

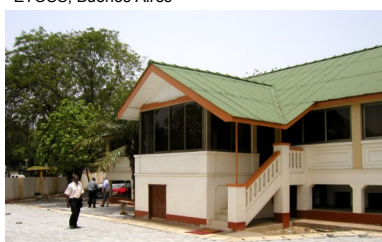
Regulating Public and Private Partnerships for the Poor



SISAB, Bolivia



ETOSS, Buenos Aires



PURC, Ghana

INTRODUCTION

This summary, the first of twenty in the Regulating Public and Private Partnerships for the Poor research series, gives an overview of the economic regulators in the world of water and reports on their declared goals relative to social equity, that is service to the poor. The research has been undertaken in the context of the decline and perhaps demise of the PPPs—the Public Private Partnerships. The summary therefore concludes by considering the role of economic regulation in the context of public water provision which is in even greater need of sustainable revenues to finance the delivery of improved

‘Regulation makes urban services efficient in the long haul to ensure that public interests are always taken into account’

Sustainable Cities Task Force

DFID

Knowledge and Research Contract R8320

Cranfield
UNIVERSITY

REGULATING PPPs FOR THE POOR

What are PPPs?

The growth and decline
of PPPs?

Regulation for PPPs

Who are the
Water Economic
Regulators?

Where do they operate?

How do they relate to the
spread of PPPs?

What are they doing
about service to the
poor ?

Who are the poor?

Regulation and the
Public Providers ?

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Research Summaries

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| 5. Chile | 15. eConference |
| 6. Argentina | 16. Alternative Providers |
| 7. Ghana | 17. Customer Involvement |
| 8. Philippines | 18. Technical & Financial Tools |
| 9. Bolivia | 19. Legal Tools |
| 10. Jordan | 20. Pro-Poor Guidelines |

Research Summary

Incentive based, economic regulation of monopoly water and sanitation providers is a powerful tool for improving services. Regulators determine the maximum water price ('price cap') needed to finance a desired level of outputs. Prices in high-income countries have tended to increase faster than inflation as society demands higher standards. Prices in lower-income economies have usually been significantly lower than costs and also need to rise, particularly to fund service expansion. The total revenue requirement (from which the price cap is derived) is determined, using the 'building block' approach, by adding anticipated operating expenditure to planned capital expenditure (for capital maintenance as well as for improvements in quality, security of supply, service standards and service extensions), plus an acceptable cost of capital (to service any debt finance for example). Both opex and capex plans need to include efficiency targets derived from comparisons between a number of providers. Water providers are allowed to retain any further efficiency savings achieved within the price cap for a period (five years for example) which is an incentive to achieve even higher efficiency, before the benefits are shared with customers in reduced prices or enhanced standards for the future.

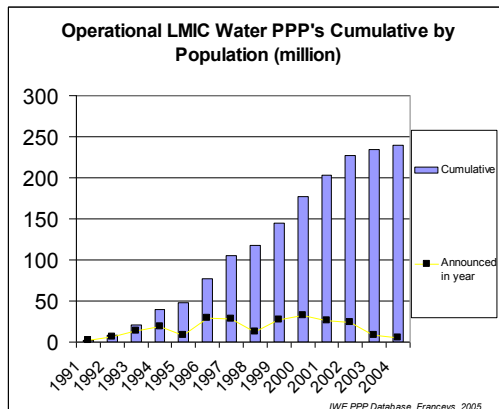
This model has been adapted around the world with varying degrees of success, usually in the context of a Public Private Partnership. Until recently the approach has tended to be reactive rather than proactive regarding early service to the poor. There is now a recognised need for adequate economic regulation of public providers, as well as private companies, in lower-income countries, to deliver similar mechanisms for financeability and efficiency and as a pre-requisite for developing effective pro-poor urban services.

This DFID research project seeks to give water regulators the necessary tools to require the direct providers to work under a *Universal Service Obligation*, to ensure service to the poorest, even in informal, unplanned and illegal areas, acknowledging the techniques of service and pricing differentiation to meet demand.

Looking to achieve early universal service, the research also considers how the role of small scale, *alternative providers* can be recognised in the regulatory process. *Customer involvement*, at an appropriate level, is seen as the third key aspect. The research investigates mechanisms for poor customers, and most importantly potential poor customers, to achieve a valid input to regulatory decision-making to achieve better watsan services within the context of social empowerment and sustainable development.



Public Private Partnerships—Drivers for Regulation



Changes in the world of PPPs

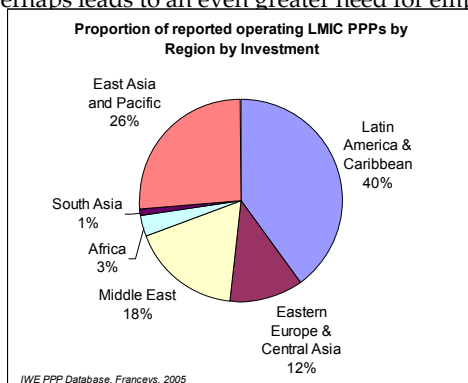
Following the rapid rise in PPPs during the 1990s, particularly in the higher-income Latin America & Caribbean region, there has more recently been a decline in new contracts in Low and Lower Middle-Income economies.

This trend has been accelerated by the significant financial losses experienced by several private sector operators, usually following exchange rate devaluations which governments chose not to acknowledge in price setting, with subsequent contract termination.

In parallel there has been a very effective anti-PPP campaign managed by global NGOs and anti-globalisation activists which has led to the cancellation of some, perhaps successful, PPPs. Considering the different PPP models, the comprehensive concession approach had been most effective in delivering improved services that included differentiated service to the poorest with some significant expansion of service areas ('Beyond Boundaries', Weitz & Franceys, Asian Development Bank, 2002). Overall there may well have been a failure of Governments and/or their Regulators as well as the private companies to deliver on their promises to be in anything like the oft proclaimed 'partnership' which demands 'acting together' and 'deciding together' by some definitions.

There is now a movement towards the use of national operators and smaller scale service/management contracts models. It is therefore even more important to ensure that the needs of the poorest are met where there are not the comprehensive requirements of an all-embracing concession and where there is no international involvement sharing best practices around the world.

Which perhaps leads to an even greater need for empowered



The 'P' Words of 'privatisation'

- Private Sector Participation
- Privatization
- Disinvestment
- Capitalization
- De-monopolisation
- Equitization
- Opening of capital
- Peopleization
- Ownership reform
- Disincorporation
- **Public Private Partnerships**

What is a PPP?

'A public-private partnership is a cooperative venture between the public and private sectors, built on the expertise of each partner, which develops or improves facilities and/or services needed by the public through the appropriate allocation of resources, risks, rewards and responsibilities.'

Adapted from Canadian Council for Public-Private Partnerships

PPP Contract Types

- *Service Contracts*
- *Management Contracts*
- *DBO, Design, Build, Operate*
- *BOT, BOOT, Build, (Own) Operate, Transfer*
- *Lease*
- *Concession*
- *Divestiture*

Who is private?

International operators
National operators
Small and Medium Enterprises
Micro Enterprises
NGOs
Neighbours on-selling
Neighbours on-selling connections

Why economic regulation?

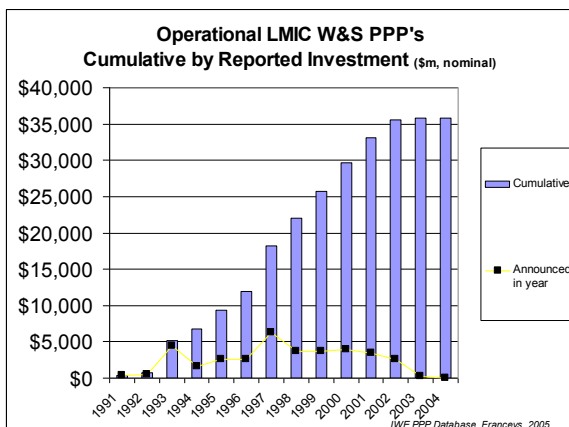
Because of the capital intensity of networked water and sanitation it is only viable to have a single, monopoly provider. All monopolies tend to be captured by vested, producer, interests over time, whether through 'professional hobbyism', trades union protectionism or political opportunism. Incentive based economic regulation can limit monopoly

Global PPPs and the Poor

THE WORLD OF WATER REGULATION

International Forum for Utility Regulation

Global R
http://www



The initial expectation of PPPs was that the private companies would deliver, from private sources, the finance necessary to upgrade water and sanitation services around the world. However, with a few exceptions, the private equity markets were not convinced enough to invest their money in pipes buried in the ground in low-income economies. The figure above illustrates the promises made at the time of contract signing, much of which has never been delivered. The table below shows where the promises were made.

	Proposed capital expenditure (billion)	Population served - Water &/or Sanitation (million)	Percentage Total Population served by PPP	Percentage Urban Population served by PPP
Total Reported/Planned	\$206.56	699.3	11.4%	24.9%
Total Operational	\$126.0	530.4	8.6%	18.9%
Operational by Income Level				
High Income Countries	\$87.8	254.3	26.6%	35.3%
Upper Middle Income	\$20.6	132.7	26.4%	34.7%
Lower Middle Income	\$14.8	99.1	4.6%	10.7%
Low Income Countries	\$2.7	44.3	1.8%	5.7%

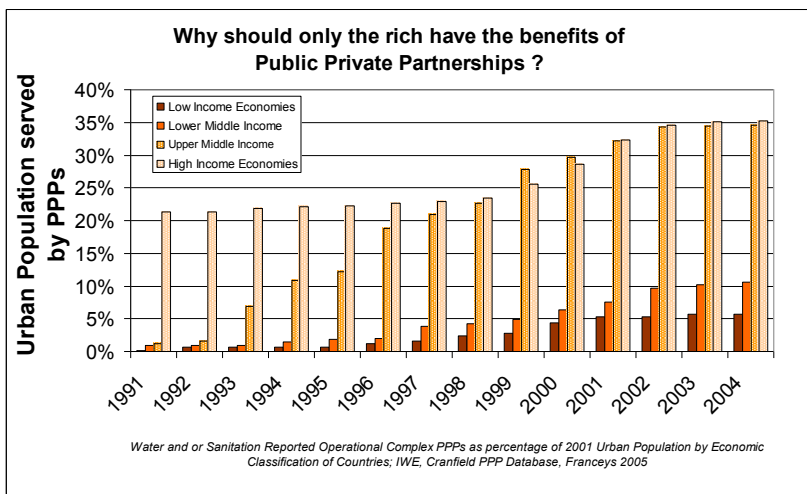
Similarly, many governments were not sufficiently convinced to allow 'foreign control' of their monopoly public water supplies, a reluctance which was most marked in the poorer countries where governance can be weak and governments need to be cautious about being taken advantage of by foreign suppliers, a caution based on hard



ADERASA
South American Water Regulators Association

AFUR
African Forum of Utility Regulators

SAPIR
South Asia Forum for Infrastructure Regulation



Regulating Public & Private Partnerships for the Poor

The end result, illustrated by the figure on the left, is that the upper middle-income countries appear to have embraced private sector involvement to a similar extent to the high-income countries. Although this does not represent a balance within (most) countries it appears to show a governance need for the private sector to be present to at least act as a comparator by which public providers can be judged. Each pattern, public or private, needs the spur of comparative competition. However, the reluctance of both governments and the private sector to work together in lower-income economies, where the public health benefits of clean water and sanitation are highest, reaching just over 10% private urban involvement in lower middle-income and just over 5% in low-income countries, might well be seen to disadvantage the poorest. The challenge now is to use economic regulation to deliver service to the poor through public providers.

Regulators and the Poor: Web-based Visions, Missions

In an overview of the declared aims of the regulators we investigated the vision and mission of the regulators mapped on previous the page and any other information that was available on their websites regarding service to the poor and social equity. We found no mention of such issues in the websites for regulators in Ghana, The Philippines or Zambia. There was mention in the websites for Argentina, Bolivia, England and Wales, South Africa, Jamaica and Trinidad and Tobago. For examples see below:

NAMIBIA

*Ministry of Agriculture, Water and Rural Development
Department of Water Affairs*

Essential water supply and sanitation services should become available to all Namibians, and should be accessible at a cost which is affordable to the country as a whole.

This equitable improvement of services should be achieved by the combined efforts of the government and the beneficiaries, based on community involvement, community participation and the acceptance of mutual responsibility.

Communities should have the right, with due regard for environmental needs and the resources available, to determine which solutions and service levels are acceptable to them. Beneficiaries should contribute towards the cost of services at increasing rates for standards of living exceeding the levels required for providing basic needs.

GHANA

The Public Utilities Regulatory Commission is an independent body set up to regulate and oversee the provision of the highest quality of electricity and water services to consumers. The Bureau of Consumer Services (BCS) within the PURC Secretariat has the responsibility of ensuring (in collaboration with other bureaux) that the regulated utilities deliver good quality of service to meet consumer expectations.

JAMAICA

Mission Statement

To contribute to national development by creating an environment for the efficient delivery of utility services to the customers whilst assuring that service providers have the opportunity to make a reasonable return on investment.

Social Tariff - Social Water

Social water refers to the provision of the minimum levels of potable water and sewerage services to persons who cannot afford the full cost of such services. The definition is also expanded to include water supplied to the public at large in circumstances where collection of payment from the user is impractical. The relevant stakeholders, including the OUR and the Ministry of Finance and Planning, shall agree on revenue sources for social water including:

- Tariffs and user fees;
- Cross subsidies;
- Direct subsidies.

TRINIDAD & TOBAGO

Regulated Industries Commission (RIC)

Mission

to ensure that good quality and efficient utility services are provided at fair and reasonable costs in Trinidad and Tobago

Social Action Plan

to protect consumers, intended for low income and vulnerable groups

Consumer voice

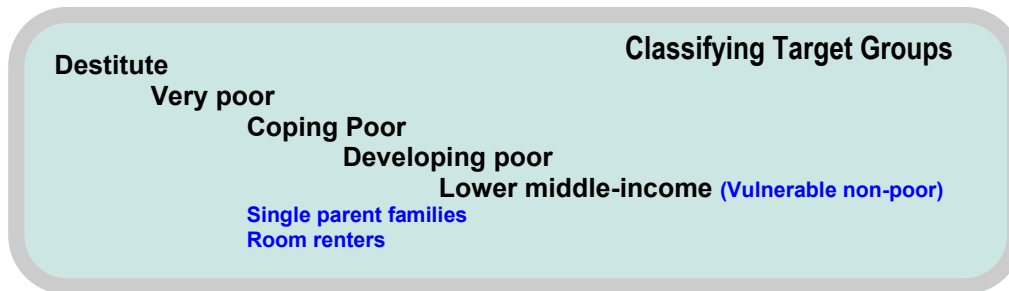
Public consultations held for setting quality and service standards

ENGLAND & WALES

Having banned disconnections, introduced free metering and instituted a 'Vulnerable charging scheme' for those with a specified medical condition, and/or large family receiving social welfare payments, the government then amended legislation in 2003 to require the economic water regulator, as a primary duty, to 'further the consumer objective'. In addition the new 'Water Services Regulation Authority' must 'have regard to the interests of—

Individuals who are disabled or chronically sick; Individuals of pensionable age; Individuals with low incomes; Individuals residing in rural areas;

and consideration of social equity



Considering how economic regulation might enable water providers to better serve the poor it is necessary to acknowledge that poverty comes in many shapes and sizes, with different characteristics over a 'spectrum of poverty'. Reflecting on a number of different sources (see for example 'Focusing Partnerships', Plummer, Earthscan, 2002), the researchers recognise the spectrum above as capturing a minimum number poverty segments which should be recognised by a watsan provider if they are to be effective. There are many different aspects of poverty which illuminate the challenge:

Who are the poor?

The income poor: 'material lack (<\$1 per day, <\$2 per day in some economies)

The 'health and education poor'

The 'quality of life poor'

The 'housing poor': slums/informal/unplanned/illegal areas poor

The 'powerless poor': 'insecurity and vulnerability, bad social relations, low self-confidence and powerlessness'

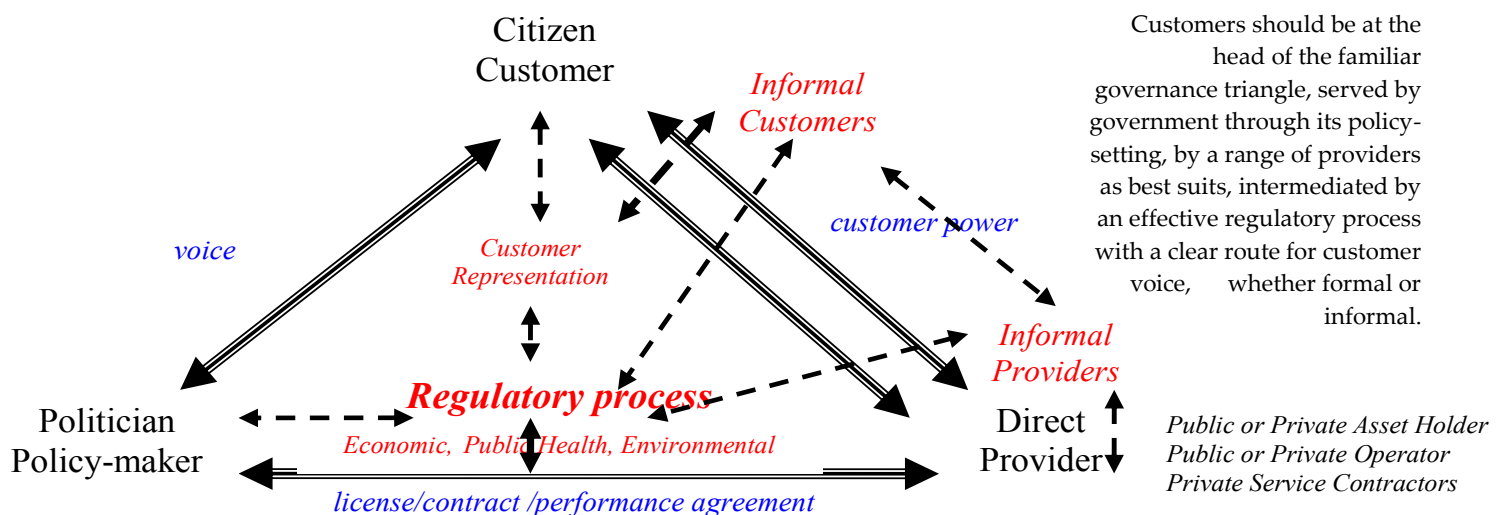
Aspects of poverty

Unemployed; Underemployed; Randomly employed – daily incomes; Over-borrowed; Disabled

The regulation game

"...if regulation is the impartial referee in the football match between the government/policy-makers and the utility direct providers (agreeing fair prices in return for societal desired standards), with the customers in the stands expecting a good performance, and the customer forum/customer committee as the biased linesman shouting off-side whenever the game seems to be going against customer interests . . . at present the poor are perhaps playing a different game altogether, on the dusty waste ground outside the main stadium. Playing a game between the poor and their alternative providers with no referees/regulator and government. Our challenge as a sector is to ensure that the poor are invited to join in the main match, perhaps standing on the hill at one end rather than sitting in the main seats - but definitely part of the experience. And to stretch the picture perhaps way too far, with the alternative providers also now in the stadium, selling drinks and ice creams to all the crowd!

How can regulation help to make water accessible to the poor ?



Regulation and the Public Providers

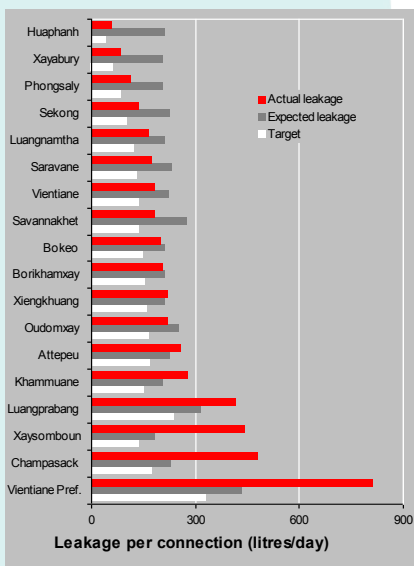
There are already a number of economic regulators overseeing the prices and service levels of public water and sewerage providers, for example:

- PURC, Ghana
- NWASCO, Zambia
- Water Commissioner, Scotland
- Water Resources Commission, Philippines
- SISAB, Bolivia
- WSA Lao PDR

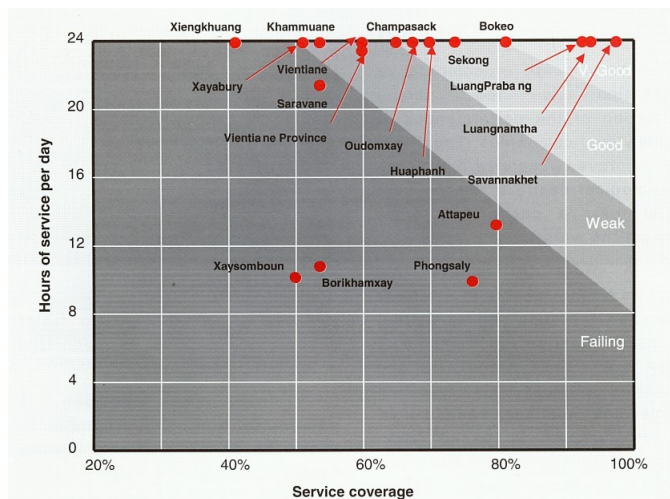
Water Supply Authority Lao PDR

Vision: "A first class water supply infrastructure that delivers the highest service possible that represents best value to customers now and in the future"

Mission: "To regulate in a way that provides a potable, sustainable and affordable water supply for all by 2015"



Left: "Exposing worst offenders: leakage rates by company in Lao PDR From Water Supply Authority, Annual Report,



Above: "Level of service performance of water companies in Lao PDR", WSA, 2002

The relatively new Water Supply Authority of Lao PDR is using comparative regulation to promote improvements of the public water providers of the main towns (some fairly small) of the country as shown by the figures from WSA's Annual Report. League tables and 'naming and shaming' utilities when they fail to submit data on time is reportedly delivering results as they strive to produce on time for subsequent reports.



Water Regulators at the Research Inception Workshop - l to r: Oward Chanda, NWASCO, Zambia; Philip Fletcher, Ofwat, England and Wales; Achmad Lanti, Regulatory Body of Jakarta, Indonesia

The Regulatory Spectrum

There is no single model of regulatory office, every country has to adapt the principles to suit its own structure of governance. There can be:

- Regulation by government department
- Regulation by performance agreement
- Regulation by contract
- Regulation by competition or fair trading authorities
- Advisory regulators
- Expert Panels
- Independent regulators
- City-wide regulation
- State/Province regulation
- National regulation
- Multi-utility regulation

How independent are the regulators?

A survey by Asian Development Bank (2005) found that less than 40% of East Asian infrastructure regulators described themselves as even nominally independent. The study suggests that it is critical to ensure that regulators are not given more discretion than the political culture can absorb.

"New regulators should rely much more on transparent rules than on discretionary power, and some responsibilities should be delegated to outside experts ... hearings should be public, contracts and licenses should be also wherever possible." In high-income countries as well, governments have demanded that regulators submit to political demands—as in the case of the UK where government threatened the Rail Regulator with immediate legislation to curb his powers if he dared to upset their plans to move against the private Railtrack.

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