



RESEARCH STUDY ON
WORLD BANK URBAN WATER
SECTOR REFORM PROGRAMME
IN LAGOS STATE

March 2007

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List of Acronyms

| | |
|---------|--|
| AUPCTRE | Amalgamated Union of Public Corporations, Civil Service, Technical and Recreational Services Employees |
| CSO | Civil Society Organization |
| DFID | Department for International Development |
| DSA | Distribution Service Area |
| FGN | Federal Government of Nigeria |
| FPIU | Federal Project Implementation Unit |
| FMWR | Federal Ministry of Water Resources |
| FMAWR | Federal Ministry of Agriculture and Water Resources |
| HBF | Heinrich Boell Foundation |
| PAD | Project Appraisal Document |
| PIU | Project Implementation Unit |
| PSP | Private Sector Participation |
| PPP | Public-Private Partnership |
| PRSP | Poverty Reduction Strategy Papers |
| LSWC | Lagos State Water Company |
| NEEDS | National Economic Empowerment and Development Strategy. |
| NEWSAN | National Civil Society Network on Water and Sanitation |
| NGO | Non governmental Organization |
| NUWSRP | National Urban Water Sector Reform Project |
| MDG | Millennium Development Goal |
| SPIU | State Project Implementation Unit |
| SWAs | State Water Agencies |
| TOR | Terms of Reference |
| WB | World Bank |
| WANG | WaterAid Nigeria |

Chapter One

Introduction/Problem Statement

1:1 Background

The 1999 Constitution of the Federal Republic of Nigeria, and in fact all other laws have given the Federal Government jurisdiction over shared water resources, large dams, formulation and implementation of policies for overall water resources management. But Water supply is a state responsibility. And to this end state governments have created State Water Agencies (SWAs) to manage and operate systems for water service delivery in all Urban (officially defined as areas with a population in excess of 300,000) and in some semi-urban areas.

Generally, the SWAs have also failed to provide water services to the people. Most SWAs do not recover their operating expenses from their own revenues, and remain dependent on state governments for subsidies. The State agencies have also failed to successfully manage several donor financed urban water projects.

For instance a 2006 World Bank Project Performance Assessment Report (PPAR)¹ shows that some of the previous bank financed water projects in Nigeria failed because of the inefficiency of the public water agencies. The Project Performance Assessment Report (PPAR) evaluated three past water supply projects viz: the \$256m National Water Rehabilitation Project approved on May 21, 1991, the \$101 First Multi-State Water Supply Project approved on May 28, 1992 and the \$5m Small Towns Water Supply and Sanitation Pilot Project approved on May 18, 2000.

The Independent Evaluation Group (IEG) rated the outcome of the National project as **highly unsatisfactory**, its sustainability as **highly unlikely**, and its institutional development impact as **negligible**. The outcome of the Multi-State project is rated as **moderately unsatisfactory**, its sustainability as **unlikely** and its institutional development impact as **modest**. In contrast, the outcome of the Small Town project is rated as **satisfactory**, its sustainability as **likely** and its institutional development impact as **substantial**. While Bank and Borrower performance were rated as **unsatisfactory** for the National and Multi-State projects, the performance of the Bank and the Borrower for the Small Towns project is rated as **satisfactory**.

¹ **Project Performance Assessment report** June 13, 2006 Thematic and Global Evaluation Division Independent Evaluation Group (IEG) of the World Bank.

One of the findings of the PPAR report is that Water **Projects cannot succeed without the political will to reform.**²

“The failure of the National Water Rehabilitation and First Multi-State Water Supply projects show there was no effective attention paid to tracking meaningful operational performance indicators, and to creating viable Commercial systems with appropriate tariffs and systems to bill and collect sufficient revenue to enable the State Water Board to become financially sufficient. The ultimate responsibility for this failure must be shared between the political and technical authorities in Nigeria and the Bank preparation and supervision teams.”

The Federal Government therefore initiated a Water Sector Reform a programme to address this problem. In 2002, the Government introduced a National Policy on water and sanitation which spelt out the roles of tiers of Government, the Private sector, development agencies and non governmental institutions in developing and managing water resources in Nigeria. Subsequently, the Government launched the 1st and 2nd National Urban Water Sector Reform Projects. The Urban Sector Reform projects are aimed at improving water governance, encouraging private sector financing of water supply projects throughout the Federation; and specifically to improve delivery of water services in five State capitals and 12 Urban towns in Ogun, Enugu and Kaduna, Lagos and Cross Rivers.¹

The five states are to serve as model states, and if the PPP experience is successful in the states, project will be replicated in other states in the country in the future. The World Bank is financing the 1st and 2nd NUWSRP with a \$120m and \$200m International Development Association IDA credit to be completed in 2009 and 2010 respectively. Prior, and in preparation of this, the Nigerian Federal Government had expended a \$2.0million IDA Project Preparation Facility and also in 2001, drawn another IDA loan of \$114.29 for a Privatization Support Project.

Reforming the water sector in Lagos State entails putting in place the policy, legal, and regulatory environment and expertise to attract and sustain private investment. The components of the 2nd NUWSRP project in Lagos State include the rehabilitation of existing water infrastructure in the state, the expansion of the water networks, and the appointment of private firms to manage the production and distribution networks.

² *Ibid*

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The Project's principal development outcome in Lagos state is to improve the reliability of water supply produced by the water treatment works in Lagos, and also to improve viability of the urban water utilities. Expected outputs from the project in Lagos are: (a) Lagos Treatment works operating at 85% capacity for 80% of the time; and (b) by project end, 100% of Lagos treatment costs recovered from sales to Distribution operators. The 2nd NUWSRP if implemented successfully in Lagos and Cross Rivers State is expected to provide replicable models for other reform minded states.

1:2 The Problem

Active participation by communities in the planning and implementation of development policies and programmes is an essential prerequisite to sustainable human development. Water being an existential reality, the civil society has a critical and strategic role to play in ensuring openness, inclusiveness, transparency and openness of the reform process; and also to mainstream gender concerns and the interests of vulnerable communities. Unfortunately, the civil society lacks access to decision making, and has not been adequately involved and engaged by Government in the design and implementation of the water sector reform projects at the National and state levels.

Moreover, Civil society lack the technical and institutional capacity to engage in the water supply and sanitation sector. Civil groups including community development associations, non-governmental organizations, consumer groups, and trade unions often find it difficult to identify the best starting point to address the challenge of establishing citizen's representation in the sector. Civil society groups are also excluded from the debate on how the sector could be reformed. The exclusion of civil society organizations also means that policy makers cannot draw on their rich experience in facilitating access to services by poor people. However, to reach that level of reform requires support by civil society -- support that is often lacking because consumers and civic organizations are skeptical that reform will bring positive impacts and apprehensive of negative results such as price increases.

The implementation of the project raises critical questions of water pricing and water access to the poor within the water distribution areas of Lagos State. There exists therefore a need to mainstream pro-poor concerns into the project, and also increase public understating and participation in the project. The citizens of Lagos State need to be armed with adequate information to monitor the Water Sector reform project in Lagos State, and ensure its transparency and openness.

¹**Brief Background on Nigeria's Urban Water Sector Reform 2007** *Engr B.A. Ajisegiri, National Project Coordinator, NUWSRP*

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It is against this backdrop that WaterAid Nigeria commissioned this study. This study was carried out within two months and it outlines key contextual issues relevant to the success of the implementation of the 2nd NUWSRP in Lagos state; and analyzes the project components with a view to identifying its strengths and/or shortcomings in relation to pro poor programming. The study also examines the implication for project focus and service delivery system, assesses the civil society engagement in the project, identifies the future roles for civil society engagement in the project, and also assesses the extent of openness and commitment from the Lagos Water Company to civil society involvement. Lastly, this study assesses the awareness of consumers of the reforms, identifies contextual factors and recommends potential actions that could be taken by the various stakeholders to further the aims of the project.

The following methodologies were used in carrying out the study: Focus Group Discussions involving consumer and community groups in Lagos state, administration of opinion survey questionnaires on water users and consumers within the 14 Distribution service areas of the Lagos State Water Company in order to determine user concerns, through interviews and review of secondary data.

Chapter One of this study is introductory and states the problem, Chapter two reviews existing literature relevant to the study, Chapter three lists the tools and methodologies used in the study, Chapter four discusses the findings, and Chapter five recommends actions to further the aims of the 2nd NUWSRP in Lagos state.

Chapter Two

Review of Literature

2:1 Introduction

Affordable, abundant and clean water is essential for human well being and development. There are clear linkages between access to potable water and health, nutrition levels and subsequently educational achievement, labor productivity and economic growth. However, for the urban poor reliable access to clean and affordable water often are unavailable. Globally, as many as 500 million urban residents have inappropriate access to water services or experience water scarcity. [USAID/PADCO, 2001]. The World Bank reports that "*some 25% of the urban population of Latin America and at least 50% of the urban population of Africa are not connected to official utility networks and rely on alternative sources for their water supply.*"²

For middle-class residents, regular water supply is one of the most valued urban services. Often, even these families face de facto rationing. In many cities demand for water, at current tariff levels, greatly outstrips supply, resulting in water management strategies that deliver water to households only for a few hours each day or for certain days of the week. Given the pressures of urban population growth, especially of low-income families that construct dwellings at the urban fringe far removed from main trunk lines, providing adequate supplies of safe water will remain one of the biggest urban challenges in coming decades.

It is also essential to know that "*Adequate access to water supply is not merely dependent on the existence of a water source. Therefore, when assessing people's level of access both to water supply and sanitation, it is important not to restrict this only to issues of distance to a source and density of users, but it further involves a range of other aspects such as:*

- 1) **Regularity:** *how frequently is the service available to people and when;*
- 2) **Sufficiency:** *how much water is available per person;*
- 3) **Affordability:** *how much do people have to pay for the service, particularly in relation to their income;*
- 4) **Quality:** *what is the quality (of water and sanitation facilities) of the service available; and,*

² World Bank Water Sanitation Website www.worldbank.org/wsp

5) **Safety:** *how safe and culturally acceptable is the access to and use of facilities, especially for women and children who must rely on facilities outside the household (e.g. public toilets).*³

The international community has committed itself to halving by 2015 the proportion of people without access to water and sanitation along with other targets, known as the Millennium Development Goals. Four studies have indicated that Nigeria like many other Sub Saharan African countries is not on track to achieve these targets.

A 2005 report by the Department for International Development⁴ was one of such. This report was an outcome of a study commissioned by DFID to compare characteristics of countries that are on and off track to achieve MDG Target 10 for water. The situation in 11 Africa and Asia countries were studied, and its findings state that Nigeria and six other countries (among the 11 studied) were “*off track*” towards achieving the MDG goals for water and sanitation.

The UNICEF/WHO Joint Monitoring Programme report 2006⁵ also states that while “*Sub-Saharan Africa continues to make progress in providing services to the unserved, with a 7 percentage point increase from 1990 to 2004; yet current coverage levels are extremely low. At the current pace of development, sub-Saharan Africa will fail to reach the MDG drinking water target*”. In particular reference to Nigeria, the report says unless current trends are reversed the country like several other African countries may not meet the MDG goals for water and sanitation. Buttressing this position, the report further states that drinking water coverage in Nigeria fell from 49% in 1990 to 48% in 2004, whereas coverage of 65% (by 2004) was required to keep Nigeria on track towards achieving the MDG. Also, though sanitation coverage rose from 39% in 1990 to 44% in 2004, coverage of 58% by 2004 was required to put Nigeria on track.

³ **Governance of Water and Sanitation Services for the Peri-urban Poor A Framework for Understanding and Action in Metropolitan Regions 2006** *The Development Planning Unit, University College London*

⁴ **Meeting the Water and Sanitation Millennium Development Goal. May 2005.** *Prepared by Environmental Resources Management for Department for International Development*

⁵ **Meeting the MDG Drinking Water and Sanitation Target: the Urban and Rural Challenge of the Decade. 2006** *World Health Organization and UNICEF. P13.*

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Similarly, a World Bank project performance and assessment study⁶ produced by the Bank's Independent Evaluation Group also raised fears on Nigeria's march towards the MDG goals in the water and sanitation sector. The Bank's Independent Evaluation Group assesses the programs and activities of the World Bank for two purposes: first, to ensure the integrity of the Bank's self-evaluation process and to verify that the Bank's work is producing the expected results. Second, to help develop improved directions, policies, and procedures through the dissemination of lessons drawn from experience. The Group in its June 13, 2006 report states inter alia:

*"it is highly unlikely that Nigeria will meet its water supply and sanitation targets under the Millennium Development Goals (MDGs). It has long been thought that the service coverage in urban areas is 50 percent for water supply. Based on a sample of towns and cities included in the three projects it seems that water service is accessible to no more than a quarter of the urban population (in the case of Kaduna state) and often to as few as 10 percent. Thus there is a threat that service coverage seems to be dropping rather than rising as the country approaches the 2015 MDG target year"*⁷

The fourth study that confirmed Nigeria's rating as off track is the United Nations Development Programme (UNDP) Human development Index 2006⁸ which says Nigeria has a 'Low human development water, sanitation and nutritional status', and the UNDP rated it 159th out of the 177 countries studied. Specifically, the UNDP report says the population with sustainable access to improved sanitation is 39% in 1990 and 44% in 2004, while the population with sustainable access to improved water source was 49% in 1990 and 48% in 2004. The report further says that on current trends Sub-Saharan Africa will reach the water target in 2040 and the sanitation target in 2076.

However, the UNDP report also states that the targets in all countries including Nigeria are achievable with greater political will and resources:

"The word crisis is sometimes overused in development. But when it comes to water, there is a growing recognition that the world faces a crisis that, left unchecked, will derail progress towards the

⁶ **Project Performance Assessment report.** June 13, 2006 Nigeria Water Rehabilitation Projects (LOAN 3322-UNI), First Multi State Water Supply Project (CREDIT 2372-UNI), and Small Towns Water Supply and Sanitation. Thematic and Global Evaluation Division Independent Evaluation Group (IEG) of the World Bank.

⁷ Ibid p14

⁸ **Human Development Report 2006 Beyond Scarcity: Power, Poverty and the Global Water Crisis** Published by the United Nations Development Programme (UNDP) www.hdr.undp.org

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Millennium Development Goals and hold back human development. For some, the global water crisis is about absolute shortages of physical supply. The UNDP Report rejects this view. It argues that the roots of the crisis in water can be traced to poverty, inequality and unequal power relationships, as well as flawed water management policies that exacerbate scarcity”

Similar views were stated in a National Water Sector Assessment Study released by WaterAid Nigeria in July 2006:

“Nigeria faces major challenges in reaching its water and sanitation MDGs. The unavailability of accurate data makes it impossible to accurately determine if the country is on-target or off-target in meeting the MDGs. Though more resources are being allocated to water, they are still inadequate and there is no sanitation budget. Those resources, which are available, are often not fully disbursed or available too late for effective use. Project arte frequently top-down without the participation needed for sustainability. Politicians fail to agree on the tariff structures needed to underpin the financial autonomy of urban utilities ”⁹

The DFID study¹⁰ earlier referred to in this chapter, lists the common characteristics within the water sector of on track countries can be summarized as follows:

- *The reform agenda for these countries tends to be owned and driven by government, rather than external agents who are generally decreasing their overall presence in the sector, bar one or two lead agencies.*
- *Government expresses the linkages between water, poverty and economic development in high-level policy frameworks.*
- *NGOs can be very effective advocates and informal “regulators” of decision-making in the sector, via the use of public opinion, which in turn has helped to drive water as a policy issue.*
- *Implementation of water sector reform, as detailed in key policy documentation, tends to be active. It is likely that SWAs may be in place, together with medium term financing plans, pooled donor funding and other forms of institutional coordination.*

⁹ **WaterAid National Water Assessment Nigeria Where Local Governments have the statutory responsibility, but Cannot Access Sufficient Funds to Provide Water and Sanitation.**
www.wateraid.org

¹⁰ **Meeting the Water and Sanitation Millennium Development Goal May 2005** Department for International Development

- *Issues of effective decentralisation (autonomy of decision making and financial management) and Monitoring and Evaluation in the sector are, in most cases, weak relative to the other water sector governance factors.*

It is important to note, however, that while these countries tend to be on track at the aggregate at national level, there may be many important issues relating to effectiveness, equity and sustainability of water supply, especially at the sub national level.

2.2 Water: Economic good versus Social good

Neo liberal ideas had a profound influence on international development and policy debates in the water sector in the 1990s. The 1992 Dublin Principles¹¹ illustrate this new perspective and apply four development dicta of the 1990s to the water sector: *care for the environment, increased participation of non-governmental stakeholders, sensitivity to gender issues, and the increased role of markets*. Water activists around the world for promoting water privatization and commodification have heavily criticized the fourth principle.

Maj Fill-Flynn of Public Citizen, a leading United States Consumer group says, “*central to this neo-liberal project in water has been the concept of ‘getting the prices right.’*” Getting the prices right, from the World Bank perspective, requires acceptance of the idea that consumer tariffs should achieve “*full cost recovery,*” (operation and maintenance costs) or sometimes “*average costs*” (operation, maintenance and capital costs).

In either case, the role of the state as guarantor of universal access to a basic human need and a basic human right, water, is undermined. With public

“Water has an economic value in all its competing uses and should be recognized as an economic good. Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price.

Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.”

—The 1992 Dublin

¹¹ **The Dublin Statement** 1992 decided at the International Conference on Water and the Environment: Development Issues for the 21st Century

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acceptance of water as an “economic good” rather than a “social good” or a human right, the role of the public sector and of public funding and cross-subsidies can be more easily undermined. The consumer must pay a market price or face cut-off of services. Imposing full cost recovery, or a “market price” for water, will ensure that the rich can use water as wastefully as they want, as long as they can pay, while the poor will continue to suffer from the lack of means to access water.¹²

The claim that water is an economic good has been used to justify a shift from treating water as a public service to a good for which users should pay. This argument is often extended to support full cost-recovery of water and sanitation infrastructure and services from users, on the grounds that only then will provision be economically sustainable. Cost-recovery is deemed preferable on an individual basis; that is, households should pay the full costs of their water and sanitation provision (i.e. installation, consumption, operation and maintenance). Subsidies – either from the state or through cross-subsidies between different types of consumer – are opposed because they distort the true cost of service provision.¹³

Generally, the reasons for the growth of international private water companies providing water services in developing countries include¹⁴:

- ◆ *Failure of government and public suppliers to provide safe, sustainable water and sanitation to their population, particularly to the poor*
- ◆ *A widespread belief that the role of the state should be reduced and that privately run companies are more efficient than publicly run services.*
- ◆ *The promotion of private companies by rich countries and international organizations (e.g.: the World Bank and International Monetary Fund) in the provision of water and sanitation services in middle and low income countries because publicly-run services have failed to reform*
- ◆ *Lobbying by the international private sector.*

¹² Maj Fiil-Flynn **The World Bank & Greedy Global Water Companies** September 2002 A Special Report by Public Citizen’s Water for All program, Public Citizen. www.wateractivist.org

¹³ **From Archipelago to Network: Urbanization and Water Privatization in the South** Bakker, Karen (2003) *quoted in Geographical Journal* Brocklehurst, Clarissa (editor) (2002)

¹⁴ **Private Infrastructure for Poor People: A Working Resource Guide** World Bank and PPIAF.

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- ◆ *The belief by donors and some developing country governments that the international private sector will bring fresh investments and access to capital to developing countries, and that this will pay for the increased costs of keeping the water flowing and of expanding services to a growing population.*

A combination of these factors has led to donors making private sector involvement a condition of aid, loans, debt and potentially, in the future, trade. For donors, private sector involvement has become the preferred model for water sector reform, to the detriment of other options.

“Full cost recovery is bad public health policy. In developing countries where the majority of the population earns less than US\$2 a day, imposing full cost recovery and raising the price of water places an unnecessary burden on the poor. It increases obstacles to clean and affordable water” --**Public Services International**

A previous research by WaterAid and Tearfund buttresses the assertion of Public Services International above¹⁵. The report states that: it is unlikely that the multinational private sector is going to play any significant role in achieving the Millennium Development Goals. Doubts over the sustainability of PSP projects, cost recovery and capital cost contributions are in most cases necessary for water services to be sustainable. However, there are problems in the application of these principles, which often results in denying the poor access to services.¹⁶

The UNDP Human Development Index report¹⁷ 2006, which focuses on the theme “Beyond Crises: Power, Politics and the Global Water Crises”, argues that “*the crisis in water and sanitation is—above all— a crisis for the poor. Almost two in three people lacking access to clean water survive on less than \$2 a day, with one in three living on less than \$1 a day. More than 660 million people without sanitation live on less than \$2 a day, and more than 385 million on less than \$1 a day. These facts have important public policy implications. They point clearly towards the limited capacity of unserved populations to*

¹⁵ **Water in Public Hands** 2001 Public Services International Research Unit, UK

¹⁶ **Private Sector Participation in Water and Sanitation New Rules, New Roles: Does PSP Benefit the Poor? Summaries of the Case Studies** September 2003 Published by: WaterAid and Tearfund, London.

¹⁷ **Human Development Report 2006** *op. cit*

finance improved access through private spending. While the private sector may have a role to play in delivery, public financing holds the key to overcoming deficits in water and sanitation". The UNDP HDI 2006¹⁸ outlines the four ways out of what it calls mismanagement of water resources.

- (a) *Make water a human right—and mean it.* All governments should go beyond vague constitutional principles to enshrine the human right to water in enabling legislation.
- (b) *Draw up national strategies for water and sanitation.* All governments should prepare national plans for accelerating progress in water and sanitation, with ambitious targets backed by financing and clear strategies for overcoming inequalities.
- (c) *Support national plans with international aid.* For many of the poorest countries development assistance is critical.
- (a) *Develop a global action plan.*

Before now, several countries have started implementing UNDP recommendation (a) above in order to increase water access to poor households. The most noteworthy policy response was the declaration of a lifeline of free water for all South Africans in October 2000¹⁹. This followed a severe cholera epidemic that year in several provinces and cities, including Johannesburg, which was the worst in South Africa's history. It was linked by many to government policies of full cost-recovery for water, and the ensuing lack of access to water of sufficient quantity and quality by the poor, including the residents of the district where cholera first appeared (who were too poor to pay the registration fee to join their local low-cost water scheme).

The lifeline is deemed to reflect subsistence needs, and is set at 25 litres per person per day, and 6,000 litres is provided per household per month (regardless of income). This is being enforced despite practical difficulties and opposition from multilateral financial institutions and private operators; for instance, the operator in Nelspruit initially argued that its contract did not include the provision of free water, and continued its policy of disconnection for non-paying households.

¹⁸*Ibid*

¹⁹ *Compiled from data provided by the Public Services International Research Unit, University of Greenwich*

In the case of India, the 2002 National Water Policy asserts that "*adequate safe drinking water facilities should be provided to the entire population both in rural and in urban areas*". In Tanzania, according to the Water Utilization Act (1974) - amended in 1991 and 1997 - and Water Policy (2002), water is regarded as a 'social good'. However, owing to the high cost of potable water supply, peri-urban communities are forced to pay for water though at a subsidized rate; this payment covers only maintenance and running costs. Similarly, in the case of Mexico²⁰, access to water is a universal right guaranteed by the National Constitution. Article 27 of the Mexican Constitution establishes the sovereignty of the state over all water resources within the national territory and treats water as a common good. Moreover, Mexico has signed international treaties agreeing to guarantee access to water as a human right.

2:3 The Reform Process

Reform must take place in an environment in which three distinct responsibilities are clearly defined and allocated:²¹

- Policy remaining with government;
- Regulation being undertaken by an independent and trusted institution; and,
- Service provision being carried out by professionals, as it is crucial to introduce a separation between the business of providing water supply and sanitation and the business of governing (or politics). This implies a commitment on the part of the government to release control over the direct provision of services, and to build capacity for effective regulation and dispassionate monitoring of performance.

2:3:1 Tools of Reform

2.3.1:1 Institutional changes

Water sector reforms can only bring in greater efficiency and accountability if they are carried out in the context of overall institutional reform. It is clear that as the sector evolves, and governments and the public increasingly require a focus on long-term financial sustainability and customer service, the institutions in the sector will have to change. These changes will involve a re-examination of both roles and structures. Many different institutional models exist for water service delivery in developing countries, each with its own strengths and weaknesses. For instance, a Corporate Board may deliver

²⁰ **Governance of Water and Sanitation Services for the Peri-urban Poor A Framework for Understanding and Action 2006**

services to the municipality, but be separate in many ways as it reports to a state, province or even national government, or a Water Board may function as a department within the city administration, and lack autonomy. The inefficiencies and inequities of each institutional model need to be resolved if other changes are expected to have their intended impact. For example, a common thread in all these models is that utilities report upwards to the next level of authority, be it the national government, state government or the city, not *downwards* to customers

A common reform measure is bringing in the private sector to provide specialized expertise, efficient management and new sources of capital. In order for private sector participation to be possible in the first place, a suitable employer must exist in order to contract the services of the private sector. This implies the need for effective local government institutions who:

- *Have a clear idea of the services they want and the extent to which they should be delegated to a private party;*
- *Stand to gain from the efficiency that the private sector can provide; and have the mandate to enter into contractual arrangements.*²²

2.3.1:2 Tariff Reform

It is often assumed that a private sector operator will take over the unpleasant responsibility of revising tariffs, but in fact responsibility for tariff setting invariably remains the responsibility of the government. In the case of service contracts and management contracts, the operator does not make his revenues from the tariff, so there is no incentive or mandate for him to propose changes. Under an affermage, the operator collects the tariffs, but remits all but his agreed fee to the government; this fee is not differentiated by customer class and is unrelated to the tariff. Likewise, under a lease the lease fee paid to the government is also unrelated to the tariff or the class of customer served. Under a concession contract, the operator bears the tariff risk, and can propose tariff changes; during the course of a 20 or 25-year contract he will certainly do so, however, the government must approve these changes. Where a regulatory system is established, regulators investigate the proposals before the government approves them, in order to make sure the tariff changes are justifiable and in line with the contract.²³

²¹ **New Designs for Water and Sanitation** <http://www.ppiaf.org> op.cit

²² *Ibid*

2.3.1:3 Improvements to Sector Governance and Regulation

Governments still regulate many infrastructure sectors through line departments, which may also be responsible for service provision. In other cases, regulatory bodies have been created which are institutionally distinct from sector ministries, and have their own legal personality. There is no uniform approach to specifying the roles and powers of regulatory bodies. This partly reflects the fact that individual sector ministries who have adopted different approaches have driven the creation of these bodies. There is also no single right answer as to what form or powers a regulatory authority should have, and the best framework will vary from country to country, and from sector to sector. Many regulatory agencies have introduced greater transparency into the way prices are set and business conducted in the industries they regulate than was the case under the government. Examples of this include:

- Public consultative processes when regulators are deciding on methodologies and principles involved in regulation;
- Public hearings on tariffs to which all stakeholders are invited, and at which views on tariff proposals are heard; and,
- Advisory committees, which are composed of stakeholder representatives.

Regulation should be carefully designed to be responsive to the needs of the poor. Of course, independence and autonomy will equip a regulator to make decisions that benefit all consumers, but it may be necessary to ensure that the regulatory body is well informed of the specific impact of its decisions on the poor, and to empower it to be innovative and deviate from convention if it sees that this will be beneficial. It is also important to make sure that the regulator has a well-established way to listen to the concerns of consumers, and that this mechanism is inclusive of the poor. None of this will work unless the regulator has some degree of independence and adequate resources to carry out this mandate. Fundamentally, a regulator requires a clear policy environment in which to function. It is not the role of the regulator to set policy but to ensure that it is implemented.²⁴

²³*Ibid*

²⁴ *Ibid*

2.3.1:4 Establishing Efficient and Professional Management of the Utility

Efficient and professional management of the utility is vital in achieving financial sustainability, customer responsiveness and optimal use of resources. In many cases, professional management is sought from the private sector, through engagement of a private operator under some sort of delegated management mechanism. The private operator is expected to act in partnership with government, the regulator and other stakeholders.

When private sector participation in the provision of water supply and sanitation services is proposed, there are often fears that the poor will not benefit, but will in fact be disadvantaged. Opponents to private sector participation express concern that private sector participation will result in higher tariffs, that private providers will favor high-income consumers, and that social goals, such as the provision of hygiene education or low cost sanitation, will not be met. However, the reality is that the private sector, if given the right tools and incentives, is more than willing to service low-income consumers. At the same time, it is unrealistic to expect the private operator to be spontaneously motivated to service a challenging customer class. The operator needs to be encouraged through policy, regulation, legal reform, contract design and compensation. Each type of private sector participation provides different options for achieving social objectives. Where private sector participation occurs, concerns regarding service to the poor can be addressed through the skillful design of contracts, in combination with better regulatory environments, good tariff reform and attention to process, including careful research, open consultation and stakeholder engagement.²⁵

The process for privatising any publicly owned service can last many years. The World Bank identifies several components of privatisation during this process:

²⁵ *Ibid*

Table 1:World Bank Recommended Path to Privatisation

| Preparation phase | | Implementation phase | |
|--|--|--|--|
| Policy Formulation | | | |
| Industry analysis –review sector studies | | | |
| Financial analysis –review key financial parameter | | | |
| Legal and regulatory –review current stat | | | |
| Institutional –review current arrangement | | | |
| Draft central policy paper with principal objectives | | | |
| Define bid process and criteria | | | |
| Address issues of transaction structure | | | |
| Technical | | | |
| Carry out preliminary technical overview of the system | | | |
| Define the service area | | | |
| Estimate replacement cost and capital expenditure | | | |
| Define technical performance standards | | | |
| Estimate human resource requirements | | | |
| | | Prepare final report | |
| | | Draft relevant sections of information memorandum | |
| Legal and regulatory | | | |
| Review legal and regulatory issues | | | |
| Draft regulations | | | |
| Prepare briefing papers on legislative package | | | |
| Draft paper on privatization issues | | | |
| Draft papers on corporatisation issues | | | |
| Review legal aspects of labour issues | | | |
| Prepare legal due diligence reports | | | |
| | | Prepare data room | |
| | | Draft transaction documents | |
| | | Enact necessary enabling laws | |
| Enact regulations | | | |
| | | Establish regulatory authority | |
| | | Approve charter and operational rules for regulators | |
| | | Select and appoint regulators | |
| | | Establish customer representative body (if any) | |
| | | Provide initial funding for regulators | |
| | | Establish regional coordination | |
| Economy and Financial | | | |
| Develop financial model | | | |
| Review demand forecast | | | |
| Test alternative tariff structure | | | |
| Estimate costs (capital, operating, maintenance) | | | |
| Test alternative tariff structure | | | |
| Draft tariff and schedules (including formulas) | | | |
| Propose capital structure (debt equity ratio) | | | |
| | | Determine government support (foreign exchange etc) | |
| | | Draft relevant sections of information's memorandum | |
| Assess implications of tax requirements, etc | | | |
| Review personnel cost and restructuring (if any) | | | |

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| Preparation phase | Implementation phase |
|---|--|
| | Prepare financial due diligence report |
| | Define financial covenants |
| Public relations | |
| Prepare public attitudes surveys (if any) | |
| | Run public awareness campaign |
| | Prepare public relations campaign for implementation |
| | Pre marketing |
| Workshop 1: Structures and policy issues | |
| Sector structures | |
| Tariff policies, subsidies, reform | |
| Legal and regulatory issues and implications | |
| Labour considerations | |
| Performance standards | |
| Legislation and regulations | |
| Workshop 2: Transaction strategies | |
| Corporatisation issues | |
| Private sector participation method | |
| Bid process and criteria/Project documents | |
| | |
| Transaction | |
| Finalize information memorandum | |
| Announce process to the press | |
| | Register interested parties |
| | Enter into confidentiality agreements |
| | Pre-qualify bidders |
| | Issue project documents |
| | Negotiate terms with bidders |
| | Receive final bids |
| | Issue letters of award |
| | Reach financial closing |

Source: Private Sector involvement in Water services, An Advocacy guide 2003. Tearfund and WaterAid

2:3.2 Features of Water Reform:

They are several key features of any water sector reform process, for it to be successfully implemented and meet the needs of the people²⁶

1. Poverty responsiveness

- ◆ *Identifying poor customers and vulnerable groups' and determining their needs, with a special focus on gender issues: this process must involve the poor themselves.*
- ◆ *Respecting those needs in project development and in designing operational procedures.*
- ◆ *Developing support mechanisms targeted effectively to bridging the gap between cost recuperating tariffs and tariffs that are affordable to the poor.*
- ◆ *Assessing the direct and indirect impact of any project activity on the poor.*

Overall efficiency gains achieved through Private Participation in Infrastructure development will go a long way in making services more affordable. However, to ensure the poorest are able to afford a minimum quantity of services it may be necessary to introduce a system of subsidies. Designing a subsidy scheme for infrastructure services involves a number of choices and tradeoffs. The main objectives are to:

- Clarify objectives
- Target beneficiaries
- Identify the funding source
- Decide upon a delivery mechanism
- Minimize control costs
- Minimize administrative costs

2. Water resource protection

In the context of the Integrated Water Resources Management principle this includes environmental protection, water resource management, and service management.

3. Power balanced partnerships

Not only the identification and selection of legitimate/appropriate stakeholders is important, but also the quality of cooperation between participating actors is crucial to the success of a PPP approach.

4. Shared Incentives

In a change process, there will inevitably be winners and losers. It is vital not only to address the benefits, but also to explicitly address the possible negative impacts on stakeholders.

²⁶ **Towards Growth and Poverty Reduction** *op.cit*

5. Accountability

Policy accountability as well as financial accountability. Monitoring compliance with laws, regulations, procedures and contracts. The Water body may set up a Compliance unit as an internal safeguard measure to ensure its activities comply with extant laws.

6. Transparency

Provision of clear and comprehensive information to- and openness to interrogation by the peoples elected representatives. As in (5) above, the water body may set up an administrative structure with defined mechanisms enabling the public to access information on its activities.

7. Customer focus

Any service that is responsive to local demands, entails

- ◆ *Identifying current and potential customers along the full service delivery chain in water and sanitation.*
- ◆ *Investigating customer's needs and expectations.*
- ◆ *Offering a choice of options to enable customers to make an informed decision on service levels and tariffs.*
- ◆ *Paying due attention to customers service that are able to resolve problems, answer customers questions and manage customers complaints.*
- ◆ *Adapting to changing customers requirements/preferences.*

8. Results orientation

Identifying overall goals and setting priorities.

9. Proactive Risk Management

Define processes for identifying, monitoring mitigating risks.

A more detailed discussion of three of these features (Power balanced partnerships, Poverty responsiveness, and accountability is below.

2:3.2.1 Power Balanced Partnerships²⁷

“Support for reform is clearly bolstered where the process is transparent, and where there is a proactive strategy of communication with groups whose interests are at stake”

²⁷ Ibid

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Ranges of stakeholders have a legitimate interest in the impact of reform. By involving them in the process, governments can better anticipate their concerns while building support for arrangements that benefit the poor. Such partnerships can also yield valuable information about market structure, consumer preferences and other aspects of reform. Some groups may offer insights on labor issues, others on ways of bettering procurement processes. Whatever, form it takes, stakeholder involvement is important throughout the reform process, from initial exchanges on reform options to the design and implementation of transactions

Depending on the sector and country-specific circumstances, several groups are likely to have strong interests in the outcome of the reform process. These include:

- *The national government; States, Provincial and local governments that will act (or may act) as grantors of private sector contracts, regulators, partners, or financiers of utilities; Regional or local planning departments that coordinate land use and infrastructure planning; Other established regulatory entities; Political parties and individual politicians; Labor unions; The management of utilities; Suppliers of goods and services to the sector; and Consumer organizations*

Three stakeholders groups tend to be associated with the goals of pro-poor reform: consumer groups, labor, and service providers that is active in poor areas. Some groups are very well organized, which enhances their ability to participate in the reform process and to express their views. Labor unions, for example, have formal institutional structures and are often aligned with unions in other sectors and with political parties. The management of utilities is also well organized and tends to have access to government decision makers. The ability of consumer groups to organize is more varied. Where groups are not well organized, or simply lack access and capacity, governments can take steps to strengthen their involvement. They can engage with stakeholders directly, or encourage non-governmental organizations to play a direct role in representing their interests.

Labor unions are often poised to play a prominent role during the reform process, especially if a significant number of jobs are at stake. In the Buenos Aires water concessions, the labor union representing employees of public utilities was represented on a committee set up to oversee the reform process, and was closely involved in negotiations on restructuring methods, severance options and retraining. In the restructuring and privatization of Congo's railway company, the government and the company's management involved the union and labor ministry representatives in developing their plans. This led to an agreement on options for retrenchment affecting about 1,600 staff. In South Africa, involvement in a broader process began even earlier. As part of the national framework agreement on

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restructuring of state assets, unions were involved in the initial decision on privatization. Training support was provided to educate unions about the goals of privatization and to help them participate effectively in the process.

Poor consumers also have much at stake, but are not always self-organized. Their interests are oftentimes advanced by community-based or non-governmental organizations. Tri-sector partnerships offer an opportunity for NGOs to collaborate with the public and private sectors. These kinds of partnerships have been effective in the water sector. In South Africa, for example, the Vivid Corporation has partnered with the Mvulu Trust, an NGO. Working together from the outset, service levels have been tailored to the needs of poor areas, and customer service centers have been set up to enhance direct interaction with customers. In Senegal, Ondeo worked closely with an NGO that installs new water stand posts and acts as an intermediary within low-income neighborhoods.

Existing service providers have a strong interest in the outcome of the reforms. Some, especially in water and sanitation, operate in the informal economy. In all sectors existing network operators may understand the opportunities and constraints associated with serving low-income customers, but are unable to act due to a lack of funds or restrictive standards. When governments prepare to grant responsibility to a private operator, it is important to draw on the knowledge of all existing service providers, including small-scale independent operators. This can be particularly important for targeting poor consumers, understanding their preferences, and assessing the need for quality standards.

In most countries, infrastructure services have been operated by the public sector for years and are considered the responsibility of the state. Consumers and policy makers sometimes have misgivings about transferring this mandate to private firms. Consumers don't easily associate profit making with the provision of essential services' – especially to the poor. Small-scale service providers fear that changes will force them out of business. Labor unions are concerned about job losses that result when efficiency increases.

As the examples above illustrated, consultation with stakeholder groups can help governments address these concerns while building a strong constituency for reform. This can begin early on in the process and continue during the design and implementation of private sector transactions. Consultation can take many forms, including participatory research, consultative working groups, and public meetings. These mechanisms can be used to gather information, inform target audiences of intentions, and highlight unresolved issues.

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Consultation is also important for the quality of reforms. Stakeholders can be invaluable sources of information about market structure, consumer demand, and the social and technical aspects of serving poor areas. In Kathmandu, a study of water markets and consumer preferences was undertaken in partnership with three NGOs to help prepare for reforms. Instead of commissioning a conventional household survey, the researchers used participatory methods and focused on community groups that stood to gain or lose from the proposed reforms. The results provided valuable information about the affordability of connections, and about preferences for certain types of service in low-income neighborhoods. This helped focus attention on subsidies for connections rather than consumption, and led to support for further research on consumer demand and institutional arrangements.

A well-designed consultation process can serve as a mechanism for communicating the government's strategy. Efforts to explain the expected benefits of reform and the reasons for choosing specific approaches can help to prevent misunderstandings that could later undermine progress, while building a consensus for support. A survey of senior civil servants and civil society representatives in the mid-1990s found that political factors and corruption were the biggest impediments to reform processes in general.

Whereas specific concerns remain, governments can devise safeguard measures. For example:

- *Protection for labor and management (redundancy and superannuating packages, worker share allocations, minimum wages and working conditions, health and safety measures).*
- *Protection for contractors or suppliers (regulatory rules to ensure competition in subcontracting and procurement).*
- *Protection for customers (tariff adjustment rules, subsidy policies, complaint mechanisms).*
- *General health and environmental protection (regulation of service standards, penalties for default).*
- *Protection for other government agencies (a regulatory role to compensate for loss of direct control, rules allowing the local authority's labor force to bid for contracting tasks).*

2:3.2.2 Poverty Responsiveness²⁸

The water poor are²⁹:

- *Those whose livelihood base is persistently threatened by severe drought or flood.*
- *Those living far from safe drinking water source (1km).*
- *Those whose livelihood base is subject to erosion, degradation or confiscation without due compensation.*
- *Those obliged to spend a high percentage of household income on water and sanitation.*
- *Those whose water supply is contaminated who cannot afford to have access to alternative sources.*
- *Those living in cramped areas that are not linked or underserved with water and sanitation services.*
- *Women, boys, and girls who spend hours a day collecting water and whose security, education, productivity and nutritional status is thereby put to risk.*

According to the World Bank (2001a), “poverty is pronounced deprivation in well-being”. In this context, poverty refers to hunger, lack of shelter, being sick and unhealthy, not knowing how to read, joblessness, fear for the future, lacking access to clean water, powerlessness, vulnerability, lack of opportunities and representation as well as loss of freedom, and social exclusion.

What are the concerns of the poor in urban water sector reform? Working from the experiences of the sector, it can be hypothesized that the poor have three main concerns when urban sector reform is proposed.

1. *The price of the service being delivered.*
2. *Expansion of the system in order to add new connections in previously unconnected neighborhoods and,*
3. *Service levels, such as water quality, hours of service, speed of response to service calls and the nature of administrative services such as billing, connection applications.*

Three objectives are of particular concern to the poor: affordability, service coverage, and appropriate service levels. The achievement of one of these may compromise progress toward another, or may satisfy one group of poor, to the detriment of another. It is important to balance goals in accordance with local circumstances.

²⁸*Ibid*

● **Affordability.** The poor, like other consumers, prefer low prices. Where the market lends itself to competition through contestability, the government need only ensure free entry to further this goal. Where the market is characterized by natural monopoly, steps must be taken to limit prices in other ways, and the most common approach is to set price limits. Regardless of whether prices are set out in a tariff schedule, or left to market forces, they are important to the poor because they determine whether a service is affordable. Where a minimum level of consumption is deemed beneficial to society, but is not affordable by some households, the government should consider ways of achieving affordability. Some methods for delivering subsidies are more effective and efficient than others.

● **Service coverage.** Expansion is particularly important to the poor, since they are likely to lack access to network services. Several factors can provide disincentives for expansion in poor areas, including low demand, low prices and unworkable service standards. While contracts can require private sector operators to expand in particular areas or at a particular rate (e.g. coverage targets), this is not necessarily the first-best approach. Governments should avoid tariff structures that penalize an operator for serving the poor, and ensure that service standards allow it to respond to demand.

● **Appropriate service levels.** In the case of water and electricity, minimum service qualities may need to be regulated to ensure public health objectives. This is particularly important to the poor since they lack resources to cope with illness and may be more susceptible to epidemics. At the same time, a variety of service levels are also important to the poor. Low-income households often have preferences for service levels that are different from better-off consumers, and have a particular interest in low cost services. Balancing these objectives should be a priority at this stage.

²⁹ **Private Sector Participation and Pro Poor Urban Water and Sanitation Services Provision.** February 2005. Paper presented at a Workshop on Private Sector Participation and Urban Reform in Water and Sanitation, Jos, Nigeria.

Table 2: Concerns of consumers

| Consumer Type | Concerned about service expansion | Concerned about price of service | Concerned about service levels? |
|-------------------------------|---|---|---|
| Poor Connected | No, except there may be a concern to limit connection cost cross-subsidies | Yes, strongly | Yes, concerned about hours of service and reliability as they have no storage facility |
| Poor Unconnected | Yes, strongly concerned about areas are prioritized for new networks | Yes, strongly | Yes, concerned about hours of service and reliability as they have no storage facility. Also want new networks flexibility and choice in service levels to ensure affordability |
| Better-off Connected | No, except there may concern to limit poor connection cost cross-subsidies | Less than the poor | Yes, but less so as they usually already have storage facilities; water quality will be their main concern |
| Better-off Unconnected | Yes, but know they are attractive customers for the operator; in any case can often afford to establish own alternative, non-network supply | Less than the poor | Yes, but less so, water quality and reliability will be their main concern. |

How these concerns are best addressed?³⁰

- *Keep the objective of improving the lives of the poor front and center in the design of reform*
- *Address the specific problems of informal settlements in water supply policy and related legislation.*
- *Avoid the assumption that poor customers are high risk, low return customers in both economic and political terms.*
- *Recognize that efforts to provide subsidies to the poor through water tariffs have often been unsuccessful.*
- *Recognize that the main operator may not be the best service provider for the poor, and that alternate service providers have an important role to play.*

Speaking in the same vein, Daniel Kasson³¹ says it is essential that a PSP process addresses the needs of the poor through:

³⁰ **Towards Growth and Poverty Reduction** *op cit*

- *A simpler, cheaper system for applying for connection.*
- *A facility for households to rent meters (which gives cheaper supply)*
- *Increase pipe size for community taps.*
- *New scale of tariffs to give parity between the rich and the poor.*
- *Participation of and consultation with the most vulnerable stakeholder group, particularly women.*
- *Introduction of the Water Kiosks.*
- *Disaster prevention and mitigation*
- *Management of the environment.*

2:3.2.3 Accountability

The African-Europe Faith and Justice Network (AEFJN) in a 2004 study titled “Ethical Contracts” notes that most multinational companies involved in water sector reform process in Africa often do not make their contracts public. In the field, a foreign “lead company” will create a new company in partnership with at least one local company or Para-statal Corporation. Even if the “lead company” will dictate the terms of contract, enquiries about the terms of contract have to be directed to the local company that has signed the contract with government or local authority and that operates the services.

Only if we have sufficient information on the contract itself and if local consumers in African towns and neighbourhoods are willing to point out the difficulties with certain clauses in the contracts that regulate their water and sanitation services, can we call upon the companies in Africa and their “lead company” in Europe to revise certain clauses so as to make the contracts more “pro-poor”. AEFJN therefore launched a campaign tagged the ‘*Ethical Contracts Campaign*’³² which encourages grassroots-groups in African towns to get an over view of the way local water supply systems are operating and to identify certain aspects of the contracts that deny the right of all to access to safe and affordable water.

AEFJN, urged interested communities to approach the companies that are involved in water contracts in Africa, and demand that their contracts would incorporate ethical standards and principles that regulate the management of water services under Public-Private Partnership, to assure the rights of the poor, to restrict enterprises’ scope of action, to define specific tasks for national and local governments and

³¹ **Private Sector Participation and Pro Poor Urban Water and Sanitation Services Provision** *op.cit*

³² *Guidelines for such ethical contracts that aim at the success of the Private-Public Partnerships in which all stakeholders benefit, can be found in the January 1999 UN GLOBAL COMPACT³² See: www.globalcompact.org, The Nine Principles on Human Rights, Labour Standards and Environment for ethical enterprise*

actively involve of the local consumers' community. AEFJN also asks companies to incorporate in their contracts values and principles of the *Universal Declaration of Human Rights*, the resolutions of the UN *Social Summit of 1995*, the resolutions of the *Earth Summit of Rio de Janeiro of 1992*. Another source is the proposed *Code of Conduct and Guidelines for Private Sector Participation in Sustainable Water Management*

2:3.3 Forms of Water Sector Reform

Public Private Partnerships (PPPs) are defined as:” *the combination of a public need with private capability and resources to create a market opportunity through which the public need is met and a profit is made.*”³³ Privatization³⁴ in the water sector involves transferring some or all of the assets or operations of public water systems into private hands. There are numerous ways to privatize water, such as the transfer of the responsibility to operate a water delivery system, a more complete transfer of system ownership and operation responsibilities, or even the sale of publicly owned water rights to private companies. Alternatively, various combinations are possible. Generally the four types are management contract, affermage, lease and concessions.

Table 3: Allocation of Key Responsibilities Under the Various Options for Private Sector Participation

| Option | Asset Ownership | Operations and Maintenance | Capital Investment | Commercial Risk | Duration |
|--|-------------------------------|-----------------------------------|---------------------------|------------------------|--|
| Service Contract | Public | Public and Private | Public | Public | 1-2 years |
| Management Contract | Public | Private | Public | Public | 3-5 years |
| Lease | Public | Private | Public | Public Shared | 8-15 years |
| Concession | Public | Private | Private | Private | 25-30 years |
| Build Operate Own Contracts (BOO) | Private and Public | Private | Private | Private or Public | 20-30 years |
| Divesture | Private or private and public | Private | Private | Private | Indefinite (may be limited by license) |

Source: World Bank, 1997. "Toolkits for Private Participation in Water and Sanitation".

³³ United Nations Economic and Social Council *op. cit*

³⁴ The New Economy of Water. Pacific Institute. 2002

Table 4: Forms of Water Sector Reform³⁵

| General contract type | Nature of contract | Standard characteristics | | Examples |
|-----------------------|---|--|--|---|
| | | Responsibility/Risk | Remuneration | |
| Management/ Service | <p>Service Contracts: Private sector operational assistance for specific tasks (installing or repairing pipes, collecting accounts)</p> <p>Management Contracts: transfers responsibility for management of operation and maintenance to private sector</p> | Only limited operational responsibility given to the private operator | Fixed fee or fee plus operational performance-payments based a number of pre-set benchmarks | Johannesburg Amman Gaza Monagas (Venezuela) Gambia Mali Namibia Sao Tome Principe |
| Affermage | <p>The private operator takes responsibility for the management and maintenance of the infrastructure but is not required to fund investment</p> <p>The contracting authority pays an affermage fee to the operator.</p> | <p>Greater responsibility given to the private company, including all management (technical and commercial) of existing operations. Funding of new capacity investment normally retained by the public sector</p> <p>Commercial risk exists. if there is a possibility of shortfall between revenues collected and the affermage Fee</p> | <p>The operator is paid an affermage fee by contracting authority, which is based on volume of water produced or sold.</p> <p>The water authority account and remits the difference between revenues and affermage fee owed. The affermage fee include performance bonuses related to efficiency</p> | Côte d'Ivoire Senegal Gdansk Niger Guinea |
| Lease | <p>The private operator takes responsibility for the operation and maintenance of the facility but is not required to fund investment into the system</p> <p>The operator pays a lease fee to the contracting</p> | <p>Greater responsibility given to the private operator including all management (technical) and commercial)</p> <p>Of existing</p> | The operator collects tariffs into his own or the water authority account. The operator pays a lease fee (fixed in advance, normally to cover the financing | Mozambique |

³⁵ **Private Infrastructure for Poor People** *op.cit*

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| | | | | |
|------------|---|--|---|---|
| | authority | operations Funding of new (normally retained infrastructure) by the public sector. Commercial risks exists as the operator's revenue is dependent on tariffs | costs to the contracting authority. The balance of the tariff revenue is paid to the operator. Performance bonuses may be paid related to efficiency | |
| Concession | Long term right to use all utility assets conferred on operator, including responsibility for all operation and investment Assets revert to government at end of concession period, including any created by the operator | Complete responsibility for management and investment transferred to the private operator | Revenue collected | Manila Buenos Aires Gabon Casablanca Macao Cameroon Cape Verde Bulgaria Chile |

Table 5: Responsibility for Service Characteristics Under Various Contract Types³⁶

| Contract type | Who sets the tariffs? | Who makes the investment? | Service levels That decide allowable service levels? |
|---------------|---|---|--|
| Management | State | State (decision) and Private sector. In some cases implementation is delegated to the private sector. | State and private sector (but link to state to ensure appropriate investment is allowed to meet the quality standards; usually regulated through the contract) |
| Lease | State (although tariff revisions may be proposed by the operator) | Private Sector | Private sector regulation by independent regulator |

³⁶ New Designs for Water and Sanitation Transactions *op. cit.*

2:3:4 Water Sector Reform in Africa

The key problems that hold back the development of the water sector in sub-Saharan Africa are³⁷:

- ◆ *The full cost of providing infrastructure services is unaffordable for a large proportion of the population or is politically unacceptable. This prevents utilities from raising tariffs to sustainable levels. Governments do not have the financial resources or fiscal discipline to provide explicit subsidies to infrastructure sectors. This leads to unpredictable and poorly planned patterns of investment, and “hand to mouth” existence for the sector.*
- ◆ *Governments do not pay their power and water bills.*
- ◆ *Employees of infrastructure utilities represent a high proportion of formal, unionized employment in the region and tend to be a powerful political constituency.*
- ◆ *Public sectors bodies suffer from low skill levels and poor motivation. This often results in inefficiency including acts of sabotage against the corporation. Instances abound of illegal connections, which are often facilitated by staff of Water Boards.*
- ◆ *PSP contract design needs to be targeted at the key problems affecting the sector. However, too often this is not the case.*

Up to 1997, the only privatised water services in Africa were in a few francophone African countries, which had granted water concessions to French companies. In 1999 and 2000, there was a sharp growth in the number of actual and proposed water privatisations. In quite a number of cases these were forced by the World Bank/IMF, who only granted loans for water infrastructures to African governments on condition that water services would be privatised.

³⁷ **Experience with Private Participation Initiatives in Sub-Saharan African Infrastructure. What are the Lessons for Future Policy?** May 2005 Castalia strategic advisors

Table 6: Water Privatisation in Africa

| Country | Company | Year | Method (%sold) | Main strategic investors (s) | Comments |
|--------------------------|--|------|----------------------|---------------------------------------|---|
| Burkina Fas | ONEA(office national de l'Eau) | 2001 | Managem ent contract | Vivendi | Vivendi was awarded a 5-year support and service contract (funded by world bank). The contract covers the management of the customer service and finance activities. |
| Central African Republic | SNE(Societe Nationale d'Ea ux) | 1991 | Lease(75) | SAUR | In 1995, a 15-year lease/concession contract was with SAUR. However, the former state owned company was split into 2 entities; SNE, wholly owned by government for the purposes of asset owing; and -SODECA, the private operating company (with SAUR as main shareholder) |
| Cote d'Ivoire | SODECI (Societee de Distribution d'Eau de cote d'Ivoire) | 1988 | Lease (51) | SAUR | The French company SAUR won an international tender to supply municipal water services in Abidjan. A new company, SODECI, was formed with SAUR as main shareholder. In 1987, a re organization necessitated a design of a new contract that appears to be a mix between concession and lease. |
| Guinea | DEG(Enterpris e Nationale de Distribution de l'EAUGuineen ne) | 1989 | Lease | SAUR | In 1989, DEG was split up into 2 entities; -SONEG, a 100% state-owned company responsible for owing sector assets and for planning and financing investment – SEEG, a joint venture between SAUR and Vivendi in charge of operations and maintenance. At the end of 1999, when the contract had run 10-year course, the government signed an interim 1-year lease contract. However, efforts to negotiate a new 15-year lease contract broke down, and SEEG was renationalized. |
| Mozambique | Water services in 5 cities; Maputo, Beira, Quelimane, Namputa, and Pemba | 1999 | Concessio n | Consort ium led by Agues de Portuga l | Aguas de Mozambique is a joint venture resulting from the merging of the water services of 5 cities. A 15-year water concession for Maputo and Motola, as well as a 5-year one for the other 3 cities were awarded to the consortium in 1999. Initially, in 2002, SAUR withdrew from the contract, selling its shares to Aguas de Portugal, which became the company's major shareholder. |

| | | | | | |
|-------------------|--|------|---------------------|--------------------------------|--|
| Republic of Congo | SNDE(Societe Nationale de Distribution d'Eau | 2002 | Lease | Biwater | In February 2002, a UK firm Biwater was awarded a leasing contract to operate SNDE distribution activity, beating competition from SAUR and Vivendi |
| Senegal | SONEES(Societe Nationale des Eaux du Senegal) | 1996 | Lease(51) | SAUR | This is an affermage contract which led to the creation of 2 distinct entities; -SONES, a 100 per cent state-owned company which, was to absorb the difference before total consumer tariffs and SDE's being responsible, for owning sector assets, planning and financing investments |
| South Africa | Dolphin Coast | 1999 | Concession(58) | Siza water (SAUR's subsidiary) | Dolphin coast, a 30-year concession to run water and waste water services was awarded to Siza (a sub-sidiary of SAUR). |
| South Africa | Neslpruit | 1999 | Concession | Biwater | 30-year concession contract |
| South Africa | Johannesburg water | 2001 | Management contract | Ondeo/Northumbrian | 5-year water management contracts in Johannesburg, which covers the 6 municipal water and wastewater structures of the city, and its 3 million inhabitants. |
| Uganda | Ugandan National Water and Sewerage Corporation (NWSC) | 2002 | Management contract | Ondeo(Suez's subsidiary) | In January 2002,Suez subsidiary, Ondeo, was awarded a 2-year contract to manage and operate the water supply and sewerage services of the Kampala area, taking over from a German technical assistant team. |

Source: www.psiru.org³⁸

³⁸ For a comprehensive report on privatisation of water services in Africa see: *Water Privatisation in Africa* David Hall % PSIRU, Greenwich/Johannesburg, May 2002, and *Lessons from Mozambique: the Maputo water concession*, Horacio Zandamela, at www.psiru.org Hall, Bayliss and Lobina (2002) and Berthelemy, J, C. kauffmann, M. Valfort and L. Wenger (2004).

Table 7: Major PPP's in Africa as of May 2002³⁹

| County | Company | Lead Company | Durati on | Date | %Partici pation |
|---------------------|--------------|-------------------|--------------|------|--------------------|
| Burkina Faso | Vivendi | Vivendi (Fr) | 5 years | 2001 | - |
| Cape Verde | Electra | Aguas de Portugal | 50 years | 1999 | 51% |
| Central African Rép | Sodeca | Saur (Fr) | 15 years | 1991 | 100% |
| Chad | STEE | Vivendi (FR) | 30 years | 2000 | - |
| Republic of Congo | SNDE | Biwater (UK) | ? | 2002 | ? |
| Cote d'Ivoire | SODECI | Saur (Fr) | 20 years | 1987 | 100% |
| Gabon | SEEG | Vivendi (Fr) | 20 years | 1997 | 51% |
| Guinea | SEEG | Saur/Vivendi (Fr) | 10 years | 1989 | 51% |
| Mali | EDM | Saur/IPS (FR) | 20 years | 2000 | 65% |
| Mozambique | ADM | Aguas de Portugal | 15 years | 1999 | 73% |
| Niger | SEEN | Vivendi (Fr) | 10 years | 2001 | 51% |
| Senegal | Senegalaise | Suar (Fr) | 10 years | 1996 | 51% |
| Uganda | Ondeo-Uganda | Suez-Ondeo (Fr) | 2 years | 2002 | - |

Table 8: Planned Privatisations of Public Water Operators as of 2002⁴⁰

| Country | Utility | Status of privatisation |
|---------------|---------------------|--|
| Burundi | REGIDESO | "in advanced state" |
| Cameroon | SNEC | Negotiations with Suez broke off in 2000 |
| Ghana | GWSC | Private operator in 2003 |
| Guinea Bissau | EAGB | Scheduled for 2002, negotiating |
| Nigeria | Lagos/Calabar Water | On going |
| Rwanda | Electrogaz | Private Operator in 2003 |
| Tanzania | DAWASA | Scheduled 1999-retendered |
| Uganda | NWSC | Leases for different towns |

³⁹ *Ibid.*

⁴⁰ *Ibid.*

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Experiences with Public Private Partnerships (PPPs) in Africa show the poorest sections of the populations often cannot afford the fees for installing and accessing water services provided under the commercial model. Moreover often the contracts allow the private companies to favour investments for water distribution to industrial water users and residential areas, at the detriment of the poor areas in towns or rural areas.⁴¹

Table 9: Failed Water Privatisation in Africa

| COUNTRY | COMPANY | PARENT | REASON FOR WITHDRAWAL |
|--------------|----------------------|---------------|--|
| Gambia | MSG | Sogea | Bad relations between investors and government from beginning, exacerbated by aggressive disconnection campaign. Contract unilaterally terminated in 1995, following coup. |
| Ghana | Azurix | Enron | World bank withdrew funding because of lack of transparency in contract award |
| Guinea | SEEG | Saur/Vivendi | Breakdown in contract renewal negotiations |
| Kenya | Seureca space | Vivendi | Contract suspended after outcry over contract terms; World bank commissioned study of alternative privatization options |
| Mozambique | Aqua's De Mozambique | Saur | Reasons for withdrawal not made public |
| South Africa | Fort Beaufort | Suez | Contract nullified |
| Zimbabwe | Gweru | Biwater /Saur | Company withdrew from negotiations for commercial reasons. Negotiations suspended in 1999 |

2:2:4.1: Case Studies of Pro Poor Water Sector Reforms in Africa.

Senegal water reform project⁴²In 1995, the World Bank provided a US\$100 million IDA credit to the government of Senegal to implement its reform plans. The objective of the Water Sector Project was the creation of an enabling government framework to attract a private operator, increase efficiency, and improve service delivery. The majority of the loan would finance network rehabilitation and expansion. The project had a capacity building component targeting key institutions and institutional restructuring.

⁴¹ **Ethical water contracts in Africa *op cit***

⁴² **Urban Water Sector Reform in Senegal: Innovative Contract Design to Expand Services to the Poor**

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A Water law passed by the Senegalese National Assembly in March 1995 authorized the creation of a new asset holding company, the Société Nationale des Eaux du Sénégal (SONES). A private company called Sénégalaise des Eaux (SDE) was selected as the winning bidder.

The design of the affermage contract recognized the need to allocate sufficient, specific resources to finance increased access to piped water supply for the poor. As a result, a national fund was created to allow the private operator to subsidize *Social Connections*. It aimed at providing improved services to the poor for a lower price. Social connections were free, while a connection fee was charged for ordinary connections aimed at wealthier households. SDE and SONES worked through a large NGO to identify the need for social connections.

Lessons learnt from the Senegal water sector reform⁴³

- 1. There can be no sustainable reform without political commitment, stakeholder ownership and strong internal leadership.*
- 2. Sector investment must be planned in parallel or in synergy with the utility reform and should be financed by external support agencies.*
- 3. Governments must remain committed to sector investment and implement it in a timely manner, as delays in rehabilitation and extension work will jeopardize improvement in service.*
- 4. Establishing a climate of trust and cooperation among the key actors will make reform sustainable and robust. Undertaking capacity-building activities can do this.*
- 5. The state asset-holding company must be institutionally autonomous, professionally competent and have clear financial guidelines.*

Côte d. Ivoires affermage⁴⁴

The contract between the government of Côte d. Ivoire and the private company SODECI contains several specific provisions aimed at providing benefits to the poor. The central mechanism for serving the poor is a social tariff, coupled with the social connection, which is a fully subsidized connection provided to households that meet certain criteria set by the relevant government ministry. The criteria are that: the connection is in small diameter (less than 15mm), that there are less than 4 water delivery points in the dwelling, and that the connection is not to be used for commercial purposes, nor is part of a

⁴³ **United Nations Economic and Social Council. Economic Commission for Africa. *op. cit***

⁴⁴ **New Designs for Water and Sanitation Transactions *op. cit***

commercial housing estate. Under these criteria, about 90 percent of the 300,000 connections installed since 1988 were social connections.

The social connections are financed by a charge, in addition to the water tariff, which the operator is obliged by the contract to collect from water customers. The amounts collected are deposited in a separate bank account, and the operator for disbursement of the funds prepares five-year plans. Approximately 10 million CFA has been collected and spent on social connections through this mechanism.

An amount is assigned that the operator can charge as his remuneration for each new connection; this amount allows the operator a profit, and thus there is an incentive to install new connections. There is no disincentive to serve customers with social connections as, due to the way the contract is structured, the operator is paid the same amount regardless of the type of connection. The shortcoming of this system is the fact that the operator can only install connections in legal settlements.

As an estimated 70 percent of the unserved population are non-Ivoiriens, and living in illegal settlements, they cannot benefit from the social connection policy. Another obstacle to serving the poor was the institution of quarterly billing by the operator. The poor could not meet the requirements of such infrequent billing, and many were disconnected. As a result, time billing centers and schemes to pay off arrears has been established, and the situation has improved.

2:3:5 Water Sector Reform in Nigeria

2:3:5:1 Sector Background⁴⁵

In Nigeria, the three levels of Government share responsibilities for the provision of water supply and sanitation. At the Federal level, the Federal Ministry of Water Resources (now merged with the Federal Ministry of Agriculture) is responsible for the formulation and coordination of national policies, allocation of water resources between the state and approving water resources development projects. The 12 River Basin Development Authorities under the defunct Ministry are in charge of hydrological and hydro geological data. They also provide multi purpose dams, which supply bulk water for potable water supply. The National Water Resources Institute, also under the Ministry, is responsible for training professional technicians for the sector.

⁴⁵ *Mr. Jonathan Malann, Government Policies on Water Sector Reform in Nigeria. 2006. Paper presented at a Workshop Private Sector Participation in Urban Water Supply.*

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At the State level, responsibility for provision of potable water supply is vested in the State Water Agency (SWA), which was created by all the 36 states and FCT for the purpose. Each SWA were established under an edict within its respective state to meet sound financial objectives. The SWAs are responsible to their state governments through the State Ministry of Water Resources or Public utilities. At the Local Government level, each local government has water supply and sanitation unit that is responsible for provision of rural water supply and sanitation facilities in their area although they have limited resources and skills to shoulder the responsibility.

There are key major challenges facing the water supply and sanitation sector in Nigeria⁴⁶:

1. Financial Challenges: The sectors in critical need of funds to finance the required investment in water supply facilities development and rehabilitation.
2. Commercial Challenge: Most water agencies are not commercially oriented, because of the subvention they enjoy from government, which in most cases are grossly inadequate. They tend to treat water users as consumers instead of customers. Hence, complaints from the customers are usually not given the priority they deserve which in turn makes the customers to relate by not paying their water bills.
3. Operational Challenges: Most water agencies are operating in a very constrained environment using facilities whose design capacities cannot be attained because of malfunctioning equipment and plants.
4. Institutional Challenge: At the Federal level, there are still problem relating to sector coordination, monitoring and evaluation. At the state level, despite the fact that the edicts that established the SWAs provide that they operate autonomous entities, in practice they operate like government departments closely integrated into the civil service. At the local government level, the major challenge is the lack of competent staff for water and sanitation services.

2:3:5:2 Justifications for Water Sector Reform

The recourse to Water sector reform is therefore the official strategy of addressing these challenges. In fact a 2006 World Bank Project Performance Assessment Report (PPAR) shows that some of the previous bank financed water projects in Nigeria failed because of the inefficiency of the public water agencies. The Project Performance Assessment Report (PPAR)⁴⁷ evaluated three water supply projects: The National Water Rehabilitation Project (Loan 3322-UNI) for US\$256.0 million was approved on

⁴⁶ *Ibid*

⁴⁷ **Project Performance Assessment Report**

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May 21, 1991, became effective on August 27, 1992, and closed on June 30, 2001, two years after the original closing date of June 30, 1999. The First Multi-State Water Supply Project (Credit 2372-UNI) for US\$101.0 million was approved on May 28, 1992, became effective on May 4, 1993, and closed on September 30, 2000, one year after the original closing date of September 30, 1999. The Small Towns Water Supply and Sanitation Pilot Project (Credit IDA 3350-UNI) for US\$5 million equivalent, was approved on May 18, 2000, became effective on August 1, 2000, and closed on June 30, 2004, one year after the original closing date of June 30, 2003.

The Independent Evaluation Group (IEG) rates the outcome of the National project as **highly unsatisfactory**, its sustainability as **highly unlikely**, and its institutional development impact as **negligible**. The outcome of the Multi-State project is rated as **moderately unsatisfactory**, its sustainability as **unlikely** and its institutional development impact as **modest**. In contrast, the outcome of the Small Town project is rated as **satisfactory**, its sustainability as **likely** and its institutional development impact as **substantial**. While Bank and Borrower performance were rated as **unsatisfactory** for the National and Multi-State projects, the performance of the Bank and the Borrower for the Small Towns project is rated as **satisfactory**.

One of the findings of the PPAR report is that Water **Projects cannot succeed without the political will to reform.**⁴⁸

“The failure of the National Water Rehabilitation and First Multi-State Water Supply projects show there was not effective attention paid to tracking meaningful operational performance indicators, and to creating viable Commercial systems with appropriate tariffs and systems to bill and collect sufficient revenue to enable the State Water Board to become financially sufficient. The ultimate responsibility for this failure must be shared between the political and technical authorities in Nigeria and the Bank preparation and supervision teams.”

The report further states that historically, Nigeria’s water supply and sanitation sector has been caught in a vicious circle characterized by an absence of policies that could enable efficient, sustainable service for all. Specifically, this includes:

- a) *The dearth of tariffs that reflect costs of service;*

- b) An absence of autonomous State Water Boards;*
- c) Perpetual operating deficits which deprive the state water boards of funds for maintenance, new investment and back-up power supplies; and*
- d) Grossly inadequate power supplies that cause intermittent water service and damage to electromechanical equipment.*

Thus, abysmal service quality jeopardizes the state water boards' collection of tariffs that might produce operating surpluses, which has led them to become dependent on periodic external finance to rehabilitate deteriorating systems and on handouts from the state governments to fund operating deficits.

2:3:5:3 Privatisation of Public Services in Nigeria

Water privatization is still in its infancy in Nigeria. The history of privatisation of services that were hitherto provided by the Government dates back to the promulgation of Decree No. 25 on Privatization and Commercialization in July 1988 that gave legal backing to and formally initiated Nigeria's privatization and commercialization programme. According to the decree, the nation's privatization program is expected to:

- (I) Restructure and rationalize the public sector in order to lessen the preponderance of unproductive investments;*
- (ii) Re-orientates the enterprises towards a new horizon of performance improvement, viability and overall efficiency;*
- (iii) Ensure positive returns on investments in commercialized public enterprises;*
- (iv) Check absolute dependence of commercially oriented parastatals on the treasury and encourage their patronage of the capital market; and*
- (v) Initiate the process of gradual cessation of public enterprises that can be best managed by the private sector.*

2:3:5:4 The National Policy on Water and Sanitation

In 2000, the Federal Government came up with the National Water and Sanitation Policy ⁴⁹which aims at providing sufficient potable water and sanitation to all Nigerians in an affordable and sustained manner through participatory investment by the three tiers of Government, the private sector and the beneficiary communities.

⁴⁸ *Ibid*

⁴⁹ **National Water Supply and Sanitation Policy. March 2006**

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The elements of the policy objective include but are not limited to the following:

1. *Ensure affordability of water supply and sanitation services for the citizens.*
2. *Guarantee affordable access for the poor to **basic human need** level of water supply and sanitation services.*

In order to achieve the policy objective the following strategies are enumerated relative to each of the elements of the policy objective.

- (a) Cross subsidy shall be implemented to accommodate the needs of the urban poor. Government shall subsidise for the poor where cross subsidy is not applicable.*
- (b) Privatised water supply and wastewater services (where feasible) with adequate protection for the poor.*
- (c) The Federal Government shall create the enabling environment for private operators to participate in water supply and wastewater services in Nigeria.*
- (d) The Federal Government shall promote private sector participation in the water supply industry to attract resources for lasting development of the sector.*
- (e) Reform of the water supply and sanitation sector to attain and maintain internationally acceptable standards.*

The National Water and Sanitation policy⁵⁰ states that the reform agenda is based on the following principles:

- I. ***Water is an economic good:*** Universal and sustainable provision of water supply and sanitation services is possible only if water is recognized as an economic good, subject to the relation of supply and demand. Thus people's demand for water is a function of the price of water. Their willingness to pay for water is influenced by the level of service they desire and the quality of the service they receive (people will pay if services are good). As the price of water depends on the cost of systems, appropriate technologies that conform to consumer's demands and willingness to pay should be adopted. Treating water as an economic good enhances financial viability, by ensuring that tariffs cover the costs of investments and operation and maintenance.
- II. ***Equity and poverty alleviation:*** The poor suffer the most from lack of access to services and often pay the most for water. Government subsidies to the sector have in the past benefited the

⁵⁰ *Ibid*

rich disproportionately. A 2005 World Bank publication⁵¹ states, “*Though subsidies for utility customers are popular among policy makers and the general public, they actually tend to benefit the middle class and well-to-do. Utility subsidies are often promoted as a mechanism for expanding coverage and making services affordable for the poor, but they can work against improving the quality of service to existing consumers and extending access to unconnected households*”

In addition, women bear an unfair burden, not only in performing household water tasks, but also in coping with water-borne disease in their families, particularly children. Thus, reforms in the sector should aim to provide access to water and sanitation in an equitable manner, while balancing economic and social considerations. Appropriate arrangements should be made, for instance target subsidies, to ensure access for the poorest segments of the population

- III. ***Autonomy of Waters Supply and Sanitation Services Providers:*** This principle recognizes that water supply and sanitation can be most efficiently and effectively delivered if service providers operate as businesses. As such, utilities, whether public or private, should be autonomous and free from political interference. While subject to appropriate economic and service regulation, utilities should have autonomy in their managerial, financial, and technical and personnel functions. This principle promotes enterprises that operate along commercial lines and have the incentives to provide adequate services that respond to customer demands and expectations. Additional sources of finance are also possible when water enterprises are perceived to be viable commercial enterprises.
- IV. ***Management at the lowest appropriate level:*** Water should be managed at the lowest ***appropriate*** level (appropriate being key and a function of the specific conditions in the concerned areas and communities). This principle promotes consumer appreciation for the value of water and sanitation investments. If local conditions and demand are taken into account in the planning, financing, implementing and operation of water supply and sanitation systems, the sense of ownership and willingness of communities to share in the cost and operations and maintenance will be greatly enhanced, thereby increasing the sustainability of the systems.
- V. ***Participation:*** Increasing the coverage and quality of services to ever growing populations will require the involvement of important segments of society that have been traditionally excluded.

⁵¹ **Water, Electricity, and the Poor: Who Benefits from Utility Subsidies?** *The publication authored by five staff of the World Bank, is available in PDF format from*

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The private sector (operators, commercial banks, and consultants), communities, as well as NGOs have a critical role to play in the planning, design, financing, implementation and operation of water supply and sanitation systems. Their potential for additional finance and technical expertise should be tapped. Other benefits inherent in participation are greater transparency, efficiency, accountability to the consumer, and self-sufficiency.

- VI. *Policy making and regulatory role of government:*** This principle reaffirms the fundamental role of the state as a facilitator, setting macroeconomic and sector policies that create an enabling environment, ensuring coordination among stakeholders and overseeing the performance of utilities, to accomplish its social and economic development objectives. At the same time it precludes its intervention in the actual delivery of services, which are more efficiently accomplished by autonomous entities, operating along commercial practices and enjoying incentives to perform efficiently and to increase coverage. This principle requires that the roles and responsibilities of government, utilities and other stakeholders be clearly spelled out.

According to figures contained in the National Policy on Water and Sanitation⁵², (a document of the Federal Government of Nigeria), only about 46% of the populace has access to safe drinking water. Access to water and sanitation is usually higher in urban than rural areas. Service coverage in urban areas is approximately 50%, and rural coverage is estimated to be 35% of actual demand for water supply. There are several Government and donor led initiatives to address this problem towards meeting the Millennium Development Goal 7, target 10.

2:3:5:5 The National Urban Water Sector Reform Project

One of such is the 1st National Urban Water Sector Reform Project (NUWSRP) which started in 2004 at the Federal level in Ogun and Kaduna states, and the 2nd NUWSRP 2005, at the Federal level and in Lagos and Cross Rivers. The Urban Sector Reform projects are aimed at improving water governance, encouraging private sector financing of water supply projects throughout the Federation; and specifically to improve delivery of water services to urban residents in the four states by launching Public- Private Partnerships (PPPs) for the management of the water boards. The four states are to serve as model states, and if the PPP experience is successful in the states, project will be replicated in other states in the

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTWSS/0,,contentMDK:20723886~pagePK:210058~piPK:210062~theSitePK:337302,00.html>

⁵² *National Water and Sanitation Policy. op.cit*

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country in the future. The World Bank is financing the 1st and 2nd NUWSRP with a \$120m and \$200m International Development Association IDA credit respectively. Prior, and in preparation of this, the Nigerian Federal Government had expended a \$2.0million IDA Project Preparation Facility and also in 2001, drawn another IDA loan of \$114.29 for a Privatization Support Project.

The 1st and 2nd NUWSRPs are focused at the utility level, and therefore, the States will manage implementation. There will be a separate State Project Implementation Unit (SPIU) for each participating utility at the state level, and a Federal Project Implementing Unit (FPIU) for FMWR at the federal level. The SPIUs will be staffed with relevant professional staff including a Procurement Officer or two Engineers familiar and experienced with World Bank Procurement Guidelines. All the participating states are expected to establish their own SPIU with relevant professionals among which shall be qualified and experienced procurement officers either seconded from ministries or direct recruitment under a transparent and competitive process, before July 31, 2005.

2: 6 Water Sector Reform in Lagos State

The Lagos State Water Corporation (LSWC) was set up by Edit 108 of 1984 of Lagos State and founded in 1986 as an offshoot of the Lagos Water Board for the purpose of⁵³:

- ◆ *Controlling and managing all waterworks and groundwater in the state*
- ◆ *Establishing, managing, controlling and developing new water works for the public*
- ◆ *Ensuring the supply of adequate and potable water throughout the state at reasonable charges*
- ◆ *Ensuring the conduct of research from time to time for the purpose of carrying out its functions*

Lagos, like all other states in the Nigerian Federation suffers from near total breakdown of public infrastructure including lack of physical access to safe water by most of the residents, and poor delivery of water services to less than one third of the populace presently served by the public water Board. Figures released January 2007, by the National Population Census, a Federal Government agency, puts the population of Lagos at 9m. But the Lagos State Government, that believe it should be higher, is contesting this. UN-Habitat estimates Lagos population at 13.4m and with sustained growth levels, this will rise to 23.2mn by the year 2015. Lagos State Water Corporation (LSWC) (now renamed Lagos Water Corporation via the Lagos Water Law 2004) has an installed capacity of 715 million litres per day

⁵³ *Paul Kalu, Phase 3 Drivers of change report : A Case Study of the Lagos State Water Corporation. June 2003. Prepared for the Department for International Development by Agenda Consulting Nigeria Limited.*

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(MLD) although it is operating at only 48% capacity. With water demand at 954MLD (based on water demand estimates), this puts the company's output at 343MLD or only 36% of water demand (as at 2000).⁵⁴ In absolute terms, only about 3million of the state's 13million population have access to piped water. With a projected population growth rate of 4%, water demand will increase to 1066MLD by 2020, and the financial outlay to meet this expansion is put at between \$1.8b to \$2.5b⁵⁵

Water Privatisation came to the fore because of the failure of the Lagos State Water Corporation to recover its operational and maintenance costs.

Two reasons⁵⁶ are attributed to this: First is *“due to the failure of many consumers to see potable water as an economic good with a cost. The implication is that many people default on payment for consumption made. Some have often justified their actions by clinging to the notion that water should be a free social good”*. Second, *“the collection efficiency of LSWC is at such a dismal level. Ideally, tariff and other revenue collection efforts should reflect the recovery of costs (including debt service and depreciation) and the limited accumulation of funds for future development. But collection efficiency calculated as payments received in relation to the billing is 23.6% for metered customers and 20.5% for flat rate customers. Out of the 110,000 quarterly bills issued, about 35,000 are either making partial or full payment”*

The privatization of water in Lagos State came to the forefront in 1998 when the Lagos State Government instituted the reform of the water sector and sought the assistance of the International Finance Corporation in refurbishing the Lagos State Water Corporation. But the initial concession plan was abandoned because investors did not show sufficient interests. This was later replaced by the present PSP plan under which management and affermate contracts would be awarded and be financed by the IDA \$200m credit. The overall goal of Lagos State initiative was to promote Private Sector Participation whereby the government would relinquish the management and operation of these services to the private sector while retaining ownership of the entity. (Kalu, 2003). The objectives of what was coined as the Lagos State Private Sector Participation (PSP) in water sector were listed as⁵⁷:

⁵⁴ **Principles of Privatisation and Commercialisation, Lagos state Water Corporation.**
www.lagoswater.com/psp/principlesofprivandcom.htm

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ Ademola Ariyo and Afeikhena Jerome. **Utility Privatization and the Poor: Nigeria in Focus.** July 2004.

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- (a) Bringing technical and management expertise and new technology into the water sector;*
- (b) Improving economic efficiency in the sector both in operating performance and the use of capital investment by adopting commercial principles and practices; Injecting large-scale investment capital into the sector or gain access to private capital markets to free government funds for other projects; and*
- (d) Making the water sector more responsive to customers' needs and preferences*

As stated, earlier the Lagos State water sector reform process is implemented within the context of the 2nd National Urban Water Sector Reform Project. The specific objectives of the reform process in Lagos also include preparing the Water Board for private sector managers and investors, to achieve the proposed state disinvestiture of the corporation. This involves unbundling its various units – production & distribution; asset holding; regulation; training; consulting; IT and telecommunication; and power generation. The full commercialization of operation is the final strategy to engage full PSP. This is to be achieved through a programme expected to devolve management controls to 12 competing Regional Supply and Distribution Commercial Districts, to be contracted to private sector operators.⁵⁸ The Water sector reform process will involve an hybrid of Management and affermate contracts. The programme took off September 2005 and is expected to wind up 2011.

The Lagos State Water Law enacted in 2004 created a legal framework for this reform process, and also the creation of the Lagos State Water Company as an asset company, which became the custodian of all assets of the former Lagos State Water Corporation (LSWC). It also provided for the set up of a regulatory commission. In July 1, 2005, the World Bank approved a credit of \$200m for Private investors for the implementation of the 2nd National Urban Water Sector Reform Project at the Federal level and in Cross River and Lagos State. Midterm Review is due December 1, 2008, while the closing date for the project is June 30, 2011.

The Lagos state arm of the reform programme has four components as shown on table 10:

a. Rehabilitation and Network Expansion. This component will include civil works to be executed within the three areas targeted for management contracts, namely Ikeja, Ikoyi, and Lagos Island, as well as works at the Adiyin and Akute Iju intakes and treatment works. Works will include the following: (i) Rehabilitation of treatment plant(s) & transmission line(s); (ii) service area network rehabilitation and metering; (iii) network expansion; and (iv) additional works, which may be identified at appraisal.

⁵⁸ *Timeyin Uwejamomere. Report of a Visit to Lagos State Water Corporation. 25 September, 2006*

Table 10: Components of the 2nd NUWSRP⁵⁹

| Component | | US\$000 |
|-----------|--|---------|
| 1 | Rehabilitation and Network Expansion | 164,400 |
| 2 | Public-Private Partnership Development | 7,750 |
| 3 | Service Sustainability & Project Mgmt. | 18,350 |
| | Institutional Development & Policy | |
| 4 | Reform | 7,400 |
| 5 | Contingencies & Unallocated | 20,100 |
| 6 | Re-Pay PPF | 2,000 |
| | Total | 220,000 |

b. Public-Private Partnership Development. The LSWC's vision for PSP in the sector is based on a prudent, stepwise approach, which takes into account both the size of the water sector in Lagos and the current difficult environment surrounding international financial markets. The Project will support this approach by assisting the LSWC in contracting private sector operators to establish three Private Sector Units (PSUs) in the service areas of Ikeja, Ikoyi and Lagos Island. The Project will also support the implementation of a multi-year management contract for the principal treatment and bulk transmission systems. The component will finance costs associated with transaction design and tendering for the PSUs, as well as the private operator fees for the treatment and transmission management contract.

c. Capacity-Building and Project Management. This component will assist the LSWC through: (i) Expert technical assistance in various areas, from institutional organization to financial management and Research and Development; (ii) the design and implementation of a communication and stakeholder outreach program; (iii) the purchase of office equipment; (iv) training; and (v) financing PIU operating costs.

d. Policy Reform and Institutional Development. As a contribution to developing and implementing the LSWC's long-term vision, this component will finance: (i) the design of a low income household access strategy for the Lagos water sector, (ii) studies to underpin reforming the regulatory framework for water supply and sanitation.

⁵⁹ **Project Information Document.** 2nd National Urban Water Sector Reform project.
www.worldbank.org

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A component of the programme is the Citizens participation system designed as a form of Stakeholder participation. Under this programme, the Government, through the LSWC and the Cross River State Water Board (CRWB), intends to employ several Nigerian Non-Governmental Organizations (NGOs) to develop and then implement the Customer Feed-Back System, as specified in the Terms of Reference. The contracts with the selected NGO Consultants will be for 36 months.

The objectives of the Customer Feedback System are⁶⁰:

- (i) *to promote citizens participation in the Project, in particular defend the interests of private customers and communities in the water utilities' Distribution Service Areas through continuous customer feed-back on service, performance, and future improvements;*
- (ii) *To build service-oriented relations between the customers and the utilities.*
- (iii) *To ensure that LSWC and CRWB have appropriate knowledge on customers' needs and priorities, improve performance and transparency, and adapt to changing customer preferences; and*
- (iv) *To build knowledge and capacity of customers and customers representatives in key water provision issues.*

The 2nd NUWSRP has taken off in Lagos state and what has been done include the set up of a PSP office within the Lagos State Water Company headed a Coordinator, and the award of the following feasibility consultancy contracts:⁶¹

1. *Preparation of feasibility study and detailed engineering design awarded to GKW Consult at a sum of \$0.237m*
2. *Preparation of feasibility study and detailed engineering design awarded to H.P.Gauff Ingenieure and CO. KG. At the sum of \$0.374*
3. *Consultancy services for rehabilitation of intakes and surface water treatment works with preparation of bidding documents awarded to TCE Consulting Engineers at the sum of \$0.429.*

⁶⁰ **Advertisement of a Meeting to Discuss Terms of Reference for a Proposed for Non-Governmental Organizations Participation.** World Bank web site. www.worldbank.org

Chapter Three

Methods and Tools

Four methodologies were adopted to conduct this study. They are:

- a. Consumers surveys*
- b. Interview of key informants.*
- c. Analysis of secondary data.*
- d. Focus Group discussion.*

3:1 Methodology A: Consumer Survey

The first methodology used in carrying out the study is the conduct of gender sensitive consumer surveys through the administration of up to 100 questionnaires on water users within the 14 LSWC Distribution Service Areas in Lagos State.

The questionnaire contains 48 questions structured to secure information on water user concerns including access, quality, and affordability; and also to determine their knowledge and attitudes towards the reform process. Specifically we sought to:

- *Determine extent of water use by households and sources of supply.*
- *Determine Consumers' knowledge of water sector reform process in Lagos state.*
- *The extent of community participation and consultation in the design and implementation of the process.*
- *Explore political and public attitudes towards water sector reform issues including, the PPP option.*
- *General water user concerns, including income expenditure on water use, affordability, pricing and accessibility.*

A total of 151 questionnaires were administered, with at least 8 households surveyed in each of the 14 Distribution Service Areas.

⁶¹ This information was sourced from the World Bank web site :www.worldbank.org

3:2 Methodology B: Focus Group Discussion

Three Focus Group discussions were organised. The first involved leadership of the Lagos State Chapter of the National Civil Society Network on Water and Sanitation (NEWSAN), the second comprised representatives of two citizens groups- the high income Victoria Island Residents Association (VIIRA) and the low income-Ajegunle Community Association. The third FGD involved Community leaders drawn from 10 villages on the fringes of Lagos and Ogun State, whose environments are adversely affected by the wastewater discharges from the Iju waterworks of the Lagos State Water Company.

Participants in the three FGDs were requested to:

- *Analyse the 2nd NUWSRP and the extent it could deliver water services to the poor.*
- *Suggest pro poor features that could be integrated into the Project.*
- *Identify existing LSWC programmes of civil society participation in water policy and service delivery and obstacles to citizen's access and representation in the water reform process.*
- *Identify roles that can be played by citizens organizations, and identify new opportunities for such civic engagements.*
- *Identify and analyze different Stakeholders groups in Lagos State.*
- *Suggest ways to enable access to information.*
- *Come up with action plans for further civic engagement in water sector policy -development and service delivery.*

3:3 Methodology C: Review of Secondary Data

Relevant data were reviewed to provide information on:

- *Past World Bank financed water projects in Nigeria, and reasons for their successes or failures.*
- *National and Lagos State Water policy.*
- *Water sector reform programmes in Nigeria and in other parts of the world.*
- *Current institutional, legal, and political framework of water resources management in Lagos State.*
- *Regulatory arrangements for Lagos State Water supply, and the level of their independence:*

Sources of data: World Bank web site- www.worldbank.org; Federal Ministry of Water Resources web site- www.fmwr.org.ng; National Urban Water Sector Reform Project Implementation Unit, Abuja office and web site –www.nigeriawaterreform.org; The Bread of Life Dev. Foundation Library, Lagos State Water Corporation; and WaterAid web site- www.wateraid.org/penweb

3:4 Methodology D: Key Informant Interviews

These were held with stakeholders including Government officials, civil society groups, World Bank officials, community associations, and consumer groups in Lagos state. Questions were asked on issues outlined in (3:2) above.

The following key informants were interviewed:

- a) *Dr. Yemi Suleiman. Head, Project Implementation Unit, Lagos State Water Company.*
- b) *Miss Yemisi Ransome Kuti, Stakeholder Adviser, Lagos Water Company.*
- c) *Mr. Razak Anifowoshe, Head Media Department, Lagos Water Company.*
- d) *Mr. Anthony Akpan, South West Coordinator, NEWSAN.*
- e) *Mr. Bankole Olubamise, Acting Executive Director, Development Information Network.*
- f) *Comrade Sylvester Ejiofor, National General Secretary - Amalgamated Union of Public Corporations, Civil Service, Technical and Recreational Services Employees (AUPCTRE) – overseeing the interests of workers in water boards in Nigeria.*
- g) *Comrade A.B. Alabi, Lagos State Chairman AUPCTRE*
- h) *Engineer Hassan Kida- Snr. Sanitary Engineer, World Bank Country office, Abuja.*
- i) *Mr. Jonathan Burton Country Director, WaterAid Nigeria.*
- j) *Ms. Monica, Finance Director, (then Acting as the Country Director) Heinrich Boell Foundation.*
- k) *Wale Agbojo, Programme Officer, Environment, Henirich Boell Foundation, Lagos Office.*
- l) *John Barker, Programme Manager, States and Local Government Programme, (financed by the DFID)*
- m) *Engr. O. Sunlola, Project Implementation Unit, Federal Ministry of Agriculture and Water Resources, Abuja*
- n) *Professor Lekan Oyebande, University of Lagos*
- o) *Prince Babs Adegbenro, Community Leader, Oke Aro Village, Ogun State*

Chapter 4

Discussions and Findings

4:1 Introduction

WaterAid Nigeria commissioned this study in November 2006 with the following objectives:

- a) To outline key contextual issues relevant to the success of the implementation of the 2nd NUWSRP in Lagos state;
- b) To analyze the project components with a view to identifying its strengths and/or shortcomings in relation to pro poor programming examining the implication for project focus and service delivery system.
- c) To access the National Civil Society Network on Water and Sanitation (NEWSAN'S) potential involvement in the 2nd NUWSRP and document lessons learnt from civil society engagement to date in promoting the interests of private customers and communities in the LSWC's DSAs through continuous customer feedback on service, performance and future improvements;
- d) To assess the extent of openness and commitment from the Lagos Water Company to Civil society involvement;
- e) To assess consumers' awareness of the reforms and the feedback system; and
- f) To identify contextual factors and recommend potential actions that could be taken by each of the stakeholders (including WaterAid) to further the aims of the 2nd NUWSRP in Lagos State.

The salient issue to be discussed in this Chapter is how the literatures reviewed in the earlier Chapter inform our understanding and appreciation of the Water Sector Reform project in Lagos.

A key posers is to what extend would the Water Sector Reform project increase water access to the residents of Lagos within the context of the MDGs? If we carefully study the common characteristics of countries the DFID study earlier referred to in this study rate as being '*on track*' towards meeting the MDG goals in the Water and Sanitation sector, we would discover that these characteristics are still lacking in the Lagos experience. The Lagos State Government for instance does not have a Water Policy that should have envisioned its goals and aspirations for the sector, and express in clear terms with measurable indicators and benchmarks how it intends to increase water and sanitation access to its citizens,. The policy should have also stated short, medium and long term financing plans for the sector.

Moreover, a Lagos State Water Policy should have been the driver of the reform process, and this should have been formulated before the enactment of the Lagos Water Law 2004. The World Bank

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recommended path to Water Privatisation outlined in Table 1 of this study also states that the development of a ‘Central Policy Paper with Principal Objectives’ is one of the essential steps of the Preparation phase. In the absence of such a policy it is difficult assessing the likely impact of the 2nd NUWSRP within the context of the State’s Water plans.

Also the UNDP HDI report 2006 for instance states that *“while the private sector may have a role to play in delivery, public financing holds the key to overcome the deficits in water and sanitation”*. What are the plans of the Lagos State Government to extend water services to over two thirds of the metropolis who are presently unserved by the Water works and which would not benefit from the 2nd NUWSRP?

The three zones selected for the take off of the 2nd NUWSRP in Lagos are Ikeja, Victoria Island and Ikoyi- all high income areas, and as a World Bank official stated in an interview reproduced in the latter section of this Chapter, the Lagos State Government has not displayed enough enthusiasm to prepare designs and feasibility for the implementation of the project in other zones encompassing low income areas. It could therefore be safely stated that while the 2nd NUWSRP would boost water supply to high-income consumers in Lagos, it might not immediately benefit the low-income consumers. The contribution of the 2nd NUWSRP in Lagos to meeting the MDG goals in this respect in Lagos metropolis is likely to be insignificant.

As clearly enunciated in the various literatures reviewed, a key ingredient of successful Water Sector Reform is the existence of an independent and trusted regulatory institution. Though, the Lagos State Regulatory Commission as provided in the State’s Water Law is yet to be established, its independence may be compromised by the provisions that vests the Lagos State Governor with the power to appoint several members of its Board to be drawn from Professional bodies and the State’s civil service. While stakeholder participation is critical to project sustainability, the Lagos State Water Law does not make any provision for Stakeholder representation in the Board of the Regulatory Board. Unless these defects are rectified through an amendment of the Lagos State Water Law 2004, the Regulatory Commission may operate like another government agency lacking autonomy and independence to objectively consider the needs and concerns of all stakeholders, particularly the poor.

Though the 2nd NUWSRP is being financed by a World Bank/IDA credit, its implementers are not respecting the WB recommended path to water privatization outlined in Table 1, page 22 of this study.

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For instance, on the vexed issue of the Lagos State Water Law 2004, the WB recommends preparation of briefing papers to facilitate a robust public debate and discourse on the legal package, but as it would be shown in the latter sections of this Chapter, the law was reportedly hurriedly enacted with little public inputs.

However, the Lagos State PIU is intending to carry out Public Opinion Surveys and Public Relations Campaigns as part of a ‘Citizens Participation Programme’, and in consonance with some of the programmes recommended by the WB model path to Water privatization in Table 1 of this study.

One of the ways the 2nd NUWSRP could respond to the needs of the poor consumers is by “*identifying poor customers and vulnerable groups and determining their needs, with special focus on gender issues; this process must involve the poor themselves*” (See Section 2:3:3 of this study). There are no records that show that a survey was carried out by the Lagos State Government prior to the commencement of this project, or a survey is being carried out now by the Lagos PIU in order to identify the locations and population of the poor customers within the 12 Zones earmarked to benefit from this project; in order to gather data that would inform policy on water pricing, provision of subsidies or social connections, and provision of other services for the poor and vulnerable. As a matter of fact, an official of the NUWSRP Federal Project Implementation Unit, confirmed to this study team in an interview reproduced in the latter in this Chapter that a Poverty Study was not prepared for the 2nd NUWSRP being implemented in Lagos and Cross River States.

One of the main planks of a successful Water Reform Process is Policy and Financial accountability as well as transparency. The Lagos PIU is yet to build its capacity in this respect. Information on the implementation of the reform process is not made available to the public in a structured manner and the mechanisms for the Lagos PIU interface with the public (such as Public meetings, hearings, and dialogues) are either undeveloped or yet to be implemented. Our findings reveal that the Lagos PIU has not organized any meeting so far to brief or request the inputs of stakeholders on its programmes. The World Bank Path to Water Privatisation also suggests the organization of a Stakeholders workshop on Structures and Policy issues as part of the preparation phase. Such a workshop expected to focus on Sector structures, Tariff policies, subsidies, reform, Legal and regulatory issues and implications, Performance standards for the Management contractors, and Legislation and Regulations issues is yet to be organized by the Lagos PIU.

Findings of this study are further discussed under the following headings:

4:2 Contextual Issues Relevant to the Success of the Project

4:2:1 Political will to reform

4:2:2 Public acceptance of the reform agenda

4:2:3 Water Governance

4:2:4 Financial and Implementation Arrangements

4:2:5 Legal framework

4:2:6 Environmental Management

4:3 Project Components -Strengths and/or Shortcomings and Pro Poor Focus

4:3:1 Maintenance merits priority over new works

4:3:2 Pro Poor focus

4:4 LSWC Analysis of Customer's Needs and Priorities to Improve Performance and Transparency.

4:5 Lessons from NEWSAN's and Civil Society Engagement.

4:6 Openness and Commitment of LSWC to CSO involvement

4:7 Consumers Awareness of the Reforms and Feedback System.

“Our institutions have suffered decay technically, managerially, and administratively; and we have to rebuild the confidence of the public in them”

-Engr. Sunlola, NUWSRP Project Implementation Unit, Abuja

“Many publicly owned utilities are failing the poor, combining inefficiency and unaccountability in management with inequity in financing and pricing”

-UNDP HDI report 2006

“I don't see any alternative to privatisation. Until we have an efficiently manned public service, we do not have any other choice. Unless we bring in the private sector into service delivery, we are not going to have the MDG goals”

- Ms. Yemisi Ransome Kuti, Lagos Water Board Stakeholder Adviser

4:2 Contextual Issues Relevant to the Success of the Project

4:2:1 Political Will to Reform

Water projects cannot succeed without the political will to reform says a World Bank study⁶². The failure of the National Water Rehabilitation and First Multi-State Water Supply projects show there was not effective attention paid to tracking meaningful operational performance indicators, and to creating viable commercial systems with appropriate tariffs and systems to bill and collect sufficient revenue to enable the State Water Board to become financially sufficient. The ultimate responsibility for this failure must be shared between the political and technical authorities in Nigeria and the Bank preparation and supervision teams.

According to key literature on water issues as they relate to the MDGs and governance processes, seven key elements of governance reform that contribute to the government's ability to deliver sustainable water services can be broadly identified:

- *Good diagnosis of water-poverty-economy linkages;*
- *Development of national policy frameworks for water;*
- *Coordination of institutions within the sector;*
- *Development of financing plans and budgeting;*
- *Implementation through a process of decentralisation;*
- *Engagement with and reaction to popular opinion and voice; and*
- *Monitoring and evaluation.*⁶³

The first two elements focus on ensuring political buy-in and policy creation for the water sector. However, while a strong water policy or PRSP is critical to ensuring progress, its practical implementation is often lacking. Therefore the remaining five elements are focused on aspects of policy implementation. These categories are by no means definitive or exclusive, and can overlap and encompass a variety of sub-issues. For example, clear regulation for the water sector, implemented and monitored by a dedicated regulatory body, is a priority for ensuring good governance, but it is not

⁶² **World Bank Project Performance Assessment Report** *op.cit*

⁶³ **Millennium Task Force Water Report**, 2003 ODI/WaterAid, 2004 *Quoted in .Department for International Department study on Meeting the Water and Sanitation Millennium Development Goal. May 2005. op cit*

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included as a distinct element because it tends to cut across several of the categories – strong regulation requires policies in place, good coordination among institutions and the regulatory body, as well as monitoring to ensure compliance with regulations. Other issues such as private sector participation are similar.

The Project Appraisal Document⁶⁴ states that prior to the take off of the 2nd NUWSRP, the Nigeria Government both at the Federal and State level had demonstrated a political will to reform the Water sector through the following activities:

1. *Requesting and using for preparation a \$2.0 million Project Preparation Facility.*
2. *Procuring during preparation multiple engineering consultancies to design civil works to be financed by the project.*
3. *Undertaking extensive public and stakeholder consultations in Lagos during preparation; and*
4. *Passing a comprehensive new water law in Lagos State.*

This study confirms some level of political will to reform both on the part of the Federal Government and the Lagos State Government. While the National Policy on Water and Sanitation adopted by all stakeholders in 2002 supports private participation in water supply at the Federal, State and Local Government levels; the Lagos State Government has created an enabling Legal framework for the reform process through the enactment in 2004 of the Lagos State Water Law.

However, as will be shown in the latter sections of this chapter, the Lagos State Government has to demonstrate greater political commitment to the reform process. Though the State plans to implement the components of the 2nd NUWSRP in 10 out of the 12 zones in the State, engineering designs have only be done for only three zones viz- *Ikoyi, Victoria Island and Ikeja*, as of the time the study was being completed. This study confirms that several public and stakeholder meetings took place during project preparation, findings however, as argued in the latter sections of this chapter, indicates that these meetings were not *consultative* in nature, or *extensive* in stakeholder participation. Lastly, while it is true that a Water law is in place in Lagos State, several strategic provisions of the Law⁶⁵ are yet to be implemented since its enactment two years ago.. These provisions include:

- (a) *The constitution of a 9 member Board of Directors for the Lagos State Water Company.*

⁶⁴ **Project Appraisal Document** *op.cit*

⁶⁵ **Lagos State Water Law 2004**

- (b) *The establishment of Lagos Water Sector Complaints Centre.*
- (c) *The establishment of a Lagos State Water Regulatory Commission*
- (d) *The establishment of the Lagos State Water Court.*
- (e) *The unbundling of the Lagos Water Company through the establishment of the following six subsidiaries⁶⁶:*

- LSWC Water Utilities Ltd/GTE
- LSWC Property and General Services Com. Ltd.
- LSWC Consulting Ltd.
- LSWC Information Technology and Telecommunications Company Ltd.
- LSWC Training and Technical Research Centre Ltd; and
- LSWC Power Generation Company.

“Several components of the law are not being implemented. The management is only implementing the side that is suitable to Government”

*- Comrade A.B. Alabi, Lagos State
Chairman of the AUPCTRE*

4:2:2 Public Acceptance of the Reform Agenda

There have been several debates on the merits and demerits of Private Sector Participation in delivery of Water services in Nigeria. But interestingly many respondents of the consumers’ survey conducted as part of this study offered support for the on going PSP. Paradoxically, most of these respondents said they do not have a good understanding of what the PSP process is all about, and were not consulted during project design.” *Do you support the Private sector participation in the urban water sector reform programmes?*”, was one of the questions asked water consumers. 98 out of the 148 or 64.9% of the respondents supported the private sector participation in water supply in Lagos state, and 50 respondents (or 33.1%) opposed the programme.

This finding of public support for the privatization scheme is in sharp contrast with a 2000 study on the aspirations of the African and Nigerian poor, Narayan, et. Al. (2000).The study states that the African and Nigerian poor are seeking for right-based approach to eradicating poverty, rather than a market based approach (adopted by the Poverty Reduction Strategy Papers of most National Governments in

⁶⁶ *Information gathered in the course of this study shows that only one subsidiary company had been created and a General Manager appointed for it. The company is LSWC Property and General Services Company Limited. We also learnt of the creation of a Water Supply Section, headed by a General Manager, but the law does not provide this. The most similar provision of this nature under the Lagos State Water Law2005 is for the creation of LSWC Water Utilities Ltd/GTE.*

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Africa including Nigeria).⁶⁷ Table 11 and 12 below of the Voices of the African and Nigerian poor further explains this.

Table 11: Voices of the Poor and Poverty Reduction Strategy Papers (PRSPs)

| Sphere | Policy Aspirations of the African Poor | Policy Recipes of typical PSSPs |
|----------------|--|--|
| Education | All school expenses must be lowered | Reduce or eliminate primary school fees, apply user fees at higher levels |
| Health | Curative treatment should be free and drug prices affordable | Free preventive health care: user fees in curative health, except for specified diseases |
| Agriculture | Distributive land, reduce land rents, subsidise basic inputs and credits, no privatization of common land: no dismantling of government cooperatives | Develop land markets, promote micro- credit schemes; and eliminate marketing boards and subsidies and taxes on Agriculture |
| Labour Market | Provide employment, eliminate measures that increase unemployment | Reduce rigidities in Labour market |
| Macro policies | Expansionary macro policies: ‘when wages decline, crop prices fall’ | Fiscal and monetary prudence |
| Distribution | High sensitivity to class polarization | Careful avoidance of distributional trade offs |
| Private Sector | No mass privatizations; anti- big business: favour local money lenders; cheap credit to the poor | Private sector led development; micro credit; privatization; eliminate financial repression to encourage saving |
| Corruption | Eliminate nepotism and corruption and corruption in health care, employment, justice and security services. | Should constitute part of a broader agenda, with special emphasis on high level corruption vis a vis business |

Source: Narayan, et. Al. (2000) cited in AFRODAD and Centre for Democracy and Development (CDD) Poverty Eradication Project Field report

⁶⁷ *Poverty Reduction Strategy Papers (PRSPs) describe a country’s macroeconomic, structural and social policies and programmes to promote growth and reduce poverty, as well as associated external financing needs. Governments through a participatory process involving civil society and development partners, including the World Bank and the International Monetary Fund (IMF) (Quoted in AFRODAD, 2000), prepare pRSPs. Nigeria’s PRSP now encapsulated in Nigeria’s NEEDS document promotes complete privatisation or concession of major public enterprises as Poverty reduction strategy.*

Table 12: Voices of the Nigerian Poor and Poverty Reduction Strategy Papers (PRSPs)

| Sphere | Policy Aspirations of the Nigerian Poor | Policy Recipes of typical PSSPs |
|----------------|--|--|
| Education | Free education | Reduce or eliminate primary school fees, apply user fees at higher levels |
| Health | Free curative and affordable drugs that are not fake | Free preventive health care: user fees in curative health, except for specified diseases |
| Agriculture | Access to fertile land for cultivation. Reform of the Land Use Act. | Develop land markets, promote micro- credit schemes; and eliminate marketing boards and subsidies and taxes on Agriculture |
| Labour Market | Provide employment for all. | Reduce rigidities in Labour market |
| Macro policies | Expansionary macro policies. | Fiscal and monetary prudence |
| Distribution | Equitable distribution | Careful avoidance of distributional trade offs |
| Private Sector | No privatization of Public utilities and social services | Private sector led development; micro credit; privatization; eliminate financial repression to encourage saving |
| Corruption | Fight against corruption in a comprehensive and non-selective manner | Should constitute part of a broader agenda, with special emphasis on high level corruption vis a vis business |

Source: Narayan, et. Al. (2000) cited in AFRODAD and Centre for Democracy and Development (CDD) Poverty Eradication Project Field report

What accounts for these seeming contradictory findings? There is really no contradiction between this report and Narayan's. One of the findings of this report supports Narayan's position that Nigerians would ordinarily aspire for the provision of social services by public utilities. When we asked respondents how their common water related problems could be resolved, 81 or 53% said the solution lies in an efficiently managed public utility, while 57 or 37.7% said Private Sector Participation in water supply is the panacea.

Perhaps most Nigerians have been frustrated by the abject failure of the State agencies to efficiently deliver essential social services and now look up to the Private Sector to make a remedy. In any case, presently most, individual households and firms generate most of their electricity and water supply independently. In Lagos State for instance, the Lagos Water Company supplies water to less than 3m of its 9m population⁶⁸(according to official figures). The rest of the populace rely on Private Water vendors, dug wells and boreholes to access water. It is arguable that if Lagosians have been used to good service under the public water utility, they will not support Private sector arrangement under which they now hope to enjoy better services delivery. Expectedly, a majority 109 or 72.1% of respondents interviewed hope the greatest benefit of the introduction of the PSP will be improved access to water

⁶⁸ *Principles of Privatisation and commercialization op.cit*

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services. Therefore support of many respondents for the PSP option can be explained by the fact that Lagosians are presently offered very poor services by the LSWC, and they felt if PSP in water supply could improve the quality of service delivery, so be it

In summary, public support for the PSP in water supply is borne out of the failure of the postcolonial state to deliver social services over the past 46 years. A report by Human Rights Watch released this January corroborates this position. The report states that:

“Nigeria has produced several hundred billion dollars worth of oil since independence in 1960, but ordinary Nigerians have derived appallingly little benefit from all of that wealth. This situation exists primarily because successive governments, both military and civilian, have stolen or misused much of Nigeria’s tremendous oil wealth. The head of Nigeria’s Economic and Financial Crimes Commission has stated that the country lost as much as \$380 billion to corruption and waste between 1960 and 1999, the year Nigeria’s current government came to power. Nigeria’s federal government has made important—albeit limited—strides towards becoming more transparent and responsible in its own use of public resources. But it has failed to stem rampant corruption in the country’s state and local governments, and that failure has crippled governments’ capacity to realize their citizens’ rights and deliver the services poor Nigerians need most.”

4:2:3 Water Governance

The PAD states that *“all technical assistance, institutional building and investment sub projects will be managed and supervised by a State Project Implementation Unit (SPIU) in each participating state. Each SPIU will be headed by a Senior Coordinator who will manage an interdisciplinary staff comprising engineers, PSP transaction expert, low income service advisor, Procurement officers and core communications staff”*⁶⁹

"Many countries face a governance crisis rather than a water crisis. Good water governance requires effective and accountable socio political and administrative systems adopting an integrated water resources approach with transparent and participatory processes that address ecological and human needs".

⁶⁹ PAD, op.cit page32

Table 13: Financial and Implementation Arrangements

| |
|---|
| Creditor: International Development Association (IDA) |
| <ul style="list-style-type: none"> • Total Project cost: US\$210.5m • IDA financing \$200m credit with a 40-year maturity. • Counterpart financing US\$10.5 to be shared by the Federal Government of Nigeria and Lagos and Cross River States • Project Implementation start: November 1, 2005. • Expected effectiveness date: November 1, 2005. Expected closing date: June 30, 2011 |

| |
|---|
| Borrower |
| <ul style="list-style-type: none"> • Government of Nigeria via the Federal Ministry of Finance |

| |
|---|
| Executing Agency |
| <ul style="list-style-type: none"> • Federal Ministry of Water Resources (now merged with Federal Ministry of Agriculture) via the Federal Project Implementing Unit (FPIU) • Project Cost \$9.7m • Special \$ accounts for FPIU |
| Functions |
| <ul style="list-style-type: none"> • Overall Project Monitoring and Evaluation • Management and supervision technical assistance sub projects in the Federal Component |

| |
|---|
| Implementation Agency |
| <ul style="list-style-type: none"> • Project Implementation at State Level via State Project Implementing Unit (SPIU) headed by a Coordinator. |
| Project Cost. |
| <ul style="list-style-type: none"> • Lagos \$150.8m. Cross Rivers \$50.0m • Special \$ account for each state |
| Functions |
| <ul style="list-style-type: none"> • Management and supervision of all technical assistance, institutional building and Investment sub-projects. |

| Estimated Disbursements (Bank FY/US\$m) | | | | | |
|--|-------|-------|--------|--------|--------|
| FY | 2007 | 2008 | 2009 | 2010 | 2011 |
| Annual | 30.00 | 35.00 | 40.00 | 65.00 | 30.00 |
| Cumulative | 30.00 | 65.00 | 105.00 | 170.00 | 200.00 |

Notes:

- IDA disburses the credit through special accounts consisting of (a) Federal special account (FSA) managed by FPIU; and (b) 1 State Special Account (SSA) for each state.
- The Implementing agency- Lagos State PIU reports directly to the WB office in Washington DC, but the WB office in Nigeria and the FPIU in Abuja performs oversight functions.
- The implementation period of the 2nd NUWSRP is 2006-2011, the borrower of the \$200m credit is the Government of Nigeria represented by the Federal Ministry of Finance, the executing agency of the Federal components is the Federal Ministry of Water Resources, and the executing agencies of the state component are the Lagos Water Corporation and the Cross River State Water Board. Overall Project Monitoring and evaluation will be undertaken by the Federal Project Implementation Unit and the Federal Ministry of Water Resources (now merged with the Federal Ministry of Agriculture).

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It is not very certain that the Lagos State PIU has been set up as specified in the PAD. The Coordinator of the Lagos State PIU, Dr. Yemi Suleiman said the Lagos Water Company PIU is not independent of the Water Company, but the state runs what it calls an 'entity system' whereby the operations of the State's PIU are carried out as part of the overall activities of the State Water Company. As such, the SPIU utilities relevant staff of the LSWC to implement its operations. However, this assertion is faulted by both Engineer Hassan Kida and Engr. O. Sunlola of the World Bank office in Abuja and the 2nd NUWSRP Federal Project Implementation Unit respectively, who both allege that the Lagos SPIU is not properly set up, as of now.

The composition or set up of the Lagos State PIU becomes an issue because of the present low level of project implementation. Information sourced from the WB web site shows that out of a total credit of \$195m that is available for disbursement in the project in Lagos state over a six-year period, only \$2.9m had been disbursed as at September 19 2006, leaving an un disbursed balance of \$192.12⁷⁰. The Sample Procurement Plan⁷¹ for the 2nd NUWSRP in Lagos state shows that about 52 goods rehabilitation works and purchases were expected to have be done for the SPIU office, and in Adiyin/ Iju water works, as well as in Lagos Island and Ikeja/Oshodi network area in the year 2006. Most of these activities were not implemented. Engr. Sunlola attributes this slow pace of work in Lagos to the poor staff strength of the SPIU. **(See interviews below)**

⁷⁰ *Status of Projects in Execution– FY06 SOPE. Operations Policy and Country Services September 19, 2006. Source: World Bank web site*

⁷¹ *Sample Procurement Plan CY2006. The 2nd National Urban Water sector Reform project. Sourced from World Bank web site*

Lagos is performing below expectations-World Bank

Lagos is still at 2% of project implementation. They have not achieved anything yet. They divided Lagos into 12 zones and they said they want the Project to cover 10 of these 12 zones. But they have gotten Consultants to do designs in only three zones/DSAs- Ikoyi, Victoria Island and Ikeja. They said they would start with these three zones. But we are pressing that what of the other seven zones, and they said they have to get approval from Government. By now- one and a half years after the approval of the project- the design for all the ten zones should have been completed.

Bureaucracy in Lagos State is causing this delay. It is a governance Issue. They have only one person in the Project Implementation Unit. Whereas they should have an Accountant, an Engineer, and other officers. And they are not willing to look into all these. They have taken money, they don't want to utilize it. And they are paying a 0.7% commitment charges for the amount not utilized as when due. What can we do, ours is just to advise that there is a delay in the implementation. There has to be a lot of public education on World Bank processes. The Bank just gives money and we don't want to interfere in the micro level of the project and the daily management of the project. The whole problem with World Bank projects in Nigeria is the way we implement policies. When it comes to implementation, we always fail, because of our own selfish ends. And the bottom line is poverty.

-Engr. Hassan Kida, Snr. Sanitary Engineer, World Bank Office, Abuja(Kida is the officer that supervises Word Bank Water and Sanitation Projects in Nigeria)

Lagos State PIU not properly constituted- FG

“The performance of the Lagos State Water Board since the project took off is far from being satisfactory. On clear indication of efficiency is disbursement of funds. If you are not disbursing, you cannot impact on the people. If the rate of disbursement is slow, people can say you are static. The management set up is responsible for this. They are administratively inefficient, the organization is incapacitated in many ways, and they are not translating potentials into reality for the resources they have. In dealing with them, they are a difficult people. You need to get so hard to get so little. The situation where you have only one man running the Lagos PIU is not acceptable to us, to the World Bank, and the Federal Ministry of Finance. We are tackling this headlong. Some people do not subscribe to the spirit of the project and this is not acceptable.”

-Engr O. Sunlola, NUWSRP Project Implementation Unit, Abuja

We have to follow due process -Lagos State Govt.

There is a misconception about our performances. The Project Appraisal Document says that within the first year what will be disbursed is \$6m. The Project became effective October 2006. To date, we have disbursed all contracts awards that have been cleared by the World Bank, and this amounts to \$6.1m. So whoever is saying that it is only 2% have been disbursed is either ignorant of what is to be disbursed or simply being mischievous. People have to be realistic, we should not expect too much. Bureaucracy is everywhere. We must follow due process, every contract must follow due process.

By the end of the year 2007, I can assure you that we would have disbursed close to the amount projected for 2007. If we don't achieve the disbursement for 2007, I will resign. But the truth is that there is no capacity in the World Bank Country office in Nigeria. Every document we sent to them, the response has to come from Washington DC.

The World Bank office in Abuja does not have any Engineer, everything goes back to DC, and this is delaying our project implementation. The WB office in Abuja needs to be strengthened, if they want us to move faster.

On the SPIU, it is not true to say that we have a one-man team. The WB had never complained about that. we have the core team of officers in place-the Project Coordinator, Engineers, Consultants, and Information Technology Consultants. We operate an entity system whereby the SPIU works through the departments of the Lagos Water Company. The World Bank itself says they want entity reporting. We are the only State Water Board that is allowed to run on the basis of the entity reporting.

Our PIU is not separated from the rest of the entity- the Corporation. It works online along with the Corporation. The PIU has a seamless operation with the corporation.

-Dr Yemi Suleiman, Coordinator, Lagos State Project Implementation Unit

4:2:5 Legal Framework

One of the initiatives of the PSP process is the enactment of a Lagos State Water Law 2004, which repealed the Lagos State Water Corporation Law Cap. L55 2003. The Law has several provisions that spelt out how the PSP system will be operated in the state. Such provisions include the establishment of a Lagos State Water Company to be governed by a Board of Directors, the creation of six subsidiaries for the new company, the establishment of Lagos Water Sector Complaints Centre, the establishment of a Lagos State Water Regulatory Commission, and the establishment of the Lagos State Water Court. The enactment of the Law itself has been mired in controversy with civil society groups claiming that they were not consulted before it was enacted.

“They announced the law overnight and every one of us was shocked. We asked why they enacted the law overnight; they said it is Government policy. None of the workers had any contribution before the law was enacted. We were very shocked”

-Comrade A.B. Alabi, Lagos State Chairman, AUPCTRE

The consumer survey also attests to this. 131 or 87.4% of the consumers that responded to our questionnaires said they are not aware of the existence of any Water Sector Law in Lagos state, and 120 or 79.4% said if such a law exists they were not consulted before it was enacted. When we asked consumers to indicate their opinion about the law, 126 people out of 144 that responded (83.4%) said they have ‘No Comments’, 4 people said it is a ‘good law’, 3 say it is a “bad law”, 12 people said the ‘law should be reviewed’, and 3 said the law is ‘anti poor’. The Lagos State Water Company welcomes an initiative to review or amend the Law. In the words of Dr Yemi Suleiman of the Lagos State PIU *“if the Law as it is now is not supportive of people’s aspirations, anyone can bring an amendment”*

But the salient issue on the law as earlier discussed in this chapter is that several strategic provisions of the law, which would have increased independence, and openness of the new Lagos Water Company are yet to be implemented. This calls for concern. Even if it is going to be reviewed or amended, it is important that the full provisions of the law as it is presently be subjected to practice, to identify its strengths and weaknesses.

4::6 Environmental Management

All major development projects in Nigeria are subject to mandatory Environmental Impact Assessment (ESIA) pursuant to EIA Act. No. 86 (Decree No. 86) of 1992. Several Federal and State Laws, and the World Bank's Operational and Procedural Policies, specifically OP 4.01 requires the Nigerian government to prepare an Environment and Social Management Framework, ESMF, which establishes a mechanism to determine and assess future potential environmental and social impacts of the participating State Water Agencies (SWA's) subproject investments under the proposed NUWSRP2, and then to set out mitigation, monitoring and institutional measures to be taken during design,

implementation and operation of these subprojects to eliminate adverse environmental and social impacts, offset them , or reduce them to acceptable levels.

The Lagos State Water Corporation takes our water and gives us waste.

“The major road leading to our community has almost been severed by the Adiyari river, which has been polluted by Industrial waste from the Lagos State Water Corporation production station at Oke Aro.

The constant discharge of Industrial waste has expanded the channels through which the river flows,. As a result the bridge across the Adiyari River has collapse. This has brought untold hardships to residents of the community. Commercial buses no longer Pl the road. Industrial chemicals from the production site of the Lagos state Water Corporation has also destroyed fishes and other animals. The Lagos state Water Corporation is responsible for the problem we are facing. They take our water and give us waste.”

**-Mr. Sola Omoyungbo,
Chairman of Otemuyi Community
Development Association (CDA),
Sunday Punch February 20, 2000.**

OP 4.01 further requires that the ESMF report must be disclosed as a separate and stand alone document by the Government of Nigeria and the World Bank as a condition for Appraisal. The disclosure should be both in country and at the Infoshop of the World Bank. The date for disclosure must precede the date for appraisal of the Project. The period of the appraisal of this project was April 4-12, 2005.

The Integrated Safeguards datasheet contained in the World Bank web site under Section BP 17.50 Public disclosure contains a question which states as follows: *Have relevant documents been disclosed in-country in a public place in a form and language that are understandable and accessible to project-affected groups and local NGOs?* And the answer given there is ‘Ongoing’.

The Nigerian Government has prepared an EIA for the 2nd NUWSRP but this has not publicly been disclosed as required by law. The only form of disclosure is the publication of the reports in the World Bank website: at www.worldbank.org/infoshop, but what the law requires is in country public disclosure at a designated venue, allowing comments to be made within a stipulated time. The Lagos State Government has also prepared an Environmental Assessment study for the construction works to be undertaken under the programme in Lagos State, but this has not been publicly disclosed as required by Nigerian laws. Dr. Yemi Suleiman of the Lagos State Water Company assured that the state is “*planning to disclose the EIA publicly*”.

The 2nd NUWSRP is rated Environmental Category B.⁷² The Project Appraisal Document states that in Lagos State, an existing environmental issue is the disposal of treatment plant sludge at Iju and Adiyen. “*Currently, the clarifiers do not work, and the slightly acidic sludge is discharged into nearby rivers. River ecology and hydrology is affected at Adiyen, the sediments are contributing to periodic flooding of a community road*”

The Lagos state Environmental Assessment study⁷³ states that “*Adiyen and Iju have impacted quite negatively on the neighboring communities⁷⁴ from the points of environmental geo chemistry, ecology and environmental engineering. The water quality has*

Save us from Lagos State Water Corporation!

“The entire members of Araromi, Oke Odo Community in Agbado/Oke Aro area of Ifo Local Government, Ogun State wish to draw the attention of Nigerians to the destruction of our environment by the Lagos State Water Corporation (LSWC). The bridge along the only access road to our community has been submerged by water from Adiyen production plant of the corporation, and this has almost cut us off from the rest of the world.

We tried to reconstruct the bridge, but it has again been submerged, while our environment continues to be polluted through constant discharge of affluent”

-Prince G.B. Adebajo, Community Chairman of the Araromi, Oke Odo Community in Agbado/Oke Aro area of Ifo Local Government, Ogun State

⁷² **PAD** op.cit

⁷³ **Environmental Assessment Study for the Lagos Water Corporation under the World Bank Assisted Project Preparation Facility for the Second National Urban Water Sector Reform Project. Final report. July 2005.**

⁷⁴ *The affected communities according to our findings are Matogun, Araromi, Oke Odo, Ishaga, Legun, Maidan, Osere, Orudu Oke, Orudu Isale, and Agira all in Ifo Local Government in Ogun State.*

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reduced considerably as some of the waters, plants and soil contained more heavy metals in the downstream sector of River Adiyari when compared to the upstream sector.”

‘Furthermore, the primary productivity in the downstream of River Adiyari is quite lower than that of the upstream of River Adiyari. In addition, much siltation and eutrophication were found to be more in the downstream of River Adiyari than the upstream. Because of much siltation, the River Adiyari downstream has refused to flow normally, and this has always led to flooding of the river whenever it rains. In addition, the siltation of the riverbed coupled with eutrophication has resulted in the area being a breeding ground for mosquitoes. This has eventually led to prevalence of malaria in the community”

The Lagos state Environmental Assessment study recommended three mitigation plans, which are:

- (a) Total rehabilitation of the two plants especially the sedimentation tanks, the filtration beds and the pumps.*
- (b) Dredging of River Adiyari from the point of discharge of River Adiyari plant up to the downstream sector belong Iju plant, to allow for free flow of River Adiyari.*
- (c) Formation of community based River Adiyari management forum to sustain the benefits of (a) and (b) above.*

The study also recommended that these recommendations “*can only be meaningful after the rehabilitation of waterworks have been completed and properly operated*”⁷⁵

The fact that these recommendations falls short of measures that need to be urgently taken to arrest and mitigate the negative environmental impacts identified above is shown in an open letters written by Prince G.B. Adebajo and Mr. Sola Omoyungbo in the boxes above. A palliative programme has to be implemented to address this environmentally problem and enable the residents access the only community road that links them to other areas, pending the implementation of works to permanently solve this problem.

⁷⁵ *Ibid*

4:3 Project Components -Strengths and/or Shortcomings and Pro Poor Focus

4:3:1 Maintenance Merits Priority over New Works

The consumer surveys confirm the popular belief that most Lagosians are not connected to the public water supply even within the 14 Government designated distribution service areas. Only 41 people representing 27% of the 151 household surveyed said they source their water supply from public piped water, 21% from Private borehole, 21% from Dug well and 7.2% from Vendor / truck provider only. Of the 41 households that access water through the public, water utility, only 10 of them admitted having regular public water supply. In a way, this finding supports the Lagos state Government decision to use proceeds of the \$210 million credit to rehabilitate existing infrastructure in order to boost water supply to existing consumers, rather than expanding the networks to new users.

“The results of the National Water Rehabilitation Project are proof that new works in the absence of reliable maintenance will not increase supply. Effectively no attention was paid to ensuring a reliable system of maintenance of the power supply, or the effective and reliable production of replacement power through standby generators. Maintenance was mentioned as an objective but for maintenance to happen there must be policy declarations, policy instrumentation and policy implementation. None of this happened. The political powers at state levels were not asked to support maintenance through policy declarations or the adoptions of suitable legislation and regulation, nor were they asked to guarantee the financing to undertake maintenance and operate the systems reliably. In the absence of financial self-sufficiency the first victim of financial stress was preventive maintenance with serious long-term consequences”⁷⁶

One of the key components of the Water sector reform programme in Lagos state is metering of household consumers. We asked water consumers two questions in this regard. The first is ‘Will you prefer if your water connection is metered?’ and the follow up question was ‘How much will you be able to pay for the cost of the meter?’ While majority (93 or 61.5%) of the respondents were not averse to this idea, 69 or 45.6% consumers stated they would be able to up to N2, 500 for the cost of metering, 11 or 7.2% said they could afford up to N5,000, and none said he would be able to afford more than N5,000. However, 60 or 39.7% said they would not be willing to pay any amount at all. What accounts for this? Most of the people that were not willing to pay any amount for the cost of the metering belong to the category of the people who do not want their water connection to be metered in the first instance, though some of them support the PSP process. An analysis of the consumer survey reveals that 40 out of

⁷⁶ *Ibid*

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the 60 people who said they would not be able to pay any amount for the cost of metering had earlier said that they do not want their water connection to be metered.

It could therefore be inferred that the unwillingness to pay any amount to acquire a meter might not necessarily be because of unaffordability but because of non-belief in the concept of metering. It could be safely assumed that citizens have fears that water metering will decrease their access to water supply. While most people hope the PSP would lead to an increase in water supply, some of them believe that water metering will decrease their capacity to access the water supply.

In any case the Lagos State Water Corporation is not planning to introduce meters to low income areas, while the cost of the meters is yet to be determined: *“The lower class will not have meters, but the high income areas will be metered. We already have a 2-year-old pilot project in Lekki Phase 1 where consumers are already metered. Under the on going Private Sector participation in other areas, I do not know who pays for the meters and the likely cost of the meters. Whether government install meters and charges consumers or the Consumer purchases the meters and do the Government personnel install them. The pilot scheme will determine how it is going to be structured”*, said Yemi Suleiman of the Lagos PIU.

4:3:2 Pro Poor Focus

“The problem with the poor is that of definition, identification of their location, and the ability to target their location”, says Engineer, Sunlola a Consultant with the National Urban Water Reform Project Implementation Unit. The urban poor are faced with several problems that include

- 1) *High cost of accommodation in the urban areas,*
- 2) *Land tenure issues,*
- 3) *Poor water and sanitation access in the urban slum where the poor live, and*
- 4) *Reliance of the urban poor on non-state providers for access to water and sanitation (sometimes paying higher than the urban rich).*

A major challenge of privately managed utility is the related problem of exclusion of the ‘poorest of the poor’ because of the desire to recover cost and investment in sanitation and water infrastructures projects. The PAD states that in Lagos, the proposed project will concentrate on restoring the city’s large treatment works to operational capacity and maintaining water production on a continuous basis. It will also rehabilitate distribution networks in up to five distribution service areas inside the city. The criteria

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for selecting the five or possibly six, LSWC districts to participate in the project would be based on achieving an equitable balance between higher income areas (to increase LSWC's cash flow) and lower income areas (to help meet the Projects poverty alleviation objectives). At the time of appraisal, two districts were selected: District I covering Lagos Island and Ikoyi: and District 4 covering Ikeja I and II and Oshodi.

The PAD also states that the expected outcomes are:⁷⁷ to improve reliability of water produced by the water treatment works in Lagos; and improve commercial viability of the Urban water Utility. Progress toward these principal development outcomes will be measured through: the increase in operating capacity and hours of operation for the Lagos treatment works, and the degree to which operating costs are recovered from water sales in Lagos state. Our findings show that the Lagos SPIU is still adhering to this arrangement as the three distribution areas chosen for Project intervention in Lagos state are Ikoyi, Victoria Island and Ikeja. It has, however, been argued that the 2nd NUWSRP does not have sufficient pro poor focus. This is primarily because its components do not include expanding the Distribution Networks to districts not currently served by the piped networks, which invariably are inhabited by the Urban poor. What seems to corroborate this view is that, while the NUWSRP- FPIU prepared a poverty study and a poor people's map⁷⁸ for Kaduna, Ogun, and Plateau state as part of the preparation for the 1st NUWSRP, none was prepared for Lagos State under the 2nd NUWSRP.

John Barker, Lagos State Programme Manager, State and Local Government Programme, which is financed by the DFID says: *'there is an insufficient poverty focus in the 2nd NUWSRP. It does not have as its prime focus getting more water to the poor people'*. Speaking in the same vein, Anthony Akpan of the NEWSAN said: *'The project does not take into cognizance the supposed poor communities. It is obvious from the design that is for the elites'*. Bankole Olubamise of the Development Information Network, an NGO also expressed similar views: *"Access is the major issue, and since the project does not take care of building new infrastructure how do you take care of poor communities who are presently unconnected to the existing networks?"*

⁷⁷ PAD *op. cit* Project Development Objectives and Key Indicators

⁷⁸ Low Income Household Service Strategy. Volume III. Digital Poverty and Distribution Network maps. Federal Ministry of Water Resources. This view is based on information sourced from Engr. O. Sunlola of the NUWSRP Implementation Unit Abuja, who gave us extracts from the document mentioned above, and said none is available for the 2nd NUWSRP.

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But the Deputy Director, Water Supply and Quality Control of the Federal Ministry of Water Resources, Engineer Alector, is of the opinion that we should not be talking about the poverty focus of the 2nd NUWSRP, since it is urban focused. In an interview, he said: " *When you are talking about Urban, you are talking about those can pay. Those who cannot pay do not stay in urban areas*". When reminded that there are poor people living in urban areas, Alector insisted that "*those who cannot pay cannot stay within urban water scheme*".

But the best argument in favour of the existing components of the 2nd NUWSRP (as regards to Rehabilitation and Network expansion) is the report of the World Bank Assessment study on three past World Bank financed National Water Projects in Nigeria. The report states that: " *The results of the National Water Rehabilitation Project that are proof that new works in the absence of reliable maintenance will not increase supply*".⁷⁹

It is difficult to determine the affordability of the water rates by the consumers surveyed. Two reasons account for this. First, 141 of the 151 (93%) of the consumers surveyed were not willing to disclose their monthly income. Second, though 58 or 82% of respondents using the public utility water admitted to paying their water bills regularly, 83 or 54.9% of all respondents (including users of water supply by other sources) refused to disclose the amount they paid monthly on water. This may be an indication that they either default in regular payments or they do not pay at all. This lack of information makes it difficult to determine what percentage of their monthly income, consumers expend on access to water.

In spite of the majority support for the PSP, fears are still expressed over its implementation. 39% and 21.8% of respondents surveyed for this project, believe that excessive billing and high connection cost respectively will be the hallmarks of the PSP. The unit cost of water production in the Lagos State Water Company is 82k⁸⁰ per litre, but it is yet unclear whether this cost will raise in the future as a result of the PSP, and the likely tariffs that may be charged in the future.

The Head of the Lagos Water PIU, Dr Yemi Suleiman however assured that tariffs will not be imposed on the consumers without due process, which means the Regulatory body would determine tariffs. He said: "*tariffs are not what anybody can set and impose on the people...the regulatory body has to fix the tariffs*"

⁷⁹ World Bank

Table 12: Existing Water Tariffs in Lagos State

| <u>FLAT RATE/MONTH/UNIT</u> | | | | |
|--|------------------------|---------------------------|-------------------------|--------------|
| Description | Low Density | Medium Density | High Density | Rural |
| | N | N | N | N |
| Domestic Block of Flats | 2400 | 800 | 500 | 250 |
| Domestic Duplex | 2400 | 1600 | 800 | 400 |
| Domestic Single Family | 2400 | 1600 | 800 | 400 |
| Domestic Multi room (Face me Face you) | — | 100 | 100 | 50 |
| Academic/Hotel/Commercial | 1000 | 1000 | 1000 | 500 |
| Religious place/Hospital | 500/600 | 500/600 | 500/600 | 250/250 |

On the fate of workers presently working in the Lagos State Water Company, Comrade A.B. Alabi, Lagos State Chairman of the Amalgamated Union of Public Services, (AUPCTRE), said they have been assured by the management that no worker would be retrenched as a result of the PSP system. The workers are however demanding for the payment of hazardous allowances to compensate for the medical risk they are exposed to through the inhaling of chemicals such as Chloride Gas, Chloride, Limes, and HTH powder. Presently, they are only offered medical check up and allocated some quantity of milk, to compensate for exposure to this hazard.

“We partially support the PSP process, but there should be changes in the condition of service of Workers since we are no longer under the Civil Service but now under the Private Sector. As such the salary structure must change, the incentive to workers must change, and the condition of work must change”, said Comrade A.B. Alabi.

4:4 LSWC Analysis of Customer’s Needs and Priorities to Improve Performance and Transparency.

The consumer surveys shows that the performance of the public utility both in terms of provision of regular/sufficient water supply and water quality is appalling and dismal. The general complaints of

⁸⁰ This information is sourced from Comrade A.B. Alabi, Lagos State Chairman of the Amalgamated Union of Public Services, (AUPCTRE).

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consumers include a combination of the following: Irregular supply of water, Excessive billing, Low water quality, Inadequate water supply, Poor customer service, and Inefficient billing.⁸¹

Only one respondent rated the customer service of the public utility as excellent, 19 or 12.5% rated the customer service to be poor, and 65 or 43% rated it very poor. Moreover, on the quality of water distributed by the LSWC, 32 households or 47% of the public utility water consumers stated that the water supplied by the public utility smell, 51 or 75% state that it has colour, 32 or 47% said it has taste, and 50 or 72% complained that the water has particles.

How does the LSWC respond to these complaints? *“We have an information department. We have 10 areas and 24 water zones, we have someone who liaises with the public and consumers in these areas”* – Yemi Suleiman. But it seems the LSWC is presently in a helpless position to address the complaints, and the official thinking is that the PSP will succeed in addressing these complaints.

4:5 Lessons From NEWSAN’s and Civil society Engagement.

Active participation by communities in the planning and implementation of development policies and programmes is an essential prerequisite to sustainable human development. Water being an existential reality, the civil society has a critical and strategic role to play in ensuring openness, inclusiveness, transparency and openness of the reform process; and also to mainstream gender concerns and the interests of vulnerable communities. Moreover, Civil society lack the technical and institutional capacity to engage in the water supply and sanitation sector.

Summary of Civil Society Activities on the Water Sector Reform Programme in Nigeria.⁸²

1. **November 2004:** A Roundtable was organized in Lagos, by the Country Water Partnership, Nigeria (Global, Water Partnership-GWP) on the theme *“Achieving the MDG goal for water in the context of Nigeria’s Water sector reform”*. About 15 NGOs attended the event.
2. **March 11, 2005:** The World Bank Nigeria office convened a meeting in Lagos to brief civil society groups on the *‘Customer Feedback System’* under which NGOs are to be appointed as Consultants to the WB to organize various stakeholder activities on the Water Sector Reform

⁸¹ See Appendix A for a detailed graphical analysis of Customers needs and aspirations.

⁸² This information is sourced from the Bread of Life Development Foundation’s Library.

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Programme. Dr Chudi Okafor, the Civil Society Liaison officer, represented the World Bank office.

3. **May, 2005:** The Pan African Vision for the Environment, (PAVE), an NGO with the support of the Department for International Development (DFID)' State and Local Government Programme organised a NGO workshop in Lagos, to consider the Terms of Reference for civil society organisations involvement in the "*Customer Feedback System*".
4. **May 14, 2005:** Civil society groups met with the World Bank officials in Lagos to discuss the Terms of Reference of NGO's participation in the "*Customer Feedback System*". The meeting was a bit stormy, as some NGOs did not want the TOR of the "*Customer Feedback System*" discussed until the World Bank released the Public Appraisal Document on the 2nd NUWSRP. Its Task Team Leader, Water and Sanitation, Alexander A. McPhail led the World Bank delegation.
5. **May 15, 2005:** Two NGOs-The Bread of Life Development Foundation and the Pan African Vision for the Environment circulated to civil society groups an electronic copy of the draft Public Appraisal Document on the 2nd NUWSRP.
6. **May 21, 2005:** The TOR of the *Customer Feedback System* was eventually discussed at a reconvened meeting in Lagos, between civil society groups and World Bank officials in Lagos. At this meeting, Civil Society groups presented several requests in order to increase stakeholder participation, increase transparency, and mainstream pro poor agenda into the Water sector reform process. Chief of them were:
 - a. *That a civil society nominee should be a member of the State Project Implementation Unit of the 2nd National Urban Civil Water Sector Reform Project in Lagos and Cross River states. The Project Implementation Unit, is saddled with the responsibility of overseeing the execution of the water reform process*
 - b. *A review of the Lagos State Water Law 2004.*
 - c. *The modification of the Customer Feedback System being proposed by the World Bank to a **Citizens participation system** in order to engage the civil society as partners rather than contractors to the World Bank.*

The WB mission led by Alexander A. McPhail said he supported request (a). But only the Lagos State Government could respond to the request (b), and that the WB noted request (c). About 30

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civil society groups attended the meeting held in the Lagos office of the Development Information Network (an NGO).

7. **May 27, 2005:** A Public Policy Forum on the 2nd NUWSRP was organized by the Pan African Vision for the Environment (PAVE), an NGO with the support of the Heinrich Boell Foundation office, Lagos.
8. **May 12-29, 2005 :** Maj Fill-Flynn, Coordinator of Water for All campaign, Public Citizen, a Consumer Rights organisation, and Nikky Reich of the Bank Information Centre, both in the United States visited Nigeria on a research study, and held meetings with Civil Groups, and officials of Lagos State Government.
9. **June 2005.** The World Bank invited Babatope Babalobi of Bread of Life Development Foundation to participate in a Conference on the theme: “*Private Participation in Infrastructure Development*” organized, in Cape Town, South Africa, June 2005. At the conference, Babalobi met with some WB officials including WB water and sanitation Sector Manager, Eustache Ouayoro and expressed Nigeria’s civil society concerns on the on going water sector reform process in Nigeria.
10. **Lagos, July 12, 2005.** Country Water Partnership Nigeria organised a discussion seminar on ‘*Water Privatisation in Nigeria*’ as part of an Integrated Water Resources Management (IWRM) Dialogue Series on ‘Millennium Development Goals (MDGs) and Privatisation of water Infrastructure- What Possibilities?’
11. **November 16, 2005.** The National Civil Society Network on Water and Sanitation (NEWSAN) with the support of the WaterAid Nigeria organised a side meeting on ‘*Water and Sanitation: Implications for sustainable development*’ during the 2nd Nigeria Social Forum held in Lagos.
12. June and September 2005: Developments in Nigeria’s water sector also elicited the interests of four International Students, who visited the offices of NGOs monitoring the process in Nigeria, to conduct research on the process. The students are:
 - i. *Soscha Bollag and Sarah Hench both undergraduate students of History and Political Science and International Studies in the University of North Carolina, Chapel Hill. Their research was*

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entitled: “The move to Privatising water in Nigeria: Consequences and Civil Society”. They visited July 2005.

- ii. Josephine Tucker, an MSc student of Water Sciences, Policy and Management, in University of Oxford, England spent six weeks in Nigeria mid 2005 studying civil society engagement in the water sector reform process.
- iii. Charisma, an Undergraduate student from the University of California also visited in August/ September for research study.

13. **January 19, 2006. Lagos.** The World Bank and the Lagos State Government met civil society groups in Lagos to discuss the terms of reference of the ‘Customer Feedback System’ being proposed by the WB. The World Bank took the inputs of the Civil Society on the terms of reference on the “Customer Feedback System’ Also during the meeting, the Lagos State Government represented by Mr. Olumuyiwa Coker, the immediate past Group General Manager of the Water Corporation announced the non-acceptance of two demands of the civil society on the Lagos State Water reform process. On calls for the review of the Lagos Water

“The project is now going on between the World Bank and the Lagos State Government without much input from the civil society. There is a problem; we have different organizations, each one claim to speak for it. That makes it easy for the Lagos state government because they choose the faction that suits them. The Lagos State Government will always tell you that they have incorporated CSOs.

The CSOs should consult with community development groups. It is obvious that community groups do not know what is going on. When we had a roundtable, it was an eye opener for us to see that the community groups were not aware and they were skeptical. I do not understand why the CSOs involved in the project do not use the strength of Community Development Associations; they should be the force behind those CSOs, negotiating with Government”

-Ms. Monica, Finance Director of HBF

“The people are not aware of the whole process. There is a gap between the civil society and the people. Government does not respond to the civil society. Civil society should work with the people and plan activities with them. The people should be behind the CSOs.”

-Wale Agbojo, Programme Officer, HBF

Law 2004, Mr. Coker said the Water Law is in order and was enacted through due process. He also announced the rejection of civil society’s request to be represented on the Lagos state

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Project Implementation Unit of the 2nd NUWSRP, saying this will not add ‘*any value*’ to the process.

“We have been able to raise the issues” said Anthony Akpan and Bankole Olubamise, two of the leaders of the civil society movement advocating around the Lagos water reform process. According to them, the minimal gains of the civil society engagement are the adoption of the Citizens participation system as a component of the programme, and the creation of the office of a Civil Society Adviser by the Lagos Water Board, though there are still strong reservations on these two developments. However, several factors are impeding effective civil society engagement in the Lagos state Government on this programme. Reasons for this are:

- ◆ Few NGOs are working primarily on water and sanitation in Lagos state, and the absence of funds to implement programmes of the few ones.
- ◆ The inability of members of NEWSAN Lagos State to have a common position on matters arising. For instance, our findings reveal that in one of the several civil society engagements with the World Bank/Lagos state, one of the conditions given by the civil society as the basis for its support of the PSP in Lagos State is the inclusion of a civil society representative in the Lagos Project Implementation Unit to serve as a watchdog. The Lagos state Government rejected this suggestion because in its view *“it does not add any value to the process”*⁸³. Yet, several NGO groups continued to support the process and participate in its implementation.
- ◆ CSOs monitoring the programme have not effectively reached the grassroots. *“There is a gap between the CSOs and the people”* said Ms Monica of the HBF. In the consumer survey, only one respondent admitted hearing of the PSP reform process through the civil society. It is also obvious that civil society groups that have been advocating and monitoring the process have not done enough to inform the public of their activities. Of the few households that are aware of the PSP process, only 1 respondent admitted hearing about the programme through the NGOs, while 29 or 20.5% said they heard through the media. It is however likely that the media reports might have been as a result of the activities of the civil society groups.
- ◆ The lack of institutionalized mechanism for Government –Civil Society relations. Comrade Sylvester Ejiofor, National General Secretary - Amalgamated Union of Public Corporations, Civil

⁸³ *Comments made by Mr. Olumuyiwa Coker, the immediate past Group Managing Director of the Lagos Water Company at a World Bank-Civil Society meeting in Sheraton Hotel, Lagos, January 2006.*

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Service, Technical and Recreational Services Employees (AUCPTRE), said officials of the defunct Federal Ministry of Water Resources had not created space for its Union to dialogue with the FMWR on the water sector reform process, including the fate of its members who may be laid off.

“We wrote two letters to the FMWR to engage the ministry, but they have not allowed us to meet with them. There is no platform for engaging the FMWR on water policy. We averted a workers strike recently because the workers do not know their fate, they do not know whether they are working under the public sector or in the Public Private Partnership. There is no platform for engagement. The Government should not play the Ostrich. Policy formulation is not the exclusive responsibility of government. We should be holistic with the word stakeholders.”- Comrade Ejiofor, General Secretary AUCPTRE

4:6 Openness and Commitment of LSWC to CSO Involvement

An Independent Assessment report on three past world bank financed water projects in Nigeria shows that the likely sustainability of one of the projects-the Small Towns project (with 13 out of 16 towns operational) attest to the merits of the principle of demand-driven investments where the communities have the final decision on the type and cost of the system that will be built. Getting management of water services to the lowest appropriate level appears to be one of the key ingredients for sustainability, says the report. *The three projects clearly demonstrate that decentralization and stakeholder participation in project design and implementation is a successful strategy,* ⁸⁴ and the fact that community participation is considered to be critical for sustainability⁸⁵

Though, the PSP option emphasizes private rather than community management of Water resources, some elements of community participation could still be integrated into the process. Under the ongoing 1st NUWSRP in Kaduna State, representatives of various stakeholders including the civil society formed a Steering Committee, which plays an advisory role in the project implementation. According to Mr. Anthony Akpan, who is the South West Coordinator of the National Civil Society Network on Water and Sanitation (NEWSAN), the civil society had also suggested a similar arrangement in the Lagos State PSP process, requesting a seat in the Lagos State PIU as a way of increasing citizen’s participation in the management of the Project.

⁸⁴ *Ibid*

⁸⁵ **Project Performance Assessment Report.** *op.cit*

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However, one of the concessions given to the civil society is the introduction of a “*Citizens participation system*” under which five NGOs will be appointed as consultants in Lagos State and they will:

- (a) *Promote Citizens participation in the project and in particular defend the interests of customers through continuous feed back on service, performance and future improvements.*
- (b) *Build long-term service oriented relations between the customers and the water boards.*
- (c) *Ensure the LSWC and CRWB have appropriate knowledge on consumers and needs and priorities, improve performance and transparency, and adapt to changing customer preferences.*
- (d) *Build knowledge and capacity of consumers and their representative in key water provision services.*⁸⁶

A World Bank official who spoke on condition of anonymity said the Citizens Participation System was introduced in response to the fears of the civil society groups on the recurrent failures of World Bank financed Water and Sanitation projects in Nigeria. “*The CSOs had genuine grievances. If you look at the history of water projects in Nigeria, there have been failed projects. So, the CSOs were correct. And we wanted the CSOs to participate in order to make the project successful*” Speaking in a similar vein, Yemi Suleiman of the LWSC PIU said: “*The Citizens Participation System is quite innovative, it engages the civil society in a sustained manner, and we want to hear the voices of the people in the DSAs*”. He however said only “*though only about 13 NGOs submitted responses to the call for expression of interests which was issued mid 2006*”.

During the several meetings in year 2004 and 2005 during which the concept of the Citizens Participation System was discussed between the World Bank and the Civil Society groups, attendance of NGOs was averagely between 30-50, so it would have been expected that most of these NGOs would have applied to implement the ‘Citizens Participation System’. The reason for low number of NGOs that expressed interest may not be far fetched, a section of the civil society were not convinced about what Wale Agbojo⁸⁷ describes as the “*concrete outcome of the Citizens participation system*”, and canvassed against participation in the scheme. Anthony Akpan of the NEWSAN argued that it would not be appropriate for the World Bank and Lagos State Government to go ahead implementing the Citizens Participation System as it is, because the low number of NGOs that expressed interest in it shows that the civil society does not have confidence in the process.

⁸⁶ PAD op cit page 28

⁸⁷ Wale Agbojo works as a Programme Officer with the Lagos Office of Heinrich Boell Foundation.

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“The major fear of the civil society is that we shall lose out independence if we become contractors to the Lagos State Government through the Citizens Participation System. I advocate that the implementation of the process should be put on hold, and the management of the Citizens Participation System should be reviewed. For instance, a third party like the WaterAid Nigeria could be invited to manage the programme and sub contract it to local civil groups. If this is done, civil groups will show more interest in the process, and the programme will become more credible and achieve its objectives”, said Akpan.

Water activists interviewed in the course of this study said there is more willingness on the part of the World Bank than the Lagos State Government to create a space for the civil society engagement in the process. *“The World Bank that we have been criticizing has been more open to us than the Lagos Government”* said Anthony Akpan and Bankole Olubamise, two of the leaders of the civil society movement advocating around the Lagos water reform process.

Our findings show that whereas the World Bank had organized several meetings between it and the civil society to dialogue on various issues on the PSP process in Lagos, none of the agencies of the Lagos State Government had organized any event to brief or dialogue with the civil society on this process in the past three years. All the meetings that had been held on this process involving civil society were either organized by the Civil Society themselves or by the World Bank, and findings show that officials of the Lagos State Government did not attend most of these meetings, even where they were invited.

Perhaps to redress this anomaly, the Lagos water Board, last year, appointed a Civil Society Stakeholder Adviser, in person of Ms Yemisi Ransome Kuti. *“My role”,* says Ransome Kuti in an interview, *“is to support the civil society to speak, not to speak on behalf of the civil society”*. But critics of this initiative point to the non-consultative manner the CSO Adviser was appointed, and the fact that she has not implemented any activity to facilitate civil society’s engagement since her appointment *“She was picked as CSO Adviser without consultation. And she has not organised any meeting with CSOs since her appointment over a year ago.”* says Anthony Akpan, South West Coordinator of the National Civil Society Network on Water and Sanitation (NEWSAN).

The PAD laid down procedures for such appointments, but this does not necessarily need to involve public consultations. What the PAD states is that *“All the participating states will establish their own SPIU with relevant professionals among which shall be qualified and experienced procurement officers*

either seconded from ministries or direct recruitment under a transparent and competitive process”⁸⁸

Obviously, there is a breach of the provisions in this respect as the officer in question was neither recruited from the Civil service nor through a transparent and competitive process. Speaking on her activities since her appointment, Yemi Suleiman of the Lagos SPIU said the CSO Adviser has been developing several programmes including a draft policy for LSWC interaction with Stakeholders

4:7 Consumers Awareness of the Reforms and Feedback System.

“There have been consultations with consumers generally in terms of getting a feel of what have been their concerns. As far back as 2003, we have recognized the need to interact with the public and we organised a ‘Grassroots Community Exercise’ to seek public opinion of the project” said Dr Yemi Suleiman, Head of the Lagos PIU in an interview. The result of the consultations says Suleiman is that *“the people of Lagos want water and are willing to pay for it”*.

The survey findings reveal that 33 or 21% out of the 151 consumers interviewed in the 14 DSAs are aware of the PSP process, while 103 or 74% declined ever hearing of the programme. The survey indicates that apart from non awareness, consumers do not understand what the PSP programme is all about, as almost equal number of respondents gave varying interpretations to the meaning of the on going PSP process.

For instance, while 20 or 13.2% of respondents said the programme means sale of the Water Board to private companies (which is not the case), another 34 or 22.5% wrongly said that it means the Government will continue to provide water. This lack of understanding shows a serious defect in the public consultation process of the water board. *“Was your community consulted in the process of designing the PSP?”* was one the questions we asked consumers. 125 or 82.7% of the respondents said they were not consulted and 5 people representing 3.3% said they were consulted.

Even, the workers of the LSWC also claimed they have not been fully briefed on the PSP and its implications. *“We need an information orientation from the authority on what we should achieve from the PSP”*, says Comrade A.B. Alabi, Lagos State Chairman of the AUPCTRE. *“They have never given us any orientation. We the staff do not understand what the programme is all about. We are not aware of the amount the World Bank gave them. We need adequate and up to date information so that workers will know what is happening.”*

⁸⁸ PAD op cit p45

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However, in an interview with the Head, Project Implementation Unit of the 2nd NUWSRP, Dr Yemi Suleiman, he said the State Government conducted several awareness campaigns before commencing the project. *“The Workers were briefed, but they had high expectations, what they felt was that there should be more money in their purse- said Suleiman.*

There were records of meetings held four years ago with some stakeholders such as traditional rulers, and community groups to inform and sensitize them about the plan of the Lagos State Government to introduce PSP in water supply. Now that the programme had been introduced, there is obviously a need to go back to the people and organized more intensive consultations to get there inputs on various aspects of the programme, yet to be implemented.

Chapter Five

Recommendations and Conclusions

5:1 Recommendations for Lagos State Government

1. The SPIU has to improve public awareness and participation in the PSP process, which at present is very minimal. It should faithfully implement the Public Communication Programme as stated in the PAD to ensure effective stakeholder participation, promote ownership within and outside the government, build consensus about water issues, and build consensus among various stakeholders. *(See Section 4:5 and 4:6 for the justification for this recommendation)*
2. A Stakeholders Forum should be set up to serve as platform of mainstreaming stakeholder participation in the PSP process. *(See Section 4:5 and 4:6 for the justification for this recommendation)*
3. An Advisory Steering Committee comprising stakeholder representatives should be set up to increase public participation and also transparency of the PSP process. *(See Section 4:5 and 4:6 for the justification for this recommendation)*
4. The Lagos Water Company should be institutionally autonomous. In order to achieve this, the relevant provisions of the Lagos State Water Sector Law 2004 should be adhered to strictly. Those that need to be implemented immediately to increase transparency, openness, efficiency and independence of the LSWC are the constitution of a Board of Directors for the Lagos Water Company and the creation of the six subsidiary companies. *(See Sub sections 4:2:1 for the justification for this recommendation)*
5. The PIU should address identified deficiencies in its human capacity to implement the 2nd NUWSRP in a timely and efficient manner. Recruitment of all PIU staff should be in conformity with stated guidelines. All the staff of the PIU should be professional competent. *(See Section 4:2:3 and 4:5 for the justification for this recommendation)*
6. The Federal and Lagos State Government should publicly disclose the Environmental Assessment study for the 2nd NUWSRP, and prioritizes short term and long-term measures to address the

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problems of the Oke Aro and other neighbouring communities. *(See Section 4:2:6 for the justification for this recommendation)*

7. Workshops should be organised with stakeholders groups particularly LSWC workers, consumer groups, community groups, and NGOs to inform and educate them on the PSP process and identify areas of participation. *(See Section 4:6 for the justification for this recommendation)*
8. The PIU should set up a Pro poor desk to serve as an interface between the LSWC and the Urban poor, attending and addressing the interests of the poor. *(See Section 4:3:2 for the justification for this recommendation)*
9. The implementation of the ‘Citizens Participation System’ should be put on hold and the TOR should be reviewed to allay the fears of civil groups most of whom have refused to express interest in implementing the programme. Under the revised TOR, an independent body such as WaterAid Nigeria could be contracted to manage the programme, which in turn would sub contract it to local civil groups. *(See Section 4:5 for the justification for this recommendation)*
10. The LSWC should note the general complaints of consumers, which are Irregular supply of water, Excessive and indefinite billing, Low water quality, inadequate water supply, and Poor customer service. The extent it effectively resolved these problems would determine the success of the new PSP system. *(See Section 4:4 for the justification for this recommendation)*
11. The office of CSO stakeholder Adviser should be more proactive in it’s programming and establish its legitimacy and relevance to the civil society. The appointment of the CSO Stakeholder Adviser should be normalized to conform to stated guidelines as contained in the PAD. *(See Section 4:5 for the justification for this recommendation)*
12. Tariffs: There should be a lifeline provision that ensures that even with the urban areas benefiting from the project, the poor of the poor, should be entitled to a certain quantity of water as a right. Other initiatives that could be introduced are cross subsidization and public connections. It is noteworthy that the Water sector reform projects of Senegal and Cote D’Ivoire, the only two officially regarded as successful in Africa, have provisions for ‘social connections’. As one of our

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interviewees said:” *they fact that the poor cannot pay does not mean they should not have water”*.
(See Section 4:3:2 for the justification for this recommendation)

13. Issues relating to the conditions of service and hazard for the LSWC staff should be addressed. (See Section 4:3:2 for the justification for this recommendation)

5:2 Recommendations for World Bank

14. The World Bank should be concerned about the low interest expressed by the Civil Society on the ‘Citizens Participation System’, and initiate a process for the review of its TOR to accommodate pending concerns of the Civil Society. (See Section 4:5 for the justification for this recommendation)
15. The World Bank office in Washington DC should respond to presentations by the Lagos PIU in a timely and efficient manner. It should also strengthened the technical capacity of its Country office in Nigeria to be able to effectively discharge its oversight function on the PIU. (See interview with the Coordinator of the Lagos PIU in Section 4:2:35 for the justification for this recommendation)
16. The World Bank Headquarters should work to establish a climate of trust and cooperation between the Country office staff in charge of the 2nd NUWSRP, key officials of the FPIU on one hand and the Lagos PIU on the other. (See interviews with officials of the WB, FMWR PIU and Lagos PIU Coordinator in Section 4:2:3 for the justification for this recommendation)

5:3 Recommendations for the Civil Society

17. The NEWSAN Lagos Chapter should undertake a mapping exercise to identify its members, organise training programmes to improve its members understanding of the PSP process, effectively coordinate its activities, and implement programmes involving the grassroots. (See Section 4:5 for the justification for this recommendation)
18. The NEWSAN and other civil society groups should advance their role in Water Sector reform process in Lagos State beyond debating the merits or otherwise of private participation in water management, to monitoring the implementation of the 2nd NUWSRP to ensure it conforms to guidelines as stated in the PAD. (This recommendation is informed by the fact that the WB had already approved a credit for this project which is already being drawn by the Nigerian government)

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19. Civil Society groups that hold strong reservations on the Lagos State Water Sector Law 2004, as it is, should initiate the process of a review through public meetings, debates, hearings, Judicial interpretations, or/and an amendment bill. *(See Section 4:2:5 for the justification for this recommendation)*
20. The Civil Society should participate in implementing the *Citizens Participation System* ' as soon as current fears are allayed through recommendation (9) above.

Recommendations for WaterAid Nigeria

21. WaterAid Nigeria should organize a Workshop bringing about various stakeholders to discuss how the PSP process can be successfully implemented, and also providing a forum to discuss the findings and recommendations of this study.
22. WaterAid Nigeria should engage with the Federal Ministry of Agriculture and Water Resources, the FPIU, and the Lagos SPIU towards achieving the following:
 - a. *Convocation of a National Stakeholders Forum on water sector reform as a platform for civil society-government engagement. This could later be stepped down to the state levels.*
 - b. *Facilitating discussions between the Lagos SPIU and the CSOs on the desirability or otherwise of the formation of an Advisory Steering Committee and CSOs representation in the SPIU.*
 - c. *Ensuring the SPIU adheres to the Lagos State Water Sector Law 2004 and the PAD guidelines in respect to disclosure of EIA reports, publication of contracts awards exceeding \$200,000, keeping a register of Fixed Assets and Contracts Registers, and the unbundling the LSWC and set up of a Board of Directors.*
 - d. *Set up of a Pro Poor Unit.*
 - e. *Institution of the Regulatory commission.*
23. WaterAid Nigeria should launch an international advocacy for the scrapping of the payment of 0.7% of un-disbursed funds as commitment charges by Governments to the IDA. This deepens the debt burden of the borrower. *(See interview with WB official in Section 4:2:3 for the justification for this recommendation)*

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24. WaterAid should consider recommendation (9) above and facilitate the process of the review of the TOR of the Citizens Participation System. *(See comments by civil society leaders in Section 4:5 for the justification for this recommendation)*
25. WaterAid Nigeria should support water communities and the civil society in Lagos state towards organizing a Citizens Action Project on water sector reform. *(See Sub sections 4:2:3 and Section 4:6 for the justification for this recommendation)*

4:5 Conclusions

According to a recent study from the South African Institute for International Affairs, in cases where Public Private Partnerships have been able to best deliver desired outcomes, “...*thorough planning, good communication, strong commitment from both parties and effective monitoring, regulation and enforcement by the government*” was present. Where there has been a lack of thorough planning, PPPs in the water sector have not had much of the desired results in Africa. Whereas it could be said that thorough planning preceded implementation of the 2nd NUWSRP, the aims of objectives are yet to be adequately communicated to all stakeholders, and the Lagos State Government also has to demonstrate greater commitment to implementing the project in consonance with its guidelines.

And this brings into remembrance the statement made by Hassan Kida of the World Bank country office Abuja that: “*Over the years, the World Bank had given credits worth about \$2billion to finance Water projects in Nigeria, yet the service delivery remains poor*”, adding that “*the whole problem with world bank projects in Nigeria is the way we implement policies. When it comes to implementation, we always fail*”. It is hoped that the findings and recommendation of this and similar studies in the future will be seriously considered by all stakeholders to ensure the aims of the 2nd NUWSRP is achieved.

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