bugkalot Association of Casecnan, Inc. (BAC) at the beginning of the Project.

Through the BAC, the Company has provided cash doleouts to the barangays for the establishment of cooperatives. The BAC is supposed to oversee and coordinate the five cooperatives. The BAC's income is from two sources: 1) the cash dole out from the Company; and, 2) its commission from quarrying activities for which the BAC was paid P7 million a year for two years, for a total of P14 million.

Barely two years after the cooperatives' inception, most have already closed down and the remaining ones are not running well. People are highly suspicious of some of their leaders whose lifestyles have dramatically improved and who cannot explain how they were able to possess, among others, a vehicle. The BAC, too, has yet to deliver the services it promised. Allegations of corruption abound.

Then again, these cooperatives and doleouts were doomed to fail as they were undertaken primarily to win the support of the community for the project, without adequate mechanisms in place to ensure the cooperatives' sustainability.

The millions of pesos in quarrying fees are now gone, too, without any tangible improvement or service for the community.

Corruption has also bred animosity between Bugkalots and non-Bugkalots, Bugkalot leaders and non-leaders among Bugkalots who saw how leaders profited. Non-Bugkalots speak of how Bugkalots are predisposed to easy money because of their "laziness". Now that the money is gone, the non-Bugkalots who profited from the company and the Bugkalot community as well with their small businesses are not too eager to do business with them, not too eager to lend even the cheapest and the most basic food item. They reason that Bugkalots don't have the capacity to pay.

Corruption has become pervasive not only among the Bugkalot leaders. Local DENR officials as well as the local Philippine National Police (PNP) are also said to be prey to bribery. At least one official has been identified as having received a vehicle from the company to be silent about violations of the ECC. DENR and PNP officials are known to be receiving "hidden allowances" such as free rice and enjoy other perks such as the free repairs of their vehicles from the company. The PNP is expected to keep security tight not for the community residents but for the company.

THE ROAD—A Dream Come True?

Be it at the ***Pelaway Site (intake tunnel area)*** or the ***Pauan Site (exit/adit tunnels area)***, the first thing that catches one's eye is the long stretch of gravel roads. The roads wind through the mountains that interconnect and make the distant construction sites accessible by vehicles. Ask any Bugkalot what benefit Casecnan brought to them and the common answer is: the road.

As one hits the road leading to Pelaway, one cannot overlook the big sign informing travelers that they are encroaching onto a private industrialized road. As one draws near the construction site, one is stopped at "Gate 1" to secure an entry pass that is to be kept posted at all times throughout one's visit. The company pass states that the holder is a visitor to the Bugkalot Village.

Prior to the Project, the Bugkalots had to walk for more than a day to reach the nearest town—Caranglan, in Nueva Ecija—to purchase important supplies like rice, sugar, coffee and other essentials. With the advent of the road, the trip to Caranglan has been cut short to two hours by public transport.

In itself, the construction of the road was enough enticement for the people to yield to the project given the rough terrain they had to endure and the long hours it took them to reach the nearest town for basic necessities. But the Company and the government promised more than just the road. They made the Bugkalots believe that the Project would bring in the much-needed services to their communities. A young Bugkalot recalled the Company as having promised to develop the area and bring in these long-awaited services.

The road has made Pelaway less remote, and that is generally a good thing. But prostitution, gambling and alcohol have been known to find their way into this remote village as well. Without any sustainable livelihood for the communities the temptation to profit from illegal logging, thanks to the road, may be too hard to resist..

Controversy 9: No Official Concern over Affected Communities

From the time the project was conceived, official concern has been focused on *getting the consent of the people and the endorsement of the local officials*. Concern for the host communities to the project goes no further than mouthing assurances that issues and concerns would be addressed in due time.

It is obvious from discussions with the Bugkalot leaders in Casecnan that they were not made aware of the terms of the contract between the government and CE Casecnan, and that their support for the project was obtained through the company deliberately keeping the locals largely unaware of the full implications of the project and the profits it would bring CE Casecnan.

The one and only genuine consultation with them was when the people opposed the project. *The so-called consultations from which the government based its decision to go ahead with the project were dubious and spurious.* (Bishops Ramon Villena, Miguel Purugganan, Diosdado Talamayan)

Like the government, the Company assured the Bugkalots that in addition to all the other promised services, it would provide education scholarships to Bugkalot children the deserving among whom could even pursue a college education. The company assured the residents of employment opportunities and job security even after construction of the project was completed. The company assured residents of medical services that would be readily available to them. And it assured residents that at the end of the construction period, physical resources used by the company would be theirs.

Now that the construction period is over, the company is withdrawing its support for the Bugkalot community:

- education scholarships being discontinued
- only 30 of 30,000 workers to be retained
- company leaving behind generator sets, clinic, equipment without the necessary transfer of know how as well as working capital needed to operate and maintain them
- in some cases, the few local residents who found employment were terminated without receiving full termination pay that was due them.

With the construction of the project finalized, the apprehensions of some residents that the company would renege on its promises to its host community were sadly confirmed. It appears most specially now when the company's need for the cooperation of local residents has been greatly diminished, after having bought off its leaders, that CE Casecnan is prepared to abandon them.

Conclusion: Heavy Costs, Uncertain Benefits

Agriculture Secretary Leonardo Q. Montemayor, who chairs the NIA, claims that the Casecnan multipurpose project will yield the following benefits (*BusinessWorld*, 20 July 2001):

- irrigate 35,000 hectares of new rice lands in five municipalities of Nueva Ecija;
- stabilize water supply in 10,200 hectares of existing palay lands in Pampanga, Bulacan and Nueva Ecija;
- recover 43,000 hectares of rice lands in Pampanga lost to Mt. Pinatubo's eruption in 1991;
- produce additional 465,000 tons of rice per year for at least 50 years from the hectarage irrigated;
- create 18,000 jobs that would benefit 80,000 people in the agricultural sector alone; and
- energize 350,000 more homes.

There are several things worth noting from this list of project benefits. For one the benefits are premised on the company being able to deliver the 801.9 million cubic meters of water that NIA promised to pay each year for the next 20 years. That remains to be verified in the months to come. It is clear that CE Casecnan was counting on the rainy months in its annual estimate of 801.9 m^3, but farmers do not need irrigation during those months. Even by the company's own estimates there was a 50% chance that it would be able to deliver the water. The effects of extensive deforestation and global warming would tend to bring that probability down rather than up. It is logical to raise doubts about this.

For another there has been a significant scaling down of new hectarage to be irrigated as a result of the project, from 50,000 to 35,000. When the ICC was deliberating upon the project, it indicated that a hectarage below 50,000 would yield an economic rate of return for the project that was below the social discount rate of 15%. So going by the scaled down figure, the project is not viable even by the government's own benchmark.

Even then, the NIA and DA estimate of 50,000 was premised on a water volume of 16,000 m^3 per hectare assuming a 100% efficiency of irrigation systems. Historically, irrigation systems have been operating at only 45% efficiency. (Minutes of ICC Cabinet Committee Meeting, Manila, 5 May 1995) Furthermore, the estimate of 50,000 hectares was assuming multi-cropping, which requires less water per hectare. Secretary Montemayor is talking only about rice lands, which are water-intensive.

The idea of multi-cropping is crucial to the project. In a letter dated 24 July 1995 by then NEDA Director General Cielito F. Habito to then NIA Administrator Apolonio V. Bautista, Secretary Habito requested NIA to submit its diversified cropping pattern for the project. Secretary Habito explained the purpose of his request was to "...ensure the viability of the project, on which the provision of subsidies were considered and on which the issuance of the performance undertaking was permitted." Those premises may have been conveniently forgotten by the agencies concerned now that the project is underway.

With regard to the claim that 350,000 more homes would be energized, the project will only add to the supply of electricity at a time when we are already in a situation of oversupply. There is no requirement or commitment to connect additional households to the grid as a result of additional capacity created by the project. Besides Casecnan electricity will be among the most expensive and many households cannot afford it. Unfortunately the commitments of NIA and NPC will be reflected in the PPA (purchased power adjustment) charge in the electric bills of households already electrified, adding upward pressure on electricity rates.

The benefits also need to be measured vis-à-vis the costs incurred. From an original estimate of $500 million, the Casecnan project cost has run up to $650 million. From the original targeted completion of November 1999, the project's actual completion was end-2001. NIA, for its part, has to spend P3.5 billion to upgrade existing irrigation facilities and erect new ones in the areas to be irrigated by the project. If we add up all the abovementioned hectares Secretary Montemayor cites as benefiting from the Casecnan project, the resulting cost per hectare is P408,163. This figure does not include the annual water delivery fees of at least $33.4 million that NIA must pay the company for 20 years. Nor does it include the annual interest payments the National Government must make on the debts it incurred—and will incur—as a result of this project.

There are other equally serious fiscal implications of the Casecnan project. Every year the national government must find at least $70 million with which to pay the company. If it borrows in order to pay these contractual obligations, then the fiscal burden is made heavier by the burden of debt. The government also foregoes millions of dollars in taxes that it must reimburse to the company. Last year, it borrowed money in order to repay CE Casecnan $46 million in tax reimbursements.

Although the benefits of this project remain uncertain, its costs to the government, the taxpayers, and to electricity consumers, are undoubtedly high.

Recommendation: Rescind the Contract

On the basis of the foregoing, the Citizens' IPP Review Commission is urging the Arroyo government to rescind the contract of the National Power Corporation with the National Irrigation Administration for the purchase of Casecnan electricity, and the contract of the National Irrigation Administration with the CE Casecnan Water and Energy Company, Inc. The contracts are grossly disadvantageous to the government and the people, and give undue advantage to one American company whose officer enjoyed close ties with then President Fidel V. Ramos. These contracts would not have been approved by the Investment Coordinating Committee for lack of technical merits. But they were approved at the instruction—behest—of then President Ramos. In the process, the law on BOT projects was violated, as well as the Constitution, which forbids non-Filipino entities from controlling the country's water resources. The lives of the host communities have not improved. Instead they have been negatively influenced by corrupt practices, offers of amounts of money never before seen by the local residents as a result of which the money has quickly disappeared, and the false promises of a company that cares little about their welfare.