

# **REPORT OF THE INTERNATIONAL FACT-FINDING MISSION ON WATER SECTOR REFORM IN GHANA**

**August 2002**



## ACKNOWLEDGEMENTS

The members of the Fact-Finding Mission wish to thank the hosts for their graciousness in receiving the members of the mission. Special thanks to all of the hosts, the Reverend Aboagye-Mensah, Mr. Akwasi Adu-Amankwah, Rt. Reverend Bishop Charles Palmer-Buckle and Professor Akilagpa Sawyerr, for their willingness to participate in making the Fact-Finding Mission a successful endeavor.



The Fact-Finding Mission wishes to thank everyone who gave their valuable time to share their knowledge and express their views on the issue of water sector reform, including members of the government of Ghana, civil service, local and international non-governmental organizations, civil society organizations, the Ghana press corps, members of Ghanaian communities and public, international financial institutions and representatives of the private sector.



The members of the Fact-Finding Mission also wish to thank all of the individuals who worked so hard to ensure that the Fact-Finding Mission would accomplish its objectives. The Fact-Finding Mission Secretariat, based in the The GOG's response is of particular concern because it suggests tion to the task of re-shuffling the itinerary, ensuring that as many meetings as possible were packed into each day, making copies of documents, sending faxes, making phone calls, organizing transportation, and undertaking all of these tasks with a smile that made it appear effortless. Very special thanks must be given to Victoria Adongo, Charles Abugre, Rudolf Amenga-Etego, Gladys Ohene-Darkoh, Steve Manteau, and Patrick Apoya. Without the dedicated work of these individuals the Fact-Finding Mission would have never taken place. Special thanks must also go to the staff of Public Citizen, USA and Southern Links, UK for their assistance in facilitating the Fact-Finding Mission.

*Note: The conclusions expressed in this report represent the majority perspectives of the International Fact-Finding Mission on Water Sector Reform in Ghana. There may be specific points in the report that are not shared by every member of the Fact-Finding Mission. Members of the delegation traveled to Ghana between April 26th and May 9th 2002. The length of each delegate's stay varied and therefore not all delegates could participate in every meeting, event or visit of the Fact-Finding Mission.*

**Delegates on the International Fact-Finding Mission  
on Water Sector Reform in Ghana**

- **Dr. Dyna Arhin-Tenkorang**, former senior economist for the World Health Organization's Commission on Macroeconomics and Health, and Research Fellow at the Center for International Development at Harvard University;
- **Joseph Brenner**, director, Center for Policy Analysis on Trade and Health, former Program Director of Working Partnerships, and expert on labour issues;
- **Josephine Elow**, Community Outreach Coordinator, Seniors with Power United for Rights, nurse and consumer advocate, New Orleans, United States;
- **Dr. Yassine Fall**, executive director of the African Association of Women for Research and Development (AAWORD).
- **Wenonah Hauter**, director of Public Citizen's Critical Mass Energy and Environment Program, anthropologist and expert on energy and regulatory issues;
- **Mr. John Kidd**, water engineer for Yorkshire Water, UK and chair of UNISON's Water and Environment Service Group. UNISON is the largest union in the British water industry;
- **Mr. Bert Roebert**, former deputy managing director of Amsterdam Water Company.
- **Dr. Ellen R. Shaffer**, director, Center for Policy Analysis on Trade and Health (CPATH); Assistant Clinical Professor, University of California, San Francisco; Governing Council and Joint Policy Committee of the American Public Health Association;
- **Dr. Jenny Tonge**, British member of Parliament and shadow international development secretary for the Liberal Democrats. Participant in British delegations to Rwanda and the East African Great Lakes region;
- **Robert Weissman**, attorney and editor of U.S. magazine, *Multinational Monitor*. Expert on international corporate governance issues;
- **Alicia Yamin**, human rights lawyer and professor of public health, Columbia University; Center for Economic and Social Rights, United States; and
- **Bertram Zagema**, environmental expert from Friends of the Earth, Netherlands.

**Facilitators of the Ghana Fact-Finding Mission**

- **Dr. Sara Grusky**, International Water Working Group and Public Citizen, Critical Mass Energy and Environment Project.
- **Kwesi Owusu**, associate of Cambridge University and a global development specialist.

**For further information and copies of the report contact:**

***Integrated Social Development Centre (ISODEC)***  
***P.O. Box 19452***  
***Accra, Ghana***  
***Tel: 233/21 306 069 or 310 634***

***Public Citizen/ Water for All***  
***215 Pennsylvania Avenue, S.E.***  
***Washington, D.C. 20003 USA***  
***Tel: 202 546-4996***

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## **INTERNATIONAL FACT-FINDING MISSION** **ON WATER SECTOR REFORM IN GHANA**

### **I. Introduction**

For many in the developing world, gaining access to clean and affordable water can be a difficult daily struggle. In most countries in North America and Europe, there is a water tap in every home and people take for granted that water will flow when they turn the tap. This is not the case in the developing world. More than 1 billion people lack access to clean and affordable water and approximately 2.4 billion people lack access to proper sanitation services. Over 2 million people, mostly children, die annually from diarrheal diseases related to lack of access to clean water.

In Ghana, formal statistics cite access to treated water as available to 62-70 percent in urban areas and 35-40 percent in rural areas. However, in urban areas, only 40 percent of the population have a water tap that is flowing. 78 percent of the poor in urban areas do not have piped water. Given the role of women in providing community support and household labour, including provisioning water, it is clear that women bear a greater burden under the current situation of water scarcity. This crisis in access to clean and affordable water has propelled the Government of Ghana (GOG) toward privatization as a possible solution.

Yet the privatization of water has caused social unrest in a number of developing countries recently, including Bolivia, Argentina, South Africa and Kenya. In Ghana there has also been social controversy over the World Bank-backed plan to privatize the country's urban water supply promoted by the ruling National Patriotic Party (NPP) and the Government of Ghana (GOG). In May 2001, the Integrated Social Development Centre (ISODEC) organized a Public Forum to provide stakeholders from government and civil society an opportunity to discuss and debate the water privatization proposal. Following the Public Forum, a broad cross-section of Ghanaian civil society gathered to issue a statement opposing the privatization of water, the Accra Declaration, and to form the National Coalition Against the Privatization of Water (National CAP of Water). The National CAP of Water includes women's groups, teachers, trade unions, public healthworkers, opposition parties, community associations, NGOs and students.

In contrast to the opposition among some groups in civil society, many in the government feel strongly that privatization or Private Sector Participation (PSP) will improve the current situation in the water sector in Ghana. They feel that the PSP proposal will improve the operational efficiency of water service, attract badly needed capital, and expand the supply of affordable water. For these reasons, the government continues to move forward with the privatization process.

As part of an attempt to overcome this stalemate, four individuals from renowned organizations in Ghana -- the Reverend Aboagye-Mensah of the Christian Council, Mr. Akwasi Adu-Amankwah of the Trade Union Congress and the Civil Society Council of Ghana, Rt. Reverend Bishop Charles Palmer-Buckle of the Ghana Catholic Bishop's Council and Professor Akilagpa Sawyerr, retired Vice-chancellor of the University of Ghana and representative of the African

Association of Universities -- invited an international delegation to study the proposal for privatization or private sector participation (PSP) in the restructuring of the water sector. These four hosts facilitated the visit of the International Fact-Finding Mission on Water Sector Reform in Ghana.

Members of the delegation traveled to Ghana between April 26 and May 9, 2002 and met with a broad cross-section of stakeholders and parties involved in the current debate on water privatization. Representatives of the Government of Ghana, including the Ministry of Housing and Works, the Public Utility Regulatory Commission, the Water Resources Commission, and the Water Sector Restructuring Secretariat met with the delegation. The delegation also met with parliamentarians and representatives from the water industry, including the Ghana Water Company, the Community Water and Sanitation Agency, the Plumbers Association and the Institute of Engineers.

The delegation met with representatives of the International Monetary Fund, the World Bank and the British Department for International Development. Third World Network held a forum for civil society organizations to present their perspectives to the Fact-Finding Mission and a range of civil society organizations made submissions to the delegation. The delegation also visited several low-income communities in Accra to talk to residents and learned of the daily difficulties many people face in gaining access to clean and affordable water.

### **Brief Summary of the Private Sector Participation (PSP) Proposal**

The PSP proposal would lease the urban water system of Ghana, approximately 74 water systems across the country, to two private sector water companies. The seventy-four systems have been divided into Business Unit A (BUA) and Business Unit B (BUA). The private sector company leasing each business unit will be responsible for operation and management and will invest \$70 million for rehabilitation, renewal, and improvement of the water systems. By and large, the private sector companies will not be responsible for the extension of the systems. The Ghana Water Company Ltd. (GWCL) will be responsible for securing the financing and executing the needed extensions to the water systems. The pre-qualified bidders are all major transnational corporations including Vivendi, Suez, Bi-water, Saur and others.

Below is the Executive Summary of the report of the International Fact-Finding Mission on Water Sector Reform in Ghana. The full report follows.

## **II. EXECUTIVE SUMMARY**

### **I. ISSUES OF PUBLIC HEALTH, ACCESS AND AFFORDABILITY**

1. The lack of access to clean water and to sanitation systems are central public health concerns, globally and in Ghana. **No single intervention has greater overall impact upon national development and public health than does the provision of safe drinking water and proper sanitation.**

2. Inadequate water and sanitation contributes to 70 percent of diseases in Ghana. In 2000, 40% of outpatient visits to health facilities were for malaria and an additional 12% for health problems (diarrheal diseases, skin diseases, and acute eye infections) that are a direct consequence of poor and/or absent water supply. Poor sanitation and drainage provide breeding places for mosquitoes, and are critical factors in the high level of malaria infections.

3. In Ghana, the incidence of some water borne diseases, including cholera, has increased, while the rate of decline for others, such as guinea worm, has slowed or has been reversed in recent years. Reduced access to water has contributed to this situation.

4. Unless improved water is provided to the widest possible area, water-borne diseases are likely to remain prevalent throughout the entire population. Cholera can only be reliably prevented by ensuring that all populations have access to adequate sanitation systems and safe drinking water.

5. Uninterrupted access to treated and piped water is only significant in selected parts of urban areas. The Ghana Water Sector Restructuring Secretariat, which advises the government on the PSP proposal, has found that 60 to 70 percent of the population in urban areas and 35 to 40 percent in rural areas have access to potable water. However, many of those who have access to potable water are buying from intermediary providers because water is not flowing regularly from their taps.

6. Affordability of water is a serious concern. Ghana is a low-income country, with an average annual Gross Domestic Product of \$400 per person which is slightly above \$1, or 8,000 cedis, a day. Like most African countries, Ghana is experiencing a growing situation of feminized poverty and children living in difficult conditions. 78% of the urban poor have no regular access to piped water, compared with 53% of the total population. For those outside of the piped water system or whose piped system is not delivering water, purchasing three buckets of water a day can cost 600 cedis to 1,500 cedis, or between 10% and 20% of the average daily income. The World Health Organization's daily requirement for water is 20-40 liters a day per person, located within a reasonable distance from a household. Three buckets of water a day provides 18 liters, just below the low point of this minimum.

7. Increased cost recovery is often part of the regulatory reform imposed prior to privatization. Conditions attached to World Bank lending led to a 95 percent increase in water tariffs in May 2001. Other tariff increases are likely before and after the PSP proposal is implemented. Tariff increases are borne unequally by the poor population due to the fact that their relatively smaller incomes already go disproportionately to pay for water and because they are often outside the piped system. For those without piped water, tariff increases are magnified as they are passed on by the tanker truck operators and other intermediary buyers and sellers.

8. The PSP proposal, as it stands, is unlikely to improve access to clean and affordable water and sanitation services. This is attributable to the following elements of the proposal.

\* The PSP proposal separates water from sanitation services and therefore does not address much-needed improvements in sanitation.

\* Increased cost recovery and automatic tariff adjustments are part of the PSP process. Under these policies affordability could deteriorate further.

\* The PSP proposal does not adequately address the situation faced by 78 percent of the urban poor who are outside of the piped water system. This population faces higher water tariffs imposed by intermediary buyers and sellers. Some of the worst abuses could be remedied by regulation and/or contractual terms between the water supplier and the tankers that could ensure supply to retailers at close to the lifeline tariff and control prices faced by low income consumers.

\* The PSP does not provide a specific plan for protecting low-income consumers. The FFM was informed by all GOG officials that there will be some relief for the poorest residents, who will be identified by geographic area. For those on the piped water system, current policy provides a lifeline and block tariff, which provides a certain volume of water at a lower cost. There appears to be continued debate among Ghanaian government officials, consultants and multilateral agencies regarding whether to continue this policy, or move toward a flat rate tariff with targeted subsidies for low-income consumers. Targeted subsidies would be less effective at reaching and providing relief for the poor population, and administering them would be a greater strain on the infrastructure. Moving from a lifeline and block tariff structure to a flat rate with targeted subsidies would likely increase the obstacles to accessing clean and affordable water adding an additional burden on women and low income communities.

\* There is a proposal for free or subsidized connection fees. Connection costs appeared to be a significant barrier for many households to gaining access to the piped water system, and this proposal may enhance affordability and access.

\* According to available documents, it appears unlikely that the PSP proposal will extend access to water significantly, if at all, beyond present service areas. The Ghana Water Company Ltd. (GWCL), not the private companies, will have responsibility for expansion and it is unclear that sufficient financing will be available for significant expansion. Therefore, it is unlikely that the PSP proposal will assure sufficient population coverage of water services to achieve improved public health outcomes.

\* The WS Atkins report, prepared to inform the PSP process, prioritizes improvements, repairs, rehabilitation and expansion in the current water system according to economic criteria based on the ratio of increased revenues relative to investment. While economic criteria receive a 60 percent weighting, public health criteria are weighted only 10 percent. No weighting is given to poverty criteria. This is likely to prioritize improvements, repairs and rehabilitation in wealthier areas over expansion to low income communities. There is no apparent mechanism to monitor changes in water-borne diseases as a control measure to assess the impact of water sector reforms.

## **II. LEGAL AND CONTRACT ISSUES**

1. The proposed lease framework prepared by Stone & Webster has not been made available to the public, and the FFM viewed only a small portion of the proposed lease framework. Without full information, it is not possible to draw firm conclusions about the incentive structure and enforceability of the proposed lease framework. Although there is enough relevant information in the public domain to raise issues and questions, the complete information is vital to properly evaluate the proposed lease framework.



2. In many countries the proposed lease framework, known as the “request for bid” is subjected to a public comment period. Such a public comment period would encourage constructive discussion among civil society, government, parliament, trade unions and other stakeholders.

3. The decision to move towards full cost recovery, and end the public subsidy for the urban water provision system, appears linked to the decision to embark on the PSP.

4. The apparent reimbursement arrangement provides an incentive to the lessee to pad costs, to engage in transfer pricing (buying products from the home country or other subsidiaries or related companies at inflated prices) and generally to be insufficiently disciplined in economizing in expenses accrued. This danger does not mean the reimbursement provision is improper; but the danger must be acknowledged and addressed. The FFM does not know what, if any, safeguards will be built into the contract to prevent such actions.

5. The lessee does not appear to be taking on much risk. Although a condition of entering into the lease arrangement is that the lessee must provide \$70 million in investment capital over 10 years, available documents suggest the lessee will be paid a specified return on investment (with the exact level to be determined by bid), as well as compensated for the depreciated value of their investment. Additionally, the lessee will receive a fee for system management.

6. The lessee incentive is likely to be to reduce non-revenue water through more systematic billing, as a priority over reducing physical leaks.

7. It is unclear how efficient the contractual mechanisms of accountability will be. Reliance on the lessee to establish performance baselines and for ongoing performance monitoring could create opportunities for lessee manipulation of the data. Reliance on an independent evaluator would be preferable.

Inclusion of a performance bond in the lease is an important mechanism of ensuring operator accountability, but the import of this mechanism is dependent on the terms of the bond, which are not known to the FFM.

8. It is unavoidable that the lessee will seek to be involved in decisions relating to expansion of the piped system. Lessee involvement in planning of the expansion and more generally in the determination of use of donor funds raises important concerns about prioritization in investment. What communities will be served? Which consumers will benefit?

To the extent the lessee has an interest in maximizing volume of water delivered and revenue generated, it will tend to prioritize upper income and industrial consumers over lower-income consumers who will be lower-volume users. Furthermore, the investment prioritization formula proposed in the WS Atkins report will favor expansion and renewal in areas closer to already serviced areas (a category heavily skewed to upper-income communities), where investment costs for extension will be lower.

9. It is not clear what, if any, specific obligations the lessee will have to provide expanded access and improved service to low-income consumers in particular. Key documents actually suggest

that the lessee will *not* be expected to take any measures to improve access and service for low-income consumers. There do appear to be plans for an administrative body to oversee lessee service to low-income consumers.

There seem to be no contractual obligations for the lessee regarding provision to lifeline consumers. Because it is the contract terms above all that determine the lessee's obligations, such a fundamental component of the water system should be included as a contractual responsibility to eliminate any uncertainty and to emphasize the government's priority for relying on the lifeline to expand access. If the lifeline tariff is not established as a contractual obligation, it is easy to imagine the lessee working to roll it back.

10. The existing tanker system is plagued by price gouging and market failures. Some of the worst abuses could be remedied by regulation and/or contractual terms between the water supplier and the tankers that could ensure supply to retailers at close to lifeline tariff and control prices faced by consumers. Either of these approaches will require cooperation from the lessee. It may be advisable to address such issues in the contract.

11. The PSP proposal could be strengthened by the inclusion in the contract of performance targets relating to poverty and public health; for example targets related to improvements in rates of water-borne diseases or targets related to serving low income communities.

### **III. ROLE OF THE IMF, WORLD BANK AND OTHER DONORS AND CREDITORS**

1. There are a long succession of IMF and World Bank loans to the Government of Ghana (GOG) that contain conditions requiring increased cost recovery, automatic tariff adjustment mechanisms, and increased private sector participation in the water sector. These types of loan conditions can have a negative impact on access to clean and affordable water.

2. The British Department of International Development (DFID) has delayed a loan of US \$10 million for rehabilitation of the water system in Kumasi, which was conditioned upon progress in water privatization in Ghana, citing slow progress in this area and a shifting of DFID priorities from direct funding of projects. Such conditionality privileges privatization in consideration of options for water sector reform.

3. World Bank prescribed institutional and legal reforms played a key role in the design of the new framework for the water sector. This has included the unbundling of rural and urban water, resulting in the development of the Community Water and Sanitation Agency to administer the rural system, and the creation of the Public Utility Regulatory Commission, the Water Sector Restructuring Secretariat, and the Water Resources Commission.

4. The PURC's implementation of a plan for full cost recovery and automatic tariff adjustment mechanisms will be a condition for the completion of the IMF's fifth review of Ghana's Poverty Reduction and Growth Facility loan. The IMF considers this necessary to "safeguard

macroeconomic stability.”<sup>1</sup> However, there are serious concerns that this may undermine the role of the PURC as an independent regulatory body.

#### **IV. REGULATORY ISSUES**

1. The Public Utilities Regulatory Commission (PURC) supports moving toward full cost recovery—a policy promoted by the international financial institutions -- and is committed to ongoing tariff increases until full cost recovery is achieved.

2. A high percentage of urban consumers depend on water tankers for their drinking water supply. This includes both consumers who are not connected to the piped water system, and consumers who are connected, but receive irregular service. These consumers pay rates far in excess of those who rely on water from the piped system. Regulation of these trucks could help alleviate price gouging immediately. The PURC could establish a pricing schedule for water tanker trucks, with small adjustments permitted to reflect varying costs of servicing different communities. There is no evidence that such a plan is under consideration.

3. Many consumer protections provided in other country regulatory contexts appear absent from the PURC rate-setting and other processes. These include formalized quasi-judicial hearings and a specified right of intervention in hearings, and monetary support for intervention.

4. The PURC says that it operates under a philosophy of self-auditing by regulated utilities, on the theory that the utilities are in the best position to provide information about their water quality and operations. However, self-audits are extremely controversial and, internationally, have been shown not to protect consumers.

5. The legislative framework that shapes the regulatory mandate of the PURC, both in relation to consumer protection and in relation to general oversight of the utilities, could be significantly strengthened.

6. According to the Stone and Webster “Information Memorandum” the Water Resources Commission may plan to transfer water rights to the private operator. If transfer of water rights to the private operator are included in the contract, this could pave the way for the private operator to gain access to Ghana’s water resources, perhaps with the idea of bulk water sales to other nations that are suffering from water shortages. While bulk sales in the region may be appropriate on equity grounds and might conceivably be handled in an environmentally appropriate fashion, neither of these outcomes are guaranteed. Very specific contract terms and regulatory authority are required to assure any bulk sales follow publicly established standards. Water rights should remain with the public authorities.

6. Ghana has entered into Bilateral Investment Treaties (BITS) with the United Kingdom and many other European nations. BITS could elevate the contractual arrangement with the lessee above government regulatory powers. PURC and other Ghanaian regulatory authorities could be subjected to international arbitration panels that deem efforts to impose regulatory requirements

on the lessee go beyond contractual terms and are a violation of the lessee's investor rights. To date, investor's rights contracts in BITS and in the North American Free Trade Agreement (NAFTA) have been invoked on at least five occasions to challenge government actions concerning water or water services.

7. Conditions attached to the recent tranche of Ghana's IMF loan from the Poverty Reduction and Growth Facility requiring that the PURC implement automatic tariff adjustment mechanisms may interfere with the independent regulatory function of the PURC. It is inappropriate for the IMF to micro-manage the regulatory decision-making of the PURC.

## **V. FINANCING AND FISCAL ISSUES**

1. The PSP proposal will bring \$140 million from the private sector. This is an important contribution, but it is worth noting that the estimated need for rehabilitation and expansion of the urban water infrastructure is approximately \$1.3 billion. A substantial portion of the financing burden will remain with the government of Ghana regardless of whether the water system is managed as a public or private operation.

2. The PSP proposal will unlock funding from the multilateral and bilateral creditors and donors. New World Bank and bilateral loans will be made available conditioned on the finalization of the PSP negotiations.

3. There are serious concerns about the appropriateness of incurring additional external debt for rehabilitation of the water system when the majority of the revenues will accrue to private sector companies.

4. It would be important that the rates of return required by the private sector companies, as well as other key information from bidder documents, be available in the public domain.

5. There are serious biases in the investment prioritization scheme proposed in the WS Atkins report. These ranking systems, where the economic criteria overrule health and poverty concerns, will likely prioritize investment in wealthier areas where there is already significant infrastructure and relatively small capital investment will yield substantial revenue gain. Extensions, or new connections, are likely to lose out to this prioritization system. Low income communities are also likely to lose out -- especially where substantial investment is needed to rehabilitate the infrastructure and revenue potential is limited. Because the ranking system gives priority to rehabilitations, renewals and improvements (rather than extensions), it also may give private sector companies priority over the GWCL in accessing multilateral funds.

6. Preparation for the PSP was part of a 10-year water sector reform process that has "unbundled" rural and urban water and separated sanitation services from water delivery. The unbundling process will, if the PSP proposal is implemented, remove the profitable sectors of water service from the public domain. This will result in the loss of a significant source of cross-subsidies.

7. The PSP proposal ensures that revenues from water billing are available for payment to the lessee. Yet the government will still carry the fiscal burden for the deficit-creating aspects of water and sanitation service delivery. This includes loans incurred for the management of rural water in the areas designated under the jurisdiction of the CWSA, expenditures for sewerage treatment, and debt service payments (interest and principal on past loans). This arrangement will likely have a negative impact on the fiscal budget.

8. The expected increase in foreign inputs that will accompany foreign private sector management of the water sector, in addition to the anticipated practice of transfer pricing, will place additional pressures on Ghana's balance of payments.

9. The PSP proposal will transfer the problem of exchange losses from a deficit on the books of the GWCL to an automatic tariff adjustment mechanism borne by Ghanaian consumers. This may have a positive impact on the government's fiscal budget, but it will have a negative impact on low-income consumers and their access to clean and affordable water.

## **VI. THE PUBLIC SECTOR OPTION**

1. The Water Sector Restructuring Secretariat (WSRS) states that efforts in the 1970s and 1980s to restructure GWSC and improve its operational and financial viability failed. Therefore, in the early 1990s, the decision was made to increase the role of the private sector. In 1994 eight PSP options were reviewed and in 1995 the lease option was selected.

2. The WSRS also states that Ghana Water Company, Ltd. (GWCL) and its predecessor have been constrained by lack of financial resources. Inadequate funds for the expansion of water supply systems, many which have been in existence for more than fifty years, growing population, and reductions in the government subsidy for water services, have contributed to the current "crisis" in the water delivery infrastructure. High levels of non-revenue water, about 52%, and inadequate billing and collection systems compound the problems.

3. The eight PSP options reviewed in 1994 did not include any public sector options. It would have been useful to have examined possible public sector restructuring options and successful cases of public sector restructuring and re-engineering in countries such as Malawi, Sri Lanka, India, Hungary, and Honduras. Historically, the alternative of a public sector water system has been the favored model, although currently international creditors and donors appear to favor some form of privatization. Globally, the majority of the world's population is serviced by public sector water services.<sup>2</sup>

4. Building and strengthening local Ghanaian capacity for effective water service delivery should be a critical part of any water sector reform proposal. There is concern that the PSP proposal will marginalize local talent and capacity, at best, and possibly result in a reduction of the future engineering, managerial, and technical capacity of the Ghanaian workforce to manage water service delivery.

## **VII. HUMAN RIGHTS ISSUES**

1. The right to adequate water is included in aspects of a variety of international treaties, including the International Covenant on Economic, Social and Cultural Rights. The government of Ghana is a party to many of these international treaties and therefore would have the obligation to respect, protect and fulfill those rights.
2. The PSP proposal includes policies based on increased cost recovery and automatic tariff adjustment mechanisms. These policies have a high potential to make water less accessible and affordable to the most vulnerable members of society. Cost recovery policies imposed by the IMF and the World Bank, together with the government of Ghana's own priorities, could place the government in violation of its international legal obligations relating to adequate water.
3. As specialized agencies of the United Nations, the IMF and World Bank have obligations to promote the human rights mission of the United Nations. Loan conditions requiring increased cost recovery and automatic tariff adjustment mechanisms, could violate those obligations.
4. Third-party States, which are shareholders of the World Bank and IMF, also have obligations under international law to assist the government of Ghana in the realization of rights relating to adequate water which could be implemented by conditioning funding for these international financial institutions on certain basic human rights principles relating to accessibility and affordability, public health objectives, full consultation, non-discrimination and public accountability.
5. Any regression with respect to accessibility and affordability of water will have effects on other rights, such as education, healthy development of children, etc. set forth under international law as well in the Ghanaian Constitution; evidence suggests that these effects will be borne disproportionately by women.

## **VIII. GENDER ISSUES**

1. Given the roles of women within the care economy, (that is defined as community support and unpaid household work provided by women, including provisioning water) it is clear that women carry heavier threats, burden and risks under this situation of water scarcity.
2. Testimonies of women's organizations and women living in poverty in communities visited by the FFM have confirmed the following facts.

\*As it is their responsibility to provide water to the household by any means necessary, and whatever the difficult conditions, the situation of unavailability of water leads to serious despair, reduced income that was already very limited, aggravated poor health and sanitation situations, and even violence. Some women have indicated lack of water means lack of dignity and even sometimes violence in the home.

\*Because of their social position and high level of vulnerability women tend to have less access to water for their personal needs when the resource is lacking. Despite the fact that they are the

household water providers they serve themselves last. This situation of very limited access to water has dramatic impact on women's health in particular on pregnant women and those giving birth. Scarcity of water as well as skyrocketing water prices put poor women in situations where they are obliged to walk long distances to find cheaper water and use unsafe water from hand-dug wells.

\*Water is the very first necessary good women will substitute without hesitation for other necessary items in their food basket. Therefore a tariff policy that is centered on cost recovery and automatic tariff adjustment, overlooking women's and children's rights to water, develops mechanisms for aggravating their poverty. Increased cost of water will push poor families towards consumption of unsafe water and consequently higher incidence of water borne diseases and women and children's morbidity.

\*This situation is even more disastrous when it threatens education, the very basic fabric for building human resource capacity in a developing country. It is common practice to withdraw children from school, in particular girls, to send them to fetch water to supplement the mothers' heavier work burden. Other students, especially girls, simply choose to not go to school because they have no water to bathe.

## **IX. LABOUR ISSUES**

1. Union participation in the development of the PSP proposal has been noticeably absent. There were no consultations or meetings with any representatives of the Public Utilities Workers Union or with the Trade Union Congress of Ghana during the course of the entire study of the restructuring of the water sector, conducted from 1994-1995 by a Government commissioned consultant.

2. No representatives from the Public Utilities Workers Union or from the Trade Union Congress of Ghana participated in the pivotal Ghana Water Sector Restructuring Workshop, February 6-8, 1995, which debated, endorsed, and launched the PSP process.

3. The selection process of private contractors under the PSP is based on a technical audit, and subsequent selection of the lowest bidder. While the government obviously needs to protect its fiscal interests, allocating the lease solely on the bid price may be problematic. On one hand, this may result in selecting a bidder that shaves labour costs, negatively impacting workers' wages, benefits, and working conditions, purchases cheaper inputs requiring greater maintenance down the road, and relies on inexperienced junior staff, creating customer service problems. On the other hand, the lowest bidder process may create a situation whereby the successful winner of the bid returns to the public trough for increases in fees to cover unanticipated operational costs.

4. In addition to leasing the urban water sector operation, maintenance and rehabilitation to private operators, the current PSP proposal calls for retrenchment of about half of the current GWC workforce of 4,300. Lower staffing levels do not automatically imply or result in greater efficiency. It has been suggested that the current GWC technical and operational staff levels are inadequate to meet service needs. It is evident that there is a substantial need for maintenance, rehabilitation and expansion of the current water system in Ghana. There is no persuasive

evidence offered to support a conclusion that reducing the current staff by half will result in efficiencies to meet this service need.

5. The Public Utilities Workers Union is engaged in negotiations with the GWC to protect laid-off workers through securing severance payments. It remains unclear what the future of these workers will be. While laid-off workers are intended to be assisted in the formation of small scale or micro companies, the success of such ventures in the past in Ghana appears illusory.

6. It is unclear at this time what criteria will be used to determine which workers will be laid-off and who will stay, what role the private contractors will have in this process, and whether such decisions are appealable.

7. Previous outsourcing of specific functional areas in the water sector in Ghana has met with mixed results, including performance problems from incompetent private sector contractors. Outsourcing continues to be recommended under the PSP process as an advantageous route to efficiency, though there is no evidence that this approach will actually increase efficiency.

8. For the workers who do remain under the proposed PSP, the vast majority of whom will work for the private contractor(s), it is apparent that the current union contract with the GWC will not be adopted by the private operators. There is concern that multinational private operators may seek concessions from the current workforce in a new union agreement. An additional concern is the challenge of having a level playing field in negotiating a union contract with prospective multinational corporations, several of which have annual sales revenues larger than the entire GDP of Ghana.

9. Organized labour has raised several concerns about the PSP proposal, calling for review of alternative options, including deeper reforms within the GWC. Labour's concerns focus on issues of equity and social justice, and the ability of the majority of the Ghanaian population to be able to afford and therefore have access to safe water should it be managed by private concerns.

## **X. CIVIL SOCIETY PARTICIPATION**

1. The consultation process has primarily involved key “select” stakeholders such as government institutions, parliamentarians, multilateral and bilateral donors, private sector actors and a few NGOs. The FFM found that the great majority of citizens and civil society organizations, who will be directly affected by the PSP proposal, were unaware of its basic components and were not involved in the decision-making process.

2. The Water Sector Restructuring Secretariat has developed a “public awareness” campaign funded by DFID. According to the WSRS the objective of the program is to “educate and inform the public on the benefits of the PSP to ensure that civil society adequately understands and appreciates the needs for the programme.” This program was cited to the FFM as evidence of civil society participation. However, it is important to differentiate a public relations approach from an approach designed to listen to and gather the viewpoints of consumer groups and citizens seeking redress on issues related to access to clean and affordable water.



3. Lack of transparency and access to information has impeded the participation of civil society. Key documents have not been made available to the public. These include revised versions of the terms of reference produced by Stone & Webster as well as other private consulting firms' documents which the FFM was informed were "driving the PSP process."

4. The PSP process is perceived by many in civil society as not wholly legitimate due to a lack of consideration of other options and a sensation that decisions are being taken "behind closed doors" to meet World Bank and IMF requirements.

## **FULL REPORT OF THE GHANA FACT-FINDING MISSION ON WATER SECTOR REFORM**

### **III. ISSUES OF PUBLIC HEALTH, ACCESS AND AFFORDABILITY**

#### **Introduction**

The Public Health Committee of the Fact Finding Mission gathered data on questions arising from the government of Ghana's proposal for Private Sector Participation (PSP) in the water sector. The committee gathered source documents and held interviews with key informants in Ghana between April 29 and May 10, 2002. The significance of the health section is premised on the fact that access to water and sanitation is a key determinant of population health and of development, globally and in Ghana. This section covers three major topic areas: (1) current conditions in Ghana regarding access to clean, affordable water and sanitation in rural and urban areas; (2) provisions of the Private Sector Participation (PSP) proposal that could affect access to and affordability of water; and (3) potential effects of the PSP proposal on public health.

#### **Full Report**

##### **Access to water and sanitation as a key determinant of population health and of development**

Public health is concerned with the determinants of individual and population health. Basic public health principles recognize the essential relationship between conditions guaranteeing social and economic well-being, the health of populations, and the physical health of individuals.

**No single intervention has greater overall impact upon national development and public health than does the provision of safe drinking water and proper sanitation.**<sup>3</sup> Universal access to water is technologically possible in the twenty-first century. The failure to provide universal access, and the remaining prevalence of morbidity and mortality related to water-related diseases, are public health crises of the first order.

16% of the world's population, approximately 1.1 billion people, are still without some form of improved water supply. Close to 40%, or 2.4 billion, live without adequate sanitation.<sup>4</sup> The lowest rates of availability are in Asia and Africa.

Over 5 million people a year die from illnesses linked to unsafe drinking water, unclean domestic environments and improper sanitation,<sup>5</sup> mostly children under age 5.<sup>6</sup> At any time over half the population in the developing world suffers from one or more of six diseases associated with water supply and sanitation: diarrhea, ascariasis, dracunculiasis (guinea worm), hookworm, schistosomiasis and trachoma. Annual mortality rates from the most fatal of water-borne diseases are: Diarrheal disease: 3.3 million deaths; Malaria: 1.5 million; Schistosomiasis: 300,000.

Diarrheal diseases can cause severe dehydration, sometimes leading to death. Cholera is a diarrheal disease that can be fatal if not diagnosed and treated quickly, with a case-fatality rate of 3.6%.<sup>7</sup> It is often prevalent in urban as well as rural areas. The seventh cholera international pandemic wave began in 1961 and spread to Africa, where it had not appeared in decades, and finally to Latin America, which had been free of cholera for more than a century. Cholera causes

at least 120,000 deaths, and many more cases, a year. **Cholera can only be reliably prevented by ensuring that all populations have access to adequate sanitation systems and safe drinking water.**<sup>8</sup>

Unsafe water has particular high risks for children, including mortality.<sup>9</sup> Poor sanitation presents a serious risk to infants, particularly those who are not exclusively breast-fed.<sup>10</sup> Studies show that unprotected exposure to malaria is associated with lower birth weights in infants.<sup>11</sup>

The health burden includes annual expenditure of over 10 million person-years of time and effort by women and female children carrying water from distant, often polluted sources.

Improved water and sanitation can reduce morbidity and mortality rates of some of the most serious water-borne diseases by 20 - 80%.<sup>12</sup> (Morbidity is a measure of illnesses.) Reviews show a 16% to 25% decrease in diarrheal morbidity resulting from improved water supply; and 20% reductions in mortality, and 40% reduction in diarrheal disease mortality, for some age groups when water is piped into or near the household. Improved water quality accounts for a median reduction in disease prevalence of 17%, while increases in quantity show a median reduction of 27%. Sanitation improvements can result in median reduction of 22% in diarrheal disease, and may be more influential than improving access to water.<sup>13</sup>

The minimum requirement for health is 20-40 liters of water per person per day located within a reasonable distance from the household, according to the World Health Organization.<sup>14</sup> An expert estimate of sufficient water is 100 litres per capita per day (lcd), or 3,000 litres a month, the equivalent of three cubic meters (m3).<sup>15</sup>

The average cost to provide water supplies in urban areas is \$105 per person, and \$50 in rural areas. Sanitation costs average \$145 in urban areas and \$30 in rural. One expert estimates investment costs to install a water system at \$500 per person in urban areas.<sup>16</sup>

In the 1980s, efforts extended water to 1.2 billion people, and sanitation to 770 million people worldwide. Two-thirds of the funds for water improvement were from national sources, a third from external organizations. However, this work failed to keep pace with population growth, uneven investment between water and sanitation, and urban-rural disparities. The limited impact of programs of the 1980s, and narrow analyses suggesting that expanding water availability was too costly compared to the benefits, caused a policy shift to treating water-related diseases, rather than preventing them. It is difficult to imagine such a decision applied, for example, to the population of Florida, where mosquito infestations have been reduced through ecological approaches. However, more recent analyses support the cost-effectiveness of providing water to prevent illness. One recent reconsideration notes that improving water may appear less costly when accounting for the fact that health benefits persist over a long time frame, and that non-health benefits also accrue,<sup>17</sup> suggesting that a proactive, preventive approach is both desirable and achievable. The World Bank<sup>18</sup> and others<sup>19</sup> have noted large financial returns when factoring in indirect benefits, including community education programs that reduce the costs of health care and the transport costs of water.

### **Current conditions in Ghana: Access to clean, affordable water and sanitation in urban and rural areas.**

There is substantial variation in access to clean, affordable water depending on income, between rural and urban areas, and across regions, in Ghana.

The Ghana Water Sector Restructuring Secretariat (WSRS) advises the GOG on the PSP proposal. It is funded by the World Bank. WSRS found that only 53% of the total population, but 78% of the poor, have no piped water.<sup>20</sup> Five percent of the total population, and 5% of the poor, have a water tap, but no flow from the water system.

Uninterrupted access to treated and piped water is only significant in selected parts of urban areas. The percentage of the population with access is officially 60-70 per cent in urban areas and only 35 to 40 per cent in rural areas, according to the WSRS.<sup>21</sup> A study in 2001 found that only 40% of the urban population had access to piped water supplied by the Ghana Water Company Ltd.(GWCL), the national agency that manages the water system currently.

The percentage with access to improved sanitation facilities is approximately 40% in urban areas and 35% in rural.<sup>22</sup>

Higher ranges for both rural and urban areas are generally applicable to the southern and costal areas and lower access to the northern regions.

During the last two decades rapid urban population increases and expansions in the urban areas, particularly Accra, have contributed to a decrease in the percentage of urban households supplied by piped water.

Households without access to piped water rely on a variety of less reliable and hygienic sources, including mobile vendors (such as water tankers) and fixed vendors of GWCL water, shallow wells and deep wells, boreholes, springs, and/or commercially bottled or bagged water. A study of one urban area, Kumasi, found that 15-30% of the population rely on hand-dug wells.<sup>23</sup> Supplies from untreated sources such as shallow wells, streams and rivers represent the greatest threat to public health because of the high exposure to contamination from improperly disposed sewage and refuse, as found in gutters and dumps, and industrial pollutants.

### **Incidence of water-borne diseases**

Inadequate water and sanitation contributes to 70% of diseases in Ghana.<sup>24</sup> Poor sanitation and drainage provide breeding places for mosquitoes, and are critical factors in the high level of malaria infections.

The water privatization proposal is targeted to urban and semi-urban areas. Water-related diseases most common in urban areas are cholera and malaria. Cholera is characterized by diarrhea, severe dehydration, fever and collapse, and is exacerbated by poor sewage treatment. Malaria and typhoid fever are also endemic.

In contrast, guinea worm and bilharzia are more common in rural areas, where people often bathe in infected water as well as drinking it.

Cholera is generally prevalent at low levels in Accra, but it becomes epidemic when the rainy season begins in the late spring, as filth in the streets increases. If not treated quickly, it can be fatal. **Cases of cholera mushroomed in two years, nearly tripling from 3,689 cases in 1998 to**

**9,432 cases in 1999**, according to a consultants' report issued by W.S. Atkins on April 17, 2001, and presented to the government of Ghana. In the Greater Accra area alone, an area with a population just under 3 million, cases rose from 254 in 1998 to 3,525 in 1999. In standardized terms, the increase in Accra represents a jump from 87 cases per year per million population, to 1,211 cases per year per million. A similar increase occurred in Kumasi, another urban center.

#### Cases of cholera, 1998-1999

<b>Region</b>	Population	1998 cases	1998 cases per yr/mil	1999 cases	1999 cases per year/million
Ghana Total	18,412,247	3,689	200	9,432	512
Greater Accra	2,909,643	254	87	3,525	1,211
Kumasi Metro	1,017,246	637	626	1,030	1,013

Improvement in the overall incidence of guinea worm has been moderate in recent years despite a number of donor supported water supply initiatives in rural areas in the highly endemic northern regions. According to the Ghana Disease Control Unit (DCU), a unit of the Ministry of Health, cases increased from 5,473 in 1998 to over 8,965 in 1999, but were back down to 4,644 in 2001.

Guinea worm has been targeted for eradication, and this decline is slower than in previous years.

According to the Ghana DCU, average mortality from guinea worm is presently 5%, a rate that varies by area. The DCU believes it should be less than 1%. The excess rate reflects the difficulty of identifying outbreaks in remote regions and deploying health care personnel and treatment in a timely way. Eradication of the disease is both clearly possible, and a superior goal to treatment once infection has occurred.

**Treatment for water-borne diseases.** Records of outpatient clinic visits provide an additional view. However, they do not necessarily represent the total burden of disease. The imposition of user fees for health services in Ghana has been associated with a decline in utilization. It cannot be assumed that all who are ill actually seek or receive treatment.

In 2000, 44% of outpatient visits to health facilities were due to malaria. Twelve percent of visits were for other health problems that are a direct consequence of poor and/or absent water supply (diarrheal diseases, skin diseases, and acute eye infections).

Reports of Outpatient Morbidity by Region were recorded in W.S. Atkins (April, 2001) and based on reports from the Ghana Ministry of Health and other national sources, for 1997, 1998 and 1999. In all years, malaria was the leading cause of outpatient visits, accounting for 2.3

million cases in 1999. During that time, diarrheal diseases (including cholera) moved up from the fourth to the third leading cause of a visit. Malnutrition accounted for an average of 13,000 visits in each of the three years.

### **Poverty level**

The average annual income per person in Ghana is the equivalent of U.S. \$400. The minimum wage was recently raised to U.S. \$1 a day (now about 8,000 cedis).

A consultants' report by Louis Berger, in preparation for the PSP proposal, comments on Ghana income levels as of 1996. Section 7 of the Berger report, on Socioeconomic Aspects, estimates between 17% and 40% of people live in poverty in the Accra-Tema Metro area (ATMA). It notes that living expenses are much higher in ATMA compared with other urban areas and with rural areas. For example, rent in ATMA at that time was c 5,652 (cedis), in other urban areas c3,514, and in rural areas c2,512.

In the other three major urban areas in Ghana, the World Bank's Poverty Reduction Strategy Paper (PRSP) notes poverty levels between 24.8% and 42.2% in 1999.

The PRSP also notes an increase in the income gap ratio, the proportion by which the average consumption level of poor households falls below the poverty line (about 30 - 35% as of 1999), and notes that "the depth of poverty for those who remain poor has increased..."

The Berger report also discusses the importance of the "informal sector" as a more useful concept than "poor" in Africa:

"In fact the term 'poor' when applied to people living in precarious conditions has little meaning since most of the population endures the(se) conditions: difficult access to safe water, poor sanitation, shanty houses, no drainage or unpaved roads.

**"Almost three-quarters of the population in modern African cities are living in the informal sector...**which is extremely flexible and capable of adapting itself to fluctuations in the economic situation.

"However, when it comes to levels of income, it is difficult as well to define who is poor, since the income levels are subject to intense variations due to precarious job situations and to the unstable economy which characterises the informal sector. A person may be considered 'poor' one month and 'wealthy' the next if traditional 'poverty line' criteria are used."

A high percentage of urban residents in Ghana are poor even by all of these indicators, and cannot well afford to pay more for water. Even in Accra, both absolute poverty and unequal distribution of income are serious concerns. It is difficult for people in Ghana to afford to pay for water, and increases in fees would make the problem worse.

### **Provisions of the Private Sector Participation (PSP) proposal that could affect access to affordable water and the reduction of water-borne diseases**

**Constraints on affordability caused by increased cost recovery and automatic tariff adjustments.**

**Affordability.** The affordability of safe water is directly related to access, and is thus a central public health concern. When safe water is neither available nor affordable, residents turn to informal storage containers that are often unsafe.

The cost of water rose by 95% in May, 2001. For those without piped water, the tariff increase was magnified as it was passed on to the tanker truck operators and other intermediary buyers and sellers. This tariff increase was borne unequally by the poor population due to the fact that their relatively smaller incomes already go disproportionately to pay for water, and because they pay higher fees for water outside the piped system.

For those who buy water outside of the piped water system, purchasing three buckets of water a day can cost c600 to c1,500, or as much as 20% of the average daily income. As a point of comparison, a minimum wage worker in the U.S. earning \$5.75 an hour, or \$1,012 a month for full time work, might expect to pay \$10 - 20 a month for water, or at most about 2% of her salary. For the more typical U.S. resident, at the median U.S. income of about \$3,083 a month, water represents only six-tenths of a percent (.6%) of income.

The consultants' report in 1998, by Louis Berger, presented targets for the percent of income that residents might reasonably be required to spend for water. It proposes figures between 5% and 7%. It is not clear what the evidence base is for this recommendation. It is many times higher than the average six-tenths of a percent paid by residents of the U.S., where the rate of poverty is also far lower by most estimates.

Consultants' studies have attempted to assess prices Ghanaians would be able or willing to pay for water. However, it is misleading to conclude that payments in an informal economy will translate into an ability to pay through formal systems such as water meters.

**Cost recovery/user fees.** A central feature of the PSP proposal is the reliance on increased cost recovery from individual consumers. While the Government of Ghana has historically provided subsidies to the GWCL and its predecessor, these subsidies are proposed to be phased out by 2003.

Several documents supporting increased cost recovery were presented to the FFM. Three consultants' reports provided to the FFM by the WSRS (Halcrow, London Economics, and Louis Berger) advocate increased cost recovery in the water sector. In interviews with the FFM, the World Bank and International Monetary Fund representatives were emphatic that residents can and should pay tariffs that cover the costs of operating and maintaining the system effectively. Evidence justifying the effectiveness of this approach has been requested, but not presented to date. World Bank officials did agree that the capital costs of installing water delivery systems should be subsidized, and could not likely be carried by the residents of Ghana.

The government of Ghana, represented by several members of Parliament, suggested that cost recovery is necessary to control development. The population of Ghana has tripled since 1960, and economic growth is positive, despite enduring poverty. The demand for water is increasing. The environmental impact of uncontrolled development is also of concern to public health. Representatives of the Trade Union Congress and civil society agreed on the need for stronger planning and regulatory mechanisms.

There can be value and social benefit to charging at least some users for water, based on consumption, especially wealthier residential consumers, and major industrial, mining and agricultural consumers. Charging fees or tariffs is one efficient way to regulate use, and fund the system. The imposition of charges, however, is only one mechanism for achieving sustainable growth.

The goal of universal access to water and sanitation services requires ensuring that the service is affordable and accessible. Privatization of water coupled with inadequate regulation and protection of the population, the vast majority of whom are poor, has led to soaring water charges in many countries. The policy of reducing public subsidy and increasing consumer cost recovery for water, coupled with unaffordable rates following privatization, has met with organized public opposition in Bolivia, the Philippines, Uruguay, Argentina, South Africa and elsewhere. If some users should be charged, it is imperative that the poor be protected from excessive charges that discourage or prevent access and use.

Cost recovery is an inequitable method to control utilization, unless safeguards are in place. The wealthy, who can afford to do so, use more.

Arhin and others have shown that the transaction costs associated with charging low-income users for health services may outweigh the fees actually collected. Additionally, attempts to fix basically flawed mechanisms can be a diversion. In the case of health care, rather than evaluating whether it is efficient to distribute any type of health care employing mechanisms that relied on user fees, particularly in low-income populations, for two decades "the debate was centered on implementation problems that were presumed to prevent the realization of illusive theoretical benefits."<sup>25</sup>

**Even low fees may be sufficient to discourage necessary use by low-income residents.** Cost recovery efforts that lead to unaffordable rates are likely to be offset by a reduction in the welfare of the population. The Ghana Community Water Sanitation Agency (CWSA), which administers the rural water system, reported a goal of encouraging rural residents to use at least three 5-litre buckets of water a day. This target was reportedly undermined by the imposition of user fees, in accordance with World Bank conditions. The 5-10 percent capital contribution required of communities by the World Bank was also perceived as a barrier to access.<sup>26</sup>

The World Health Organization recommends that the key to sustainable water is institutional support from communities.<sup>27</sup> This is a separate issue from financial contributions, particularly within poor countries. (WHO Fact Sheet 112) During a meeting with the World Bank in Washington, DC, prior to the Mission, officials stated that guinea worm had increased in rural areas where water systems were provided without charge, evidence that the water systems were deteriorating. (Written confirmation has been requested, but not supplied to date.) In contradiction to this claim, the Community Water Sanitation Agency reported the results of a survey of rural communities. Some communities in the survey were required to make a 5% capital contribution to the water system. Some communities were able to afford the 5%, but others, notably small towns, were not. The survey sought to determine the influence of the financial charge on the community's sustained maintenance of the water system. The survey, due to be released publicly shortly, reportedly finds no correlation of any sort between imposition of the charge, and successful maintenance of the water system. That is, communities that did not



pay were equally likely to be successful as communities that did. Other factors encouraging community responsibility and participation may be more influential.

**Automatic tariff adjustment mechanism.** Recent IMF and World Bank loans to Ghana have included conditions requiring the Public Utilities Regulatory Commission (PURC) to implement an automatic tariff adjustment mechanism to the current water tariff rates. The FFM was informed by Stone & Webster, the transaction advisor, that the exact nature of this adjustment formula was not determined but that it would likely include an index to adjust for inflation, exchange rates and interest rates. This would ensure that the private sector companies and the Government of Ghana (who will be paying the fee to the private companies from a tariff collection account) will not incur the costs of exchange losses due to the depreciation of the cedi on the international market. These costs will be passed to the consumer.

The automatic tariff adjustment mechanism would likely ensure that water tariff rates will climb upwards continually as the cedi has depreciated fairly steadily with reference to hard currency exchange rates. Concerns about the impact of the PSP proposal on the cost of water has been a central focus of civil society groups opposing the government's plan. The impact of such an automatic tariff adjustment mechanism on access to safe and affordable water, especially without adequate policies to protect low income consumers, could be quite significant.

In addition to an automatic tariff adjustment mechanism applied to consumer water rates, the latest draft of the bidders' lease document viewed by the FFM, dated April 17, 2002, builds in the following factors which will be used to calculate fee increases to the foreign lessee:

- Capital and non-capital investment
- Rate of inflation (changes in CPI) in the currency of Ghana and of the home country
- Performance targets including assessments of residual chlorine, availability, customer complaints, etc.

Fee increases based on these indicators are guaranteed to the operator, and are not subject to negotiation by the Government administrator, the Ghana Water Company Limited, or by the Public Utility Regulatory Commission, according to the WSRS. Fee increases will likely be passed along to consumers as tariff increases.

The lease document is currently under review by the government of Ghana, the IFIs, and bidders, but not yet available to the public.

IMF and World Bank officials reported to the FFM their belief in the importance of protecting foreign lessees who might operate the water system from losses due to fluctuations in the exchange rate. This belief is reflected in the consultants' reports used to develop detailed plans for the PSP, and in the bidders' document described above.

It is reasonable that for-profit investors will be attracted to risky ventures only in the likely event that they will make a profit. The question is whether balancing safeguards to assure affordability of water for residents of Ghana are in place. If not, the advisability of the PSP is in question.

**The primary concern expressed to the FFM by residents of Ghana and by civil society organizations regarding the PSP was that water rates would rise, and become more unaffordable.** This concern appears to be justified, based on the proposal for an automatic tariff

adjustment mechanism, the commitment to move toward full cost recovery, as well as the increase imposed in May 2001.

**Three policies can play an important role in assuring affordability. One is public subsidies for water. A second is regulating rates in the informal sector. A third is “lifeline” protections for poor neighborhoods.**

**Public subsidies.** In the U.S., and many European countries, there was substantial public subsidy during the end of the 19<sup>th</sup> and the early 20<sup>th</sup> century to build the infrastructure of the water and sanitation system. While much of the poor population was excluded from adequate water and sanitation facilities during the early 19<sup>th</sup> century, by the turn of the century cholera and other public health problems had motivated governments to begin making the public investment necessary to ensure universal access. Today, those living in the U.S. and Europe assume as a basic right the principal of universal access to adequate water and sanitation facilities. However, the excessive economic, political and social inequities between developed and developing countries have precluded the extension of this right to many countries in the south.

The extent and nature of public subsidies to water and sanitation systems vary from country to country. In addition to monies raised through tax revenues, bonds and bank loans, the water sector may ensure funding for universal access through cross-subsidies among urban and rural residents, among residential, industrial and agricultural water consumers, among different classes of residential users, and between the water delivery and sanitation systems.

In poor countries, user fees are not sufficient to contribute significantly to the costs of production and distribution, though they may supplement other sources of public support. Bond suggests that expanding access to water has such great human and economic benefits that it is worth considering having governments provide it at a loss, to be subsidized by other sectors that benefit. Bond also notes that governments pay a high cost for additional public health services and lost human productivity when water and sanitation systems are inadequate.<sup>28</sup>

**Regulating tanker trucks.** Several officials who support the PSP pointed out that the cost of piped water would be lower than the price many residents now pay to buy water through tankers or other alternative systems, since piped water is not available to them. This assumes that the PSP proposal will actually expand the piped water system to new users, especially low-income users. However, the current PSP proposal does not require the private companies to take responsibility for system extensions, which will continue to be the responsibility of the GWCL.

Many people depend on tanker trucks that transport water to neighborhoods. Those without piped water, or whose pipes aren't delivering running water, are not currently benefiting from the water lifeline and block tariff rates. The poor population who do not have access to piped water supply and depend on secondary and tertiary suppliers pay considerably higher prices – in some cases 600 cedis per bucket of 18 litres, whereas the PURC-approved social tariff is 18 cedis per bucket.<sup>29</sup>

Given the fact that the current PSP proposal does not provide for extensions to new users, but leaves this responsibility to the GWCL, and it is unclear that there will be sufficient financing to expand the system significantly, it is likely that dependence on tankers will persist for some time. Since charges are many times higher than the rates paid for piped water, an alternative (and

immediate) approach to protecting the poor, and improving access and affordability, could involve effectively regulating tanker truck charges, and setting fair rates. This suggests that some governmental structure is needed to regulate the tanker truck operations and the other intermediary water vendors upon whom the vast majority of poor people are dependent.

**Inadequate assurance of continuation of the policy of a water lifeline and block tariffs.** For those on the piped water system, there is currently a lower “lifeline” rate for low volume users, of 990 cedis for 0-10 kilolitres. The charge is 3,600 cedis per kilolitre after the first ten kilolitres. There appears to be continued debate among Ghanaian government officials, consultants and multilateral agencies regarding the advisability of continuing the policy of a water lifeline and block tariff or moving toward a flat rate tariff with targeted subsidies for low-income consumers. The FFM was informed by all GOG officials that the PSP will provide some relief through reduced rates for the poorest residents, who will be identified by geographic area. However, there did not appear to be a specific plan in place for protecting low-income consumers. World Bank officials informed us that the 2002 budget included a proposal that 0.2 percent of GDP would be used to subsidize the price of water.

The FFM was informed of a GOG proposal to establish a Urban Low Income Group Water Unit (ULIGWU) with the responsibility for assuring public sector oversight of private sector contractual responsibilities to serve low-income consumers.

There may be some important debates regarding the volumetric level of the lifeline, the rate charged for the lifeline, and whether there should perhaps be a “free” water lifeline. **However, of greatest concern to the FFM was the potential of a policy decision overriding the water lifeline and block tariffs completely and favoring a flat rate system instead.** A water “lifeline” provides a certain volume of water, such as ten cubic meters a month, free, or at a low base rate. With progressive block tariffs, the rate increases for higher usage. A flat rate system charges all usage at the same rate, and seeks to identify low-income individuals who receive targeted subsidies.

A flat rate system is highly regressive and removes the possibility for cross-subsidization among various levels of consumers. With the current block tariff system high volume consumers pay more than it costs to deliver water in order to subsidize lifeline consumers. There are, of course, flaws in the lifeline/block tariff arrangement. In large compounds or multi-family households with a single meter, a base rate volume may be quickly exceeded. As a result, some who should benefit from such an arrangement end up paying more. However, the FFM was informed that this can be overcome through social mapping and ensuring that bills are shared between families on the basis of a social tariff.<sup>30</sup>

While concerned about the possible implementation of a flat rate system, the FFM found the proposal for free or subsidized connection fees to have merit since the connection costs appeared to be a significant barrier for many households to gaining access to the piped water system.

The proposal to implement a flat rate system with targeted subsidies raises a number of concerns. First, there is the concern whether those who truly need the targeted subsidy would indeed be identified as eligible or would jump the necessary bureaucratic hurdles to gain access. Second, as in all “welfare” approaches, there may be a stigma attached to the subsidy program. Here, again, the decades of experience with user fees in health care is instructive. A multi-year study of

user fees in health care, including surveys in Ghana, has demonstrated that exemptions from users fees are ineffective and difficult to administer. Users are often unaware of the exemptions, and knowledge of the fees is often sufficient in itself to discourage use.<sup>31 32 33</sup> In the case of water, some problems may be alleviated by exempting entire communities as opposed to individuals. Even in this case, user fees and exemptions from them are a complication without an apparent justification, or counterbalancing benefit.

The definition of who is poor is salient, in a country where the vast majority earn less than \$2 a day. A World Bank official estimated that only 5% of the residents of Accra are poor. Unlike the usual method of determining poverty based on expenses of daily living, this estimate relies as a standard on the income required to purchase a minimum intake of calories. A report by London Economics chose the figure of the bottom 25% of per capita expenditure. Other commentators reported that they expect about 20% of urban residents in Ghana to receive some financial support. (The rate of poverty in the U.S. is about 17%.)

An effective targeted subsidy approach would have to assure that a sufficient number of neighborhoods or individuals would qualify. Given the high rates of poverty in Ghana, and most developing countries, a water lifeline and block tariff approach would achieve greater social equity benefits, than a flat rate and targeted subsidies. A flat rate and targeted subsidies are likely to create new barriers to accessing clean and affordable water.

**In summary, whether through taxes, bank loans, bonds, cross-subsidies or other forms of financing, water and other services are ultimately financed by the population. Without adequate protections, increased cost recovery hurts the poor. Without adequate and effective regulation, it does not constrain overuse by those who can afford it. Further, it does not build community commitment to maintenance or enhance sustainable development, two measures that would effectively contribute to financing the water system, and it raises administrative costs. Government efforts will need to center on ensuring affordability and equity in access and consumption.**

#### **Failure to assure sufficient population coverage for water and sanitation to achieve health benefits**

In order to effectively reduce water-borne diseases, including intestinal parasites, safe water should be widely available in a community. One study explored the relationship between parasitic infections and sanitation systems in Ghana, Botswana, and Zambia among urban residents with similar socio-economic status and housing, but access on an individual household level to different water systems and sanitation technologies.<sup>34</sup> It found no difference in infection between residents with and without improved systems. It concluded that providing superior water and sanitation to a small cluster of houses, or to houses scattered throughout an area, may not protect the residents from infection if the overall level in the environment is high.

While the full details of the PSP plan are not completely known, there is a possibility that water improvement projects will focus on wealthy areas, because of the way investment incentives and priorities may be structured. This presents the problem that not only will there be little health benefit to residents in other areas, but also that the health of even wealthy residents with improved water will not benefit significantly. Unless improved water is provided to the widest possible area, water-borne diseases are likely to remain prevalent throughout the population.

**Increased revenues as the primary criterion for improvement and expansion, as opposed to measures of need, including incidence of water-borne diseases and poverty. No apparent mechanism to monitor changes in water-borne diseases as a control measure.**

Providing affordable access to safe drinking water in urban and semi-urban areas of Ghana should reduce the incidence of water-related diseases, particularly cholera as a sentinel water-borne disease. The incidence of these diseases is not noted in the PSP documents. Two reasons would recommend that this factor should be recognized:

1. To prioritize improved access to water.
2. As a performance indicator, to assure that safe water is being supplied.

**(1) Prioritization.** It appears that the \$400 million committed by donors to improve the Ghana water system will be inadequate to the task. The WSRS estimates the cost of extending water to presently unserved areas, and rehabilitating the existing system, at \$1.25 billion. While the difference in these sums is insignificant compared with donor resources, it is sufficient to force hard choices regarding allocation - and perhaps to assure the failure of the project.

Given the need to prioritize, outside consultants have evaluated and compared several program priorities, including improvements to the existing system (such as rehabilitation of leaking pipes), and extensions to new areas. They have also ranked which areas should be served first.

The W.S. Atkins report of April, 2001, presented a priority list of districts scheduled for improvement based on two factors: Economic, weighted at 67% ), and Level of Service (reliability, chlorination, and water quality), weighted at 33%. It states that since the charges required to fully fund investments in the water system are unaffordable, "capital investments therefore require prioritizing" so that "an appropriate overall investment programme can be determined." (p.1)

The Economic indicator is actually a measure of the likely profitability of new investments in water. It is defined, on page D5 of the WS Atkins Final Report, as the "relative economic value of each investment," as a ratio of the value of additional water supplied to customers, calculated by dividing the present value during the first ten years of an enhanced lease contract, by the present value of the corresponding capital investment needed in the first five years of the contract.

The report further notes that an Advisory Committee meeting on February 9, 2001, recommended the use of incidence data on cholera, guinea worm, and other water-related diseases, as factors in prioritizing the delivery of safe water, to assure that the most affected areas receive the earliest relief. The report notes that the disease incidence data are presented at the District Level, but not at the water supply system level, and thus are inadequate for prioritizing water delivery. Poverty data are likewise considered inadequate for financial modeling.

A sensitivity analysis found that using the available health data did not significantly influence the list or order of priority areas.<sup>35</sup> However, it factors in the health data weighted only at 10%, while economic and service criteria comprise the remaining 90%.

The report recommends developing better health data that can be used for the purpose of prioritizing service.

A review of the current plans suggests that no such an indicator is being developed.

This forthright statement that investments in the system would be prioritized based on the relative economic value of the investment is troubling. It suggests that investments in low-income areas, suffering the most from water-borne diseases, would be put on the back burner, and that investments in extending new water systems to currently underserved areas would be a lower priority than rehabilitating and improving the existing system. While choices have to be made if only \$400 million are available for the project, health-related factors should have at least equal weight with other criteria.

As discussed above, water-related diseases are likely to decline only if entire populations have access to safe water. A program that is less than universal will not serve the public's health. Of equal concern, a program that does not provide safe water to the lowest-income areas, which are at greatest risk of poor access and of poor health, is counter-productive.

**(2) Performance indicator.** According to the draft bidders' form presented to the FFM for viewing on May 9, 2002, by the Water Sector Restructuring Secretariat, prospective lessees will be given automatic increases or decreases in their fees based on achievement of certain targets, weighted in importance.<sup>36</sup> (Performance bonuses are in addition to the automatic tariff adjustment described above.) As of May 9, the performance criteria or targets and their related weights did not include a reduction in water-related diseases. They were: residual chlorine (20 percent), non-revenue water (10 percent), availability (30 percent), metering rate (10 percent), customer complaints (30 percent).

Reducing incidence of cholera and other water-related diseases should be an automatic consequence of adequate performance, and not a justification for raising either fees to the lessee, or rates charged to users. However, an increase in these diseases would be an important indicator of serious deficiencies. Should the PSP proposal proceed, it is proposed that disease indicators be reported directly to the Ghana Water Company Limited and to the Public Utility Regulatory Commission, for their use in oversight. An increase in water-borne diseases should also provide a basis for reducing the fee to the lessee.

### **Failure to address improvements in sanitation.**

The proposal continues the recent practice in Ghana of separating water and sanitation functions. The FFM is aware of no current plan to improve the urban sanitation system, which is rudimentary at best. Raw sewage is still dumped untreated into the sea in many cases. Studies cited above, and others,<sup>37</sup> suggest that improvement in public health and reduction of water-borne disease is only effective when the combination of improved water supply and effective sanitation are provided.

### **Potential effects of the PSP proposal on public health, access and affordability.**

The current proposal is unlikely to improve the public health status of the due to the following factors:

- The policy commitment to full cost recovery and automatic tariff adjustment mechanisms could reduce access to and affordability of water under the PSP with serious public health impacts;
- The PSP proposal does not address the public health linkages between providing adequate water and much-needed sanitation services. Insufficient funding to properly provide universal access to safe water and sanitation and failure to prioritize investment in improving and expanding access to water and sanitation based on public health and poverty criteria will likely leave the currently unserved and underserved population reaping few benefits from the proposal;
- The PSP proposal does not adequately address the situation faced by 78 percent of the urban poor who are outside of the piped water system. This population faces higher water tariffs imposed by intermediary buyers and sellers. Some of the worst abuses could be remedied by regulation and/or contractual terms between the water supplier and the tankers that could ensure supply to retailers at close to the lifeline tariff and control prices faced by low income consumers.
- The PSP does not provide a specific plan for protecting low-income consumers. There appears to be continued debate among Ghanaian government officials, consultants and multilateral agencies regarding whether to continue this policy, or move toward a flat rate tariff with targeted subsidies for low-income consumers. Targeted subsidies would be less effective at reaching and providing relief for the poor population, and administering them would be a greater strain on the infrastructure. Moving from a lifeline and block tariff structure to a flat rate with targeted subsidies would likely increase the obstacles to accessing clean and affordable water adding an additional burden on women and low income communities.

#### **IV. LEGAL AND CONTRACT ISSUES**

##### **Lack of transparency.**

The legal and contract issues surrounding the PSP are clouded by uncertainty. This uncertainty is due to two factors: (1) a wide array of details about the PSP have not been worked out, according to the Water Sector Restructuring Secretariat and other key officials involved in the PSP process; and (2) the proposed lease framework and other documents are not public and were not made available to the FFM.

The Water Sector Restructuring Secretariat (WSRS) justified this confidentiality on the grounds that the document was still in preparation, that public release may generate unwarranted criticism about provisions still subject to revision, and that the document would become public at a later date (usually referenced as sometime before the PSP proposal is formally considered by parliament). Different parties gave the FFM conflicting information about whether the proposal would go to parliament for formal consideration.

In many countries the proposed lease framework, known as the “request for bid” is subjected to a public comment period. Such a public comment period would encourage constructive discussion among civil society, government, parliament, trade unions and other stakeholders. Although it would not be reasonable for every small revision of the draft documents to be released publicly, it would not place a burden on the Secretariat or the government to periodically release updated iterations of the proposed lease framework. While publicly available versions would no doubt generate criticism from civil society, those would be informed criticisms -- exactly the kind of debate that not only characterizes, but strengthens, a democracy. Indeed, those criticisms could be expected to strengthen both the process and substance of the PSP proposal itself. Specific and pointed comments could highlight flaws and shortcomings in the proposal, which could then be addressed. (This process of review and revision, after all, is what the Secretariat says it is now undertaking to improve the document; the status quo process, however, is confined to government officials and others with privileged access to the document.) If potential criticisms from civil society organizations cannot be addressed, then it may be the case that in fact the PSP proposal should be reconsidered.

Making the confidential nature of the lease framework documents all the more untenable is the fact that the bidders themselves are permitted to see them. At structured bidders' conferences (at least one has occurred, and another is expected to be scheduled soon), the bidders actually review the framework for the lease arrangement and offer comments for how it should be revised. The logic of these conferences is that the bidders are able to offer informed commentary about what is reasonable and feasible in a lease arrangement, and that so long as all bidders are engaged on equal terms, then the bidders' conferences strengthen the lease proposal. There is merit to this claim -- but exactly the same logic suggests why the public should be incorporated into the process.

World Bank country representative Peter Harrold told the FFM that he would support and recommend that NGOs be permitted to participate in the next bidders' conference. If achieved, this would be an important step forward. To be effective, however, the bid documents would have to be made publicly available in advance of the bidders conference -- so that the NGOs would have the same advance opportunity to review the materials as the bidders, and also



incorporate member and public comments into their input at the conference -- and NGOs would have to be given the opportunity to participate in the conference on the same terms as the bidders.

As things now stand, all parties to the PSP proposal are effectively involved in formulating the implementation details -- except for the most important, the Ghanaian public.

Given the veil of secrecy over the proposed lease framework, the FFM's analysis of legal and contract issues connected to the PSP proposal is unavoidably speculative and contingent. A March 2001 Stone & Webster "Information Memorandum" prepared for donors provides important details on the PSP proposal. However, it is dated, and important elements of the proposal have been altered, according to the Water Sector Restructuring Secretariat. The FFM assumes that this document still provides a rough outline of many of the important features of the PSP. It relies as well on consultant documents, and information offered during interviews.

### **Framework for the PSP proposal**

To prepare the water sector so that private sector participation would be viable, the Government of Ghana has significantly refashioned the water sector. Key changes undertaken in the 1990s include:

- Transferring use of water supply assets in rural communities and small towns to District Assemblies, and removing any Ghana Water Company (GWC) responsibility for water provision in these areas;
- Creating the Community Water and Sanitation Agency to assume responsibility for water provision in rural areas.

The division of rural and urban water systems reflected the basic understanding that there was insufficient market demand in the rural sector to attract private operators.

The Government also moved to adopt a policy of achieving cost recovery. While some government officials and the World Bank suggest that cost recovery is a valuable policy objective in its own right, the move to achieve cost recovery has proceeded in tandem with evolution of the PSP proposal.

Cost recovery is viewed as a prerequisite to attracting private operators: according to the Berger report, "In the context of leasing contracts under PSP, a tariff level that covers at least operating and maintenance costs as well as the financial costs related to any capital expenditures made by the private sector is necessary to attract private operators since it represents the break-even point for these contracts." (Berger 4.18) In particular, private operators do not want to be dependent on government subsidy for revenues to cover their fees and profits. (Berger, 8.21)

In framing the responsibilities of the lessee, the government has retained certain responsibilities. These include responsibility for sewerage and for expansion of the pipe system.

The sewage system in Ghana is rudimentary. There is little prospect for a functioning market in this area -- the cost of developing a full-fledged sewage disposal and treatment system would be enormous, and it is unclear to what extent there is effective market demand for such services,

despite the enormous public health and environmental benefits of sanitation systems. Thus responsibility for sewage was shaved off of duties to be transferred to the private operator. There is no sign that the government will be able to invest in this area.

Expansion of the pipe system was also allocated to the government. Pipe extension is expensive, and there is no realistic scenario in which tariff revenues might cover the cost of expansion. There is thus a need for external financing, and the government anticipates relying on donor funds -- in many cases, available only to public recipients -- to pay for the costs of pipe expansion.

Reviewing this division of labour reveals the many ways in which the water sector has been parsed to create a market on terms desirable to private operators. The government retains enormous financial responsibility for system operation -- far greater than that assumed by the lessees.

The carve-up of the water sector to facilitate the PSP does not mean the PSP approach is irrational. The World Bank and other PSP advocates argue that it is quite appropriate to rely on private operators for the portion of the sector to which they are attracted; the efficiencies which the private sector is purported to introduce should be obtained to whatever extent possible.

But the water sector carve-up does suggest the artificiality of the PSP emphasis on cost-recovery and termination of public subsidy to the (urban) water sector. The PSP proposal framework draws a line around the urban water provision (not sewerage) systems' operation and maintenance and says: cost recovery, and no public subsidy, here. But the line could as easily have been drawn elsewhere (around industrial consumers, for example) or a goal could have been set of tariff revenues covering some percentage of the costs of urban water operations and maintenance, on an equally rational and financially responsible basis.

The decision to seek cost recovery, and end the public subsidy, for a portion of the system that correlates exactly with the portion leased out can only be understood as fundamentally related to the decision to embark on the PSP. Whatever the benefits of the PSP, there are costs to ending the public subsidy for urban water consumers. The resultant higher tariffs will reduce water use, with potentially severe public health consequences, as described in the previous section.

### **Responsibilities of the Private Sector Operator**

The PSP arrangement proposes to divide the major urban water systems into two business units, A and B. Business Unit A, which includes the Accra metropolitan area, includes approximately 129,000 connections. Business Unit B includes more than 87,000 connections. These regions were formed to aggregate sufficient customers to interest foreign operators; multinational operators are interested in systems with 50,000 or more connections (note).

The March 2001 Information Memorandum indicates that the units will be leased to two separate entities. These operators will each have responsibility to manage, operate, maintain, renew and rehabilitate the units. Their elaborated responsibilities in the March 2001 Information Memorandum include:

Provide water supply;

Rehabilitate, renew, improve, maintain assets

Connections, reconnections, consumer connections, consumer meter

Meet performance targets

Bill and collect -- water tariffs and sewerage fees, if requested

Deposit all collections into tariff account, then disperse per established rules

Respond to consumer complaints

Environmental compliance

Develop emergency plans

Prepare annual monitorable implementation plans and updates

Commission condition surveys

Maintain detailed records

Provide supervising engineer

Inspect land, business unit, records

Provide water for public purposes

Insurance

Performance bond<sup>38</sup>

The lessees will be paid a fee for system operation. This fee will include costs incurred by the lessee, including a rate of return on investment. According to the March 2001 Information Memorandum, these costs will include: government levies, such as PURC fees, abstraction charges and one-off taxes, indexed operating and maintenance expenses, depreciation and a return (to be bid) on net fixed assets.

The fee will be adjusted to reflect the degree to which the lessee meets or exceeds reductions in non-revenue water.

The fee will be further adjusted to reflect the degree to which the lessee meets certain performance targets. The subject matter of these targets, and their relative weighting, are: residual chlorine (20 percent), non-revenue water (10 percent)<sup>39</sup>, availability (30 percent), metering rate (10 percent), customer complaints (30 percent). (WSRS meeting, 5/9)

The fee also will be adjusted to take into account inflation and currency rate fluctuations.

The lessee may be paid a fee for each connection established.

The lessee will post a performance bond, which will presumably be forfeitable upon mis-, mal- or non-feasance by the lessee.

### **Questions Regarding the Private Sector Obligations**

Because the bid documents are not in the public domain, and the FFM was permitted to view only a small portion of the current lease framework document, it is not possible to draw firm conclusions about the incentive structure and enforceability of the contract. The FFM does not know the extent to which other factors have been included in the fee structure (or whether items from the 2001 Information Memorandum have been excluded). Nor does the FFM know what the performance standard multiplier is. Nor does the FFM know precisely what the performance targets are.<sup>40</sup> This missing information is absolutely vital to properly evaluate the contract proposal. It would indicate, for example, the weighting of performance target achievement as a compensation factor. In the absence of more complete information on performance targets, the FFM can only raise questions and concerns.

### **Transfer Pricing, Padded Costs, Uneconomical Expenditures**

Through reimbursement of indexed operating and maintenance expenses, the lessee will be reimbursed for the basic costs of running the water system. The 2001 Information Memorandum suggests there will be reimbursement for "prudently incurred" costs. This reimbursement provision provides an incentive to the lessee to pad costs, to engage in transfer pricing (buying products from the home country or other subsidiaries or related companies at inflated prices)<sup>41</sup> and generally to be insufficiently disciplined in economizing in expenses accrued.

This danger does not mean the reimbursement provision is improper; but the danger must be acknowledged and addressed. The FFM does not know what, if any, safeguards will be built into the contract to prevent such actions. It is unclear what agency would have the capacity to review expenditures by the lessee. The duty presumably will rest first with the GWC, and perhaps also with the PURC, in case of request for tariff increase. At present, the GWC does have considerable knowledge and expertise on the costs of operations and management. However, much or most of that expertise will be transferred to the lessees. After the lease, the GWC will run a skeleton operation of 80, which among other responsibilities, will be obligated to oversee the expansion of the piped system. It is very difficult to see how the GWC will maintain capacity to scrutinize the expenditures of the lessee. The obligations for independent audit, if any, are unknown, but such an audit would need to do more than review financial records -- it would need to look to the actual prudence of expenditures, based on knowledge of reasonable expenditures in the relevant Ghanaian and international markets -- to address this concern.

### **Relatively Riskless Investment by the Lessee**

Although a condition of entering into the lease arrangement is that the lessee must provide \$70 million in investment capital over 10 years, this is not the sort of investment made by an entrepreneur. Indeed, it may be viewed as more of a loan to the business unit. Under the terms of the contract, at least as elaborated in the 2001 Information Memorandum, the lessee will be paid a specified return on investment (with the exact level to be determined by bid), as well as compensated for the depreciated value of their investment.

To an extent that cannot be determined because the effect of performance targets on compensation is not known from existing public information, the lessee will have an incentive to allocate the investment to satisfy the performance criteria. This incentive arrangement, however,

does not pose the same risk structure as an entrepreneur's investment, where an investment is made with an eye to increasing revenues, but with the risk that poor investments will result in losses.

There may or may not be a rationale for such an approach, since by terms of the contract the lessee will only have guaranteed responsibility for the business unit for 10 years. But in any case, the investment should be viewed in light of the guaranteed payback provision embedded in the contract.

### **Uncertain Incentives to Reduce Physical Losses**

To an undetermined extent, the contract provides an incentive to the lessee to reduce non-revenue water. Non-revenue water is an umbrella term that refers both to water that is physically lost through leakage and to water that is not paid for, due to unauthorized connections, nonpayment of bills or other reasons.

Overall system loss of non-revenue water is unknown, but generally estimated on the order of 50-55 percent of overall production. The Berger Report estimates approximately 30 percent losses due to nonpayment, and 25 percent to physical leakage.

From an accounting point of view, non-revenue water due to nonpayment and non-revenue water due to physical leaks are equivalent. However, they are not equally important in terms of service delivery; nonpayment water at least reaches a consumer, leaked water is simply wasted, with no consumer benefits.

It is likely that the "low-hanging fruit" in reducing non-revenue water will relate to nonpayment rather than leaked water. If this is correct, then -- at least to the extent there are built-in incentives to reduce expenses<sup>42</sup> -- the lessee incentive will be to reduce nonpayment water.

There are some apparently easy means to reduce non-revenue water. The Berger Report estimates that half of all nonpayment water is consumed by government agencies that are either not billed, or simply do not pay their bills. These are large water users, and a lessee with authority to cut off agencies for nonpayment is likely to be able to quickly reduce this nonpayment. However, the investment needed to rehabilitate the infrastructure and reduce physical leakage would likely remain unaddressed.

Forcing government agencies to pay for water would reduce non-revenue water and improve the water system's balance sheet. Indeed, this could easily be accomplished by the GWC, if there was political will to do so. However, it should not be necessary to require private sector operators to implement such a measure. And, if government agencies paid their bills the financial viability of the GWC would show immediate improvement.

### **Baseline Determination and Monitoring Concerns**

The performance multiplier will apparently be applied starting in year four, with reference to baseline performance data from previous years.

This may give the lessee incentive to underperform in the early years of the contract, to lower the baseline.

An independent problem relates to the establishment of baseline data, and monitoring of performance indicators during the term of the contract. Existing data is insufficient to establish baseline levels; determining these data will be a responsibility of the lessee. The lessee will also have responsibility for reporting performance data during the term of the contract. The lessee will also have responsibilities to report information to the PURC, in matters covered by PURC regulations.<sup>41</sup>

As described in section IV on regulatory issues, the global experience with self-reporting is quite poor, and there is reason to be skeptical of PURC's capacity to scrutinize the self-reported data. There is even greater reason to be concerned about GWC's ability in this area, given the skeletal staff that will remain after transfer of managerial duties to the lessee.

It is easy to imagine manipulation of almost all of the data relevant to the performance standards. In particular, data on water availability and customer complaints -- making up more than half of the weighting for the performance multiplier -- would be very susceptible to manipulation.

Improper reporting, of course, could completely undermine the beneficial intent of the performance criteria in the payment formula, enabling the lessee to be paid for targets not achieved and eviscerating the performance multiplier's intended effect of incentivizing improved performance.

### **Performance Bond and Protections Against Lessee Failure to Perform**

Inclusion of the performance bond in the lease is an important mechanism of ensuring operator accountability.

However, the import of this mechanism of accountability is dependent on the terms of the bond. Important questions include:

@ Is the bond partially forfeitable, or only fully forfeitable?

@ What are the standards for forfeiture?

@ Who makes the determination of forfeiture? According to what rules?

This information is not in the public domain. Disturbingly, it is not clear to what extent these details have been considered by policymakers in Ghana. The FFM asked government officials, including the Water Sector Restructuring Secretariat, and the World Bank about the terms of revocation of the bond. None indicated knowing the details, or even having given it much thought.

Whether there are other protections included in the contract, and on what terms, is not in the public domain. Key questions that require detailed public review and debate before any hand over of authority to the lessee could be responsibly undertaken include:

@ What provisions exist related to potential lessee breach of contract?

@ What provisions exist for damages and penalties against the lessee? What are the standards for imposing these penalties? Who makes such a determination?

@ What are the conditions under which the government can terminate the contract? And what obligations does the government owe the lessee in the event of termination?

These last questions are particularly vital. Multinational operators generally seek assurances that contracts will remain in place, and not be subject to political reconsideration. However, such measures may provide one-sided assurances to private operators who may be able to demand large exit payments from governments, even in the event of poor performance.

There are also important considerations in this regard related to bilateral investment treaties and international investment guarantees that may lock the government into one-sided arrangements. This issue is discussed further in the regulatory section of this report.

### **Tariffs and Lessee Payment**

The 2001 Information Memorandum states that the lessee will collect tariff revenue, and deposit the funds in a tariff account. The account will be used to pay the lessee, with GWC and then PURC having subsequent claims.

It is unclear what happens if the tariff account does not have sufficient funds to pay the lessee.<sup>43</sup>

One possibility is that the lessee will not be paid more than is available in the tariff account. It seems unlikely that a potential operator would agree to this arrangement, since the lessee fee is otherwise not structured to fundamentally rely on tariff revenue, and since tariff revenue is largely dependent on tariff rates, which do not appear to be guaranteed in the lease. If this arrangement is the case, it will create tremendous pressure to move to cost recovery, and make the top lessee priority the attainment of tariff rates sufficient to pay the lessee invoice.

The alternative is that the government will pay the difference between what is owed the lessee and what is in the tariff account. This will constitute an ongoing public subsidy of the water system, but it will appear as government payment to the lessee, rather than as government support for the system. This arrangement too is likely to generate pressure to move rapidly to cost recovery.

### **Expansion Responsibilities and Investment Priorities**

In the PSP proposal, responsibility for expansion of the piped system rests with the government and the GWC.

Given the enormous need for expansion -- approximately one-third of households in the urban areas covered by the PSP proposal do not have piped connections (Info Memo, 29) -- and given the oft-stated premise of the PSP that the public water sector in Ghana is unreformable and congenitally unable to provide quality service, it may seem strange to leave expansion responsibilities to the GWC.

However, all parties agree that the system itself will not generate revenues to pay for expansion, and that the only viable source of external funding is donor support. Donor support is generally more available for government-controlled projects, and so GWC is left with expansion responsibility -- although some donor funds also may be available for rehabilitation, renewal and improvement.

A consultant to the government, W.S. Atkins, estimated the overall expense of rehabilitation, renewal, improvement and extension of the system as approximately \$1.25 billion.

At a November 2000 donor's conference, donors -- including the World Bank and donor agencies from the United Kingdom, France Japan, Denmark, Germany and the European Union - suggested they were prepared to provide approximately \$400 million over a 5-10 year period. These funds will mostly be in the form of concessional (low or no interest) loans, but except for some small grant monies, they will need to be paid back.

The donors indicated a variety of funding preferences. Most prioritize expansion, but also rehabilitation.

Some of the donor money might therefore be allocated to the lessee for renewal and rehabilitation, through mechanisms that may not yet be determined. (Info Memo, 14) Determining this mechanism in advance of entering into the contract is vital. It must be structured so that the lessee does not get a return on the donor investment. Also meriting assessment is whether, since the donor loans require repayment, revenues generated as a result of investments (specifically in responsibility areas of the lessee) should in part be set aside for loan repayment. In the 2001 Information Memorandum, it appears that the lessee would have first claim on these revenues.

GWC's skeletal staff will be responsible for allocating the monies for expansion projects. They will rely on private contractors for the physical work of installing pipes and extending the system. Whether the lessee may bid as a contractor is not apparent, and should be clarified.

Because the lessee will have the duty to service new customers connected to the pipe system, it is unavoidable that the lessee will seek to be involved in the decisions regarding renewal, rehabilitation, improvement, expansion and at what pace, etc.<sup>44</sup>

Lessee involvement in planning of rehabilitation, renewal, and expansion and more generally in the determination of use of donor funds raises important concerns about prioritization in investment. What communities will be served? Which consumers will benefit?

The public health, human rights and social equity imperative is to provide service to those unserved and underserved, with priority given to low-income consumers.

This imperative may not match with the lessees' interests, however.

To the extent the lessee has an interest in maximizing volume of water delivered and revenue generated, it will tend to prioritize upper income and industrial consumers over lower-income consumers who will be lower-volume users. This structural bias against low-income consumers may be exacerbated by the lifeline tariff arrangement, as discussed below.

This structural problem of lessee bias against low-income consumers is worsened by the investment prioritization proposed in the W.S. Atkins report and included in the 2001 Information Memorandum. (Like many other matters, the FFM does not know whether this aspect of the PSP has been revised.)



The prioritization exercise undertaken by W.S. Atkins and reported in the 2001 Information Memorandum assigns weights to different factors in determining investment priorities. The two factors considered in the exercise were economic merit and levels of service improvement.

(An advisory committee had recommended including public health considerations as a criterion, but because "sufficient system level health data was not available," public health considerations were excluded from the prioritization exercise. It is unclear whether this data problem has been or will be remedied in time to incorporate health considerations into investment priorities.)

The economic criteria is simply the value of additional water supplied per unit cost -- the calculation is the present (cash) value of the additional water sold in years one through ten, divided by the present cost of the investments in years one through five. This factor was assigned a 67 percent weighting in determining priorities.

The service criteria combined three factors, each weighted equally. These are: quality of the water at the tap, chlorination and reliability of service. It is unclear the extent to which the reliability of service factor refers only to areas with existing service, or whether unconnected areas are graded as having 100 percent unreliable service. The combined service criteria was weighted 33 percent in determining investment priorities.

Even in the somewhat unlikely event that the reliability of service factor is calculated as an incentive for expanding to unserved areas, the overall formula is weighted heavily toward investments that will increase volume as distinct from increasing number of connected consumers. Furthermore, the formula will favor expansion and renewal in areas closer to already serviced areas (a category heavily skewed to upper-income communities), where investment costs for extension will be lower.

Thus the investment priorities will work strongly to favor expansion and rehabilitation for upper-income and industrial users, and as a disincentive for expanding the system to reach low-volume, low-income consumers.

### **Missing from the Contract: Public Health and Expanding Access**

The 2001 Information Memorandum includes boilerplate language that "a major impetus for the PSP is to improve the utility's ability to consistently provide water of good quality to the largest number of citizens" -- with the caveat that this should occur "while moving toward full cost recovery." It adds, "the Government of Ghana felt strongly that LICs [low-income consumers], together with other consumers, needed to reap social, economic and health benefits from the PSP process. The World Bank, DfID, and other donors likely to invest in the sector have reinforced this as a priority. Bidders will therefore need to demonstrate their ability to serve these consumers." (p. 40)

At a minimum, it would be important to include clear contractual obligations and performance targets related to providing expanded access and improved service to low-income consumers. The FFM was informed that there are now plans to establish a Urban Low Income Group Water Unit that would have oversight over the contractual provisions related to service to Low Income Consumers.

However, the 2001 Information Memorandum and the WS Atkins Report suggest that the lessee will *not* be expected to take any immediate measures to improve access and service for low-income consumers: "It is fair that the operator will need to devote considerable time in the early stage of a contract to rehabilitation of an existing system and other priorities rather than expansion to LICs."(p. 41)

Instead, low-income consumers are expected to continue to rely on *status quo* arrangements, specifically to continue reliance on tanker-supplied water. The 2001 Information Memorandum contains general language on the obligation assumed from the GWC to work with private tankers, and perhaps to take measures such as providing the tankers with more geographically diverse access to water supplies (so as to reduce transportation expenses). "In the case of Ghana, an indigenous system already exist[s] for reaching LICs outside the network so the Lease does not attempt to displace local private providers," the 2001 Information Memorandum states.

However, as described in previous sections of this report addressing access, affordability and regulation, the existing tanker system is plagued by price gouging and market failures. Some of the worst abuses could be easily remedied by regulation and/or contractual terms between the water supplier and the tankers that implemented price controls. Either of these approaches will require cooperation from the lessee, and should be inscribed in the contract.<sup>45</sup> However, there is no evidence that such terms are contemplated for the contract.

Also apparently given short shrift in the leasing arrangement is the tariff rate for lower-income consumers.

Ghana currently maintains a lifeline tariff, so that the first small quantity of water used by consumers is provided at a much lower rate than larger uses. The government is debating whether to continue with the lifeline and bloc tariff arrangement.

While the existence of the lifeline tariff is mentioned in the 2001 Information Memorandum, and while the lessee will be required to charge whatever rates the PURC establishes, it is notable that there seem to be no contractual obligations for the lessee regarding provision to lifeline consumers.

This contractual hole may be important for several reasons.

First, lifeline service is an absolutely vital element in ensuring the broadest access to piped water and promoting service to the poor. Because it is the contract terms above all that determine the lessee's obligations, such a fundamental component of the water system should be included as a contractual responsibility to eliminate any uncertainty and to emphasize the government's priority for relying on the lifeline to expand access.

Second, enshrining the lifeline in the contract would remove it from political pressures from the lessee. The lessee may have financial interest in eliminating the lifeline, lessening its subsidy component, or moving from a bloc tariff arrangement. To the extent that a highly discounted, bloc tariff lifeline reduces revenues, it may harm the lessee's interests. Once implanted into Ghanaian society, the lessee will be a powerful political and economic actor, certainly the most powerful force operating in the regulatory arena. If the lifeline tariff is not established as a contractual obligation, it is easy to image the lessee working to roll it back.

Third, the lower revenue stream from lifeline consumers, and the fact that their tariffs will not cover the marginal cost of servicing them, will give the lessee a disincentive to service these lower-income consumers. Absent countervailing provisions embedded in the contract, the lessee is likely to make servicing lifeline consumers a low priority, and particularly to disfavor new connections for lifeline consumers as against higher volume consumers.<sup>46</sup>

Fourth, and for the same reasons that the lessee has a disincentive to service lower-income consumers, it will have a strong incentive to disconnect non-paying lifeline consumers. Money losers even when paying their bills, the lessee will have an incentive to eliminate lifeline consumers from its customer list.

Although one of the pre-qualification bidders documents (May 2000) states that there will be a performance target related to “expansion of distribution network” this is not reflected in the 2001 Information Memorandum. It is striking that completely absent from the performance multiplier, or other portions of the contract, as proposed in the Information Memorandum, is any incentive to expand access.

If expanding access is in fact a primary goal of the PSP, and a fundamental public health<sup>47</sup> and human rights imperative, it is inexplicable that there are no contractual incentives to achieve this goal, that this goal does not appear as a contractual obligation, and that no measures are included to offset the apparent contractual incentives to disfavor lifeline, low-income consumers.

## **V. THE ROLE OF THE IMF, WORLD BANK AND OTHER CREDITORS**

Given their role as international financiers, the IMF and the World Bank can exercise tremendous influence over the development policies of developing countries. The World Bank coordinates the Consultative Group in Ghana (an informal organization of all bilateral and multilateral creditors and donors in Ghana) and exercises tremendous influence in determining the policies and projects that will be rewarded with the support of the major creditors. Ghana was recently granted entry into the Heavily Indebted Poor Country (HIPC) Initiative by the IMF and World Bank. Eligibility for this debt relief program required three years of compliance with IMF and World Bank macroeconomic and structural adjustment policies. The standard prescription of IMF and World Bank structural adjustment policies include fiscal austerity (cutbacks to reduce budget deficits), privatization, de-regulation, and trade liberalization.

The World Bank's promotion of the privatization of urban water in Ghana is a component of this larger structural adjustment and privatization agenda. The privatization policies promoted by the World Bank and implemented to date have included the privatization of banks, the bus system, the agricultural marketing boards and the sale of government shares of Ghana Telecom. The future privatization agenda promoted by World Bank includes, in addition to urban water, the privatization of the oil refinery, rail, ports, and electricity. The privatization agenda of the IMF and the World Bank is rationalized, in part, in the context of the overall effort to cut budget deficits and create new revenue streams. When a country is heavily indebted and running large budget deficits, it is considered too poor by the IMF and the World Bank to subsidize a public water system. Full cost recovery from consumers is advocated to replace government subsidy. The institutions also subscribe to a broader market-oriented ideology that believes that, in general, the private sector is more efficient and cost-effective than the public sector.

The cost recovery policies promoted by the IMF and the World Bank in Ghana's water sector are also part of a broader pattern of policies that the World Bank has promoted in the health and education sectors, often known as "user fees." Similar to the privatization agenda, the cost recovery and user fee policies of the World Bank are driven by efforts to cut budget deficits and to move the weight of the costs of public services such as health, education, and water away from the public budget and toward individual consumers on a fee for service basis. This undermines the role of the state and its capacity to use a progressive tax system to redistribute income and provide universal access to essential human services such as health care, education and water.

The privatization and cost recovery policies that the IMF and the World Bank are promoting are not particular to Ghana. In a recent review of 40 IMF loans completed during 2000, loans in 12 countries were found to contain water privatization and cost recovery conditions similar to those being promoted in Ghana.<sup>48</sup> More than 80 percent of World Bank water and sanitation loans approved in 2001 contain cost recovery measures and over 40 percent require privatization of water utilities.

The specific list of IMF and World Bank loans to the Government of Ghana (GOG) that have contained conditions requiring increased cost recovery and privatization in the water sector can be found in Box I.

### **BOX I**

#### **Water Sector Reform Conditions in IMF and World Bank Loans to Ghana**

**Pipeline loan, World Bank, Ghana Water Sector Restructuring Project.** This \$100 million loan provides for the renovation and rehabilitation of the urban water infrastructure in Ghana. The loan was originally scheduled for Board approval in 2000, but has now been re-scheduled for September 2003. World Bank officials have stated that the loan will not be approved until the Government of Ghana (GOG) concludes contract negotiations with a private sector company.

**February 2002, International Monetary Fund, Poverty Reduction and Growth Facility Loan, fifth tranche.** This loan includes conditions requiring the “early implementation of the Public Utilities Regulatory Commission’s plan for full cost recovery in the public utilities, with automatic tariff adjustment formula for electricity and water.”

**July 2001, World Bank, Third Economic Reform Support Operation Credit for Ghana.** This loan includes a wide range of prior actions. These are actions that the Government of Ghana must complete prior to the approval of the World Bank loan. Prior actions include "increasing electricity and water tariffs by 96 percent and 95 percent, respectively, to cover operating costs, effective May 2001."

**June 2001, International Monetary Fund, Poverty Reduction and Growth Facility loan, forth tranche.** This loan includes a long list of structural benchmarks. Structural benchmarks are policy actions that will negatively influence the approval of future loans if the Government of Ghana does not comply with them. One of the many structural benchmarks requires “publication by the Public Utility Regulatory Commission (PURC) of its strategy for achieving full cost recovery<sup>49</sup> in the public utilities and implementation of automatic tariff adjustment formulae<sup>50</sup> for electricity and water.”

#### **June 2000, World Bank, Country Assistance Strategy (CAS)**

The World Bank’s Country Assistance Strategy (CAS) describes the loans the Bank plans to extend to the Government of Ghana over the next two to three years. The June 29, 2000 CAS for Ghana proposes loans ranging between \$285 million and \$640 million. If the Government of Ghana adequately complies with conditions known as triggers it will be eligible for more loans (closer to the \$640 million). If the government does not comply adequately with the triggers, it will be eligible for fewer loans (closer to the \$285 million). The triggers in Ghana’s CAS require that the Government of Ghana expand private sector participation in infrastructure including power, urban water, rail and ports.

**June 2000, IMF and World Bank, Interim Poverty Reduction Strategy Paper (IPRSP) Policy Matrix** The Poverty Reduction Strategy Paper (PRSP) is, in theory, a borrowing government document that provides the “policy framework” for IMF and World Bank lending. In reality, borrowing governments know the spectrum of policies that the lending institutions find acceptable. However, it serves the political interests of the IMF and the World Bank to

make their own policy conditionalities appear as if they are generated by the borrowing government. In actual practice, the Policy Matrix attached to the IPRSP is often written by the IMF or the World Bank, rather than the borrowing government. The Policy Matrix for Ghana includes, under the policy area titled “Urban Water,” the following statement: “Divest urban water systems to private sector operators: issue invitation for bids.”

**August 1999, Second Community Water and Sanitation Project:** Performance triggers are the criteria or conditions used to evaluate an individual project and determine eligibility for subsequent loan installments or loans for the project. One of the performance triggers for the Second Community Water and Sanitation Project includes achieving increased rates of cost recovery from rural communities.

Source: Information on Ghana loans at IMF and World Bank websites, [www.imf.org](http://www.imf.org) and [www.worldbank.org](http://www.worldbank.org)

The World Bank has repeatedly stated its commitment to poverty reduction. Yet, as reflected by the list in Box 1, loan conditions are focused on increased cost recovery and water privatization. These types of loan conditions can have a negative impact on access to clean and affordable water. In order to make practice consistent with rhetoric, World Bank lending should prioritize improved public health and poverty reduction outcomes rather than increased cost recovery and privatization.

Of particular concern to the FFM is the condition stated for the fourth and fifth tranche of Ghana’s Poverty Reduction and Growth Facility loan from the IMF. This condition requires the PURC’s publication and implementation of a plan for full cost recovery and automatic tariff adjustment mechanisms. The IMF considers this necessary to “safeguard macroeconomic stability.”<sup>51</sup> However, there are serious concerns that this may interfere with the role of the PURC as an independent regulatory body. The FFM did not feel that it was appropriate that IMF loan conditions required specific actions of an independent regulatory body relating to the mandate of that regulatory body to approve utility rate adjustments.

Some bilateral lenders have also conditioned their loans on completion of the water privatization deal. The British Department of International Development (DFID) has delayed a loan of US \$10 million for rehabilitation of the water system in Kumasi. The loan was conditioned upon progress in water privatization in Ghana, and citing slow progress in this area and a shifting of DFID priorities from direct funding of projects, the loan was delayed.<sup>52</sup> Such conditionality cannot help but impact on GOG policy-making. In fact, this is the intention of such conditions. The result is that privatization is privileged in consideration of alternative options for water sector reform.

## **VI. REGULATORY ISSUES**

### **1. Assessment of Regulatory Efficacy**

The proposed structure for regulating the urban water sector after privatization is laid out in the "Final Business Framework Report,"<sup>53</sup> which was prepared by the Louis Berger SA. This is one of the documents that the Public Utility Regulatory Commission (PURC) and the Water Sector Restructuring Secretariat have indicated were used as the basis for preparing the Terms of Reference for the proposed contracts by the private water operators. The Berger paper outlines the authority for managing the privatization or private sector participation (PSP) as follows:

- Government of Ghana/Minister of Finance: credit facility approval/guarantee;
- Government of Ghana/Minister of Works and Housing: sector policy definition; identifying and mobilizing capital investment;
- Ghana Water Company, Ltd.: asset (infrastructure) ownership and management; water sector development/investment planning; establishment of water utility performance targets; enforce water quality standards;
- Ghana Water Company, Ltd./Private Operator: engineering design of works; construction of works; supervision of construction of works; expansion of works,<sup>54</sup> billing and collection, customer relations, compliance with water quality standards, water quality monitoring, human resource management and training.
- Private Operator: financial management/accounting for urban water utility; administrative management of water utility; operation of water systems; maintenance of water systems; repair of water system.
- Water Resources Commission: grant water rights; water resource management.
- Public Utility Regulatory Commission: establishment of a tariff structure; setting and regulation of tariffs; monitoring costs; consumer education and protection; monitoring of water utility performance (targets).
- Environmental Protection Agency: define water quality standards.
- Auditor General: audit water utility accounts.

The Public Utility Regulatory Commission (PURC) is the chief agency responsible for regulating the private water operator and protecting consumers. However, the Ghana Water Company will establish the performance targets of the private operator and monitor compliance with water quality standards, the Environmental Protection Agency will define water quality standards, and the Auditor General has accounting oversight. Overall, the mandate of the PURC appears weak and the allocation of responsibilities and regulatory authority between the different parties demonstrate a high degree of fragmentation.

### **Role of the Public Utilities Regulatory Commission (PURC)**

As established by Act 538, the PURC's functions are as follows:

- \* to provide guidelines on rates chargeable for provision of utility services;
- \* to examine and approve rates chargeable for provision of utility services;

- \* to protect the interest of consumers and provision of utility services;
- \* to monitor standards of performance for provision of services;
- \* to initiate and conduct investigations into standards of quality of service given to consumers;
- \* to promote fair competition among public utilities;
- \* to conduct studies relating to economy and efficiency of public utilities;
- \* to make such valuation of property of public utilities as it considers necessary for the performance and functions;
- \* to advise any person or authority in respect of any public utility;
- \* to maintain a register of public utilities, and
- \* to perform such other functions as are incidental the foregoing.

These functions can be organized into four categories:

1. Setting rates
2. Protecting the interests of consumers
3. Monitoring services
4. Promoting fair competition

PURC officials indicate that they have all of the authority needed to regulate the private operator. However, the Berger paper indicates that the PURC will need technical assistance and "may need to secure an independent source of financing to perform regulation work."

### **Setting Rates**

PURC officials make clear that they view rate setting as one of their most important tasks. The PURC indicated during the meeting with the FFM that the process for setting tariffs is as follows:

- 1) the utility submits a proposal making its case to the PURC;
- 2) the PURC publishes the proposal and informs key stakeholders;
- 3) a public forum is held, which gives key stakeholders and the utilities an opportunity for discussion;
- 4) the PURC makes a decision.

The PURC strongly supports the objective of achieving full cost recovery --a funding strategy promoted by the international financial institutions --and is committed to ongoing tariff increases until full cost recovery is achieved. According to the London Economics report, "Ghana Urban Water Supply: Demand Assessment and Willingness to Pay Study Progress Report," a full cost recovery average tariff would be calculated based on the following:

- \* the private operator's expenditure on operation and maintenance;
- \* the private operator's capital expenditure required in the lease agreement and a reasonable rate of return on the expenditure;



\* GWCL capital expenditure - namely debt service on pre-PSP loans and new debt and depreciation on assets.<sup>55</sup>

The IMF has decided that the PURC's implementation of a plan for full cost recovery and automatic tariff adjustment mechanisms will be a condition for the completion of the fifth review of Ghana's Poverty Reduction and Growth Facility loan.<sup>56</sup> An automatic tariff adjustment mechanism would impose some formula whereby water tariff rates would fluctuate "automatically" with the shift of the Ghanaian currency on the international market. Since the Ghanaian currency has generally depreciated on the international market this, along with the commitment to full cost recovery, will ensure a continued upward trend for water tariffs.

The fact that the IMF intends to use its very influential power as a lending institution to pressure the PURC to implement automatic tariff adjustments is a major example of institutional overreach. Non-compliance on the part of the PURC with the IMF's loan condition could threaten access to funding for the government of Ghana. Yet, it is clearly inappropriate for the IMF to interfere with the decision-making of an independent Ghanaian regulatory body. The IMF claims the loan condition is necessary to "safeguard macroeconomic stability."<sup>57</sup> However, the decision of the IMF to interfere in Ghanaian regulatory affairs sets a very poor precedent and raises serious concerns about the difficulties the PURC might face in avoiding industry "capture."

The decision on the part of the PURC to move toward full cost recovery and implement automatic tariff adjustment mechanisms is a crucial one. If maintained to a considerable extent, it renders further public debate over tariffs superfluous. Since current tariffs are far below the full cost recovery rate, the PURC will have effectively committed itself to continued rate increases for the foreseeable future; further deliberations will be only to decide the velocity of rate increases. It appears that this fundamental decision, which will have dramatic influence over consumers' access to water, has been reached without a full public debate, without public hearings, and without parliamentary debate.

The surveys that were completed as part of the London Economics study on "willingness to pay" did not provide an adequate opportunity for public discourse on full cost recovery and privatization. According to the London Economics report, consumers have evidenced higher rates of "a willingness to pay" when the increased tariffs are associated with improved services. The results of the Berger report and the London Economics report<sup>58</sup> are used to advance the justification for requiring a largely impoverished population to pay incrementally increased rates leading to full cost recovery. The consultant reports do not address the fact that, since water is a substance essential to life, people may prioritize obtaining water before many other things, including food, education, and health care. The reports include an elaborate set of rationalizations on which they base the conclusion that there is a willingness to pay, but there is less attention to the issue of ability to pay.

The argument is also made that "willingness to pay" is evidenced by the fact that the large percentage of the population that are outside of the piped water system, or whose pipes do not flow regularly, are already paying much higher prices through secondary and tertiary sources (primarily tankers). Increased cost recovery is justified by arguing that higher water tariffs will

provide the capital to rehabilitate and expand the system to these people. Increased water tariffs for those connected to the piped system would still be less than current tanker truck rates. However, this argument is premised on the assumptions that (1) there will be high enough levels of investment to substantially expand the water system, (2) investment will be prioritized to serve the low income communities where most of those outside of the piped water system reside, and (3) connection costs will be free or substantially subsidized to ensure access. The FFM was *not* convinced of points 1 and 2. There appeared to be significant interest in developing a plan to address point 3.

Widespread poverty and the fluctuations and insecurities of the informal sector mean that paying increased tariffs for water will disadvantage large segments of Ghana's urban population. Clearly, the underlying issues of poverty and the need for subsidies cannot be dealt with by the PURC alone. At all levels of government there needs to be increased emphasis to the need to provide universal access to affordable and safe water. All of the major players that the FFM met with, from the World Bank and the IMF, to the WSRS and the PURC indicated that provision of water to the poor was one of the major objectives of the privatization process. Yet it appears that, at this point, the PSP proposal includes no comprehensive plan for ensuring that safe and affordable water is provided to all urban Ghanaians, including both those who meet poverty guidelines and the working poor.

As mentioned above, the FFM was informed that reduced fee or free connections were being considered as part of a subsidy strategy. On the other hand, the "Guidelines for Tariff Setting," included in the Berger report, discuss a "connection rent or fee" being retained by the private operator that could contribute to raised tariff rates.

The PURC will regulate tariff setting using independent technical and financial audits of the private operator and GWC Ltd. and slowly move the tariff toward full cost recovery. It is unclear that the PURC will have the staff or the political clout to challenge excessive charges or unfair billing for operation and maintenance expenses by the private operators.

Currently, water tariffs in Ghana include a volumetric lifeline rate and a progressive block tariff structure. However, the FFM was informed that reform of this tariff structure was being considered and that flat tariff rates and targeted subsidies are under discussion. In societies with high levels of poverty and broad socio-economic disparities, the lifeline rates and progressive block tariffs ensure a greater degree of social equity. The flat rate is a regressive tariff structure. Targeted subsidies or "user fees", as discussed in Section III, Public Health Issues and Access and Affordability, have failed in the context of health care.

### **Regulating Tanker Rates**

Currently, the PURC does not regulate tanker trucks and PURC officials did not indicate to the FFM that they plan to regulate them in the future.

A high percentage of urban consumers depend on water tankers for their drinking water supply. This includes both consumers who are not connected to the piped water system, and consumers

who are connected, but receive irregular service. These consumers pay rates far in excess of those who rely on water from the piped system.

Through nonrandomized questioning of Accra residents, the FFM found that consumers pay extraordinarily diverse rates for tanker water. Some residents reported rates approximately twice as high as others. These dramatic differences cannot be reasonably attributable to varying costs. Rather, they reflect market imperfections.

Regulation of these trucks could help alleviate price gouging immediately. The PURC could establish a pricing schedule for tanker water, with small adjustments permitted to reflect varying costs of servicing different communities. The tankers' supply comes from the Ghana Water Company. Either the GWC or the PURC could easily establish a licensing system, with tankers not permitted to buy water unless they adhere to the tariff schedule. With publicity of the tanker tariff schedule, consumers encouraged to report noncompliant trucks, and the sanction of permit revocation for noncompliant trucks, regulatory enforcement would be quite simple.

These crucial issues will not disappear in the near future, either with the PSP arrangement or without. Under the PSP arrangement, new investment in expansion of the system will remain the responsibility of the GWC and is generally prioritized after rehabilitation, renewal and improvement. It appears that under the status quo or the PSP proposal for water management, a large number of Ghanaian consumers are going to be reliant on truck delivery of water for the foreseeable future.

### **Protecting the Interests of Consumers**

The mandate of the PURC includes consideration of the interests of consumers in making decisions related to the provision of utility services and setting tariffs.

However, the process for consumers to participate in and influence decision-making is limited. The statute says that "the Commission shall by legislative instrument prescribe for matters relating to submission of complaints to the Commission and the hearing and determination of Complaints." The PURC is also directed to establish consumer service committees and to determine their functions.

While the PURC indicated during our meeting that there is no formal intervention process for the public or consumer groups, they discussed the outreach that they have done to the nascent consumer groups in the country. They said that they would be putting together committees to represent consumer issues. In addition, industrial and household consumer interests are represented on the PURC board.

The PURC indicated that they held public forums regarding rate increases. However, it does not appear that there is any formalized quasi-judicial hearing process for cases regarding tariff increases or new tariff structures. In many countries, guidelines for proceedings before utility commissions are quite formal and are used not only for rate cases but for asset transfers, customer complaints and other matters. These proceedings are quasi-judicial and are usually specified in the statute that created the commission. Formal, quasi-judicial hearings are required

to make decisions or determine the "rulemaking" that is used to establish various practices of the commission. Due-process rights, as well as open proceedings and open records are important in these rulemaking proceedings. Participants in a regulatory case might include commissioners, administrative law judges, commission staff members, utility representatives, consumer advocates and members of the public. Even though these proceedings are technical and can be time-consuming and expensive, they do offer a formal process for review and an avenue for public participation<sup>59</sup>. In addition to not specifying the formal process requirements for rulemaking by the PURC, the disclosure requirements are extremely weak. The utility is required "upon reasonable notice" to provide information to the PURC, but there is no requirement for the PURC to disclose this information to the public.

### **The Absence of a "Regulatory Compact"**

The FFM was informed in conversations with the PURC and other government agencies that the new regulatory system in Ghana was built on the model of regulation in the developed world, most notably the United States. In fact, African regulators are routinely brought to the United States to be trained in regulation. A program created by the U.S.-based National Association of Regulatory Utility Commissioners (NARUC) which partners developing nations with state public utility commissions in the U.S., has paired PURC with the Pennsylvania Public Utility Commission<sup>60</sup>. Ghana is also a member of the African Forum on Utility Regulation, which holds events and trainings for African regulators<sup>61</sup>. Some of these take place at The Public Utility Research Center (PURC), located in the Warrington College of Business Administration at the University of Florida<sup>62</sup>.

According to traditional regulatory theory, regulation plays a significant role in abrogating market failures related to monopoly service--where a single utility provides an essential public service to customers on demand. In essence, regulation helps replace competition and insures that corporations do not take advantage of captive customers. These types of utilities must be regulated to prevent abuse of economic power. Utilities require large amounts of investment in fixed assets, require capacity to be added in large increments, and incur substantial fixed costs relative to the variable costs of production. In order to avoid duplication in facilities or services, this type of utility tends to be vertically integrated. Additionally, because of their unique nature, utilities may be empowered to exercise rights of way and eminent domain. In exchange, the utility is given an exclusive service territory, is entitled to a fair rate of return, and is protected from "ruinous competition." The regulated utility monopoly has an obligation to serve customers. This arrangement is known as the "regulatory compact."<sup>63</sup>

Language about the regulatory compact is missing from the statute that created the PURC. While there is no mandate related to an obligation to serve consumers, there is an obligation to provide a bill. The statute deals with the provision of services obliquely. Part II states that the utility has a duty to provide adequate service. But it weakens the requirement by going on to say that the utility must "make such reasonable effort as may be necessary to provide to the public service that is safe, adequate, efficient, reasonable and non-discriminatory."

### **Monitoring Services**

Governance of water standards under the current division of labour is extremely fragmented. The PURC is required to "monitor standards of performance established by the licensing authorities of public utilities for compliance by public utilities." The PURC said that the Ghana Standards Board, which is located in the Ministry of Trade and Industry, regulates drinking water quality. The EPA establishes the water standard. The PURC can require compensation if the public utility fails to meet a standard of performance. However, it is unclear that the PURC has authority superceding the terms of the contract.

The PURC indicated to the FFM that if the lessee failed to meet water quality standards, PURC could take action beyond what the contract laid out. But whether PURC has and will retain this authority depends on contractual provisions the FFM was not able to review.

The PURC also said that they operate under a philosophy of self-auditing by the water companies. They believe that companies are in the best position to provide information about their water quality and operations. Therefore, the private water company would test the water and provide this information to the PURC. Obviously, this presents a problem. Self-audits are extremely controversial and do not provide the type of oversight that protects consumers.

### **Promoting Fair Competition**

Regulation in the developed world, typically known as economic regulation, is based on prices, profits, and the terms and conditions of service. It is directed toward markets that are not fully competitive, have barriers to market entry, have implications for protecting the commons or have the potential to adversely affect social or environmental goals. Universal access to service is one of the chief goals of regulation.<sup>64</sup>

One of the problematic aspects of the PURC's mandate and the "Packaging of the Business Units" is related to lack of competition. First, around the world it is recognized that the provision of water is a natural monopoly, which will involve one set of pipes. It is unrealistic to believe that there would be competitors in a single service territory. It is also unrealistic that the PURC can create competition by having two business units, with competing bidders. It is unrealistic to expect that the PURC can create a competitive market in the delivery of water services. The structure precludes true competition.

But even if one believed that competition in the provision of water services is possible, the two business unit model does not provide it. A widely used measure of market concentration, the Herfindahl-Hirschmann Index (HHI), is used by U.S. agencies like the Federal Trade Commission. The HHI is calculated by summing the squares of the percentages of a market as represented by each competitor. For example, five equally sized generators each contributing 20% of a market would result in that market having an HHI of 2000 ( $5 \times 20^2 = 2000$ ). Federal agencies handling anti-trust issues consider a market having an HHI of 1800 or more to be highly concentrated. While useful when examining competition among generators, it is of limited use when dealing with interacting components (such as generation and transmission) where even a low HHI would not necessarily reveal monopolistic capabilities available because of vertical integration.<sup>65</sup>

Obviously, a bidding process where different companies compete for the contract does not replace a competitive market with several companies competing for business. Unfortunately, the best that can be expected from the two business unit model is a weak type of benchmarking.

The trend toward deregulation in the developed world makes competition even more important. Deregulation is based on mainstream neo-classical economics, which argues that competitive markets will allocate resources more efficiently and constrain market power in public utility industries after economic regulation is removed. While we can debate how beneficial deregulation is for consumers, everyone agrees that competition and open access to markets is necessary in a deregulated marketplace.

In the context of the two business unit model proposed by the PSP, the PURC will be unable to promote competition. Ghana's water market is neither competitive nor is it "deregulated" in the sense that a market will be created that will constrain the market power of the water utilities.

### **Bulk Water Sales**

The recently organized Water Resources Commission has the mandate to grant water rights and exercise overall water resources management. As part of the PSP lease contract, the Water Resources Commission could grant water rights to the private sector water companies during the 10-year lease period. While this possibility has been under discussion, it is not clear that a final decision to transfer water rights to the private company has been made. The Stone & Webster information memorandum states that the water use permits issued to GWCL "can be transferred to the Lessee as allowed by Section 17 of Act 522. After these transferred permits expire, the Lessee will be required to apply for renewal."<sup>66</sup> (p.37)

If water rights are included in the lease contract, this could pave the way for the private operators to gain access to Ghana's water resources, perhaps with the idea of bulk water sales to other nations that are suffering from water shortages.

The Water Resources Commission told the FFM that one of the existing bids includes a plan to sell water from the Volta River Basin to Togo. The Volta River Basin drains six countries and is a tremendous freshwater resource. This has real implications for water resources in Ghana and upstream.

In various countries around the world the transnational water companies are planning to create water markets and engage in bulk water sales.<sup>67</sup> The possibility of bulk water sales could increase the interest of private water operators in the PSP arrangement in Ghana. It would be very important for the public to know if the proposed lease will include a transfer of the water rights to the private sector operators. And, it would be important to ascertain if the private sector operators plan to engage in bulk water sales.

The Water Resources Commission not the PURC will have authority to set a tariff on bulk water sales for export. PURC Act 538 Section 18 discusses the sale of bulk water outside of Ghana<sup>68</sup> and states:

*Notwithstanding the other provisions of this section, the power to approve rates under this section for services to which this section would otherwise have applied shall not apply to export of the service.*

Water rights should remain with the public authorities and a clause to this effect should be included in any lease contract. First, while bulk sales in the region may be appropriate on equity grounds and might conceivably be handled in an environmentally appropriate fashion, neither of these outcomes are guaranteed. Very specific contract terms and regulatory authority are required to assure any bulk sales follow publicly established standards. Second, even if such sales may be reasonable, the decision to allocate Ghana's crucial freshwater resources in such fashion should be subject to public and democratic debate and review. Third, if water rights were transferred to the private operators, bulk water sales could be made with little or no control by Ghanaian regulatory authorities, and there could be extraordinary opportunities for profiteering by the lease operators -- profiteering done while Ghana's freshwater supplies are depleted.

### **The Unknown Factor: Trade Agreements**

Ghana has Bilateral Investment Treaties (BITs) with many European nations, including the United Kingdom and other countries. The language on investment in BITS is being used by some of the transnational water companies to sue nations if a contractual arrangement is broken. Most BITs have been negotiated under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) established by the World Bank in 1966. This means the disputes are not decided by national courts or judges, but rather by private international arbitration tribunals.

An affiliate of Vivendi, a French water company, is suing Argentina for \$300 million, over a water and wastewater privatization deal that went awry. The company alleges that public health orders, mandatory service obligations, and rate regulations violated its rights as an investor. To date, investor's rights contracts in BITs and in the North American Free Trade Agreement (NAFTA) have been invoked on at least five occasions to challenge government actions concerning water or water services. This type of suit is likely to become more common in the future. A report by the Council of Canadians outlines the problems that could arise from PSPs for a nation with BITs.<sup>69</sup>

*International investment agreements are likely to play an important role in resolving disputes under public-private partnerships (P3) or other privatization arrangements concerning water and wastewater services. When water services are privatized these days, bidding is usually dominated by transnational water corporations - local competition is virtually non-existent in the wake of the recent global consolidation of this industry. Thus the private partner's interest in a P3 will almost always qualify as a foreign investment under most investment treaties.*

*For this reason, P3 agreements are governed not only by the rules of domestic contract law, but by international investment and services treaties as well, and in a conflict, the latter prevails. This means that when a government enters into a typical P3 contract, it will be entering into a foreign-investment relationship, whether it appreciates the fact or not.*

While some government officials may not understand the international implications of such P3 arrangements, their corporate partner is likely to, and may well have been involved in writing these international rules.

Moreover, when privatization relationships break down, major corporations have already demonstrated a willingness to invoke these powerful international arbitration regimes rather than take their chances before domestic courts.

As the Vivendi-Argentina case demonstrates, BITS may effectively elevate the contractual arrangement above government regulatory powers. PURC and other Ghanaian regulatory authorities could be subjected to international arbitration panels that deem efforts to impose regulatory requirements on the lessee go beyond contractual terms and are a violation of the lessee's investor rights. These findings may be accompanied by substantial monetary compensation awarded to the lessee.

### **Conclusion**

The PURC and other aspects of the regulatory system that have been developed to oversee the PSP are inadequate to protect the public and to insure improved access to water. While we can all agree that the current situation includes many barriers to access to clean and affordable water, there is no evidence that the PSP proposal will improve the situation, especially given the objective of full cost recovery and automatic tariff adjustment mechanisms. Due to funding constraints and the sources of funding that the PURC will need to rely on, the agency would have great difficulty in being independent. The water companies will have a tremendous amount of clout and political power, and there is no evidence that the PURC will be able to discipline these multinational corporations. IMF interference in the regulatory affairs of the PURC has already set an unfortunate precedent in this regard. It is inappropriate for IMF officials to impose loan conditions that require specific actions by independent regulatory bodies.

The lack of a formal intervention process in rate-making could also mean that the companies will have undo influence over the process. Consumer groups will not have the ability to directly challenge rate hikes or unfair billing practices.

Additionally, the solutions put forward by the PURC to insure that the poor will have access to water are not broad enough to protect the large number of vulnerable citizens. Given the likelihood of on-going rate increases, there has been inadequate attention given to developing a comprehensive regulatory regime for ensuring that low-income consumers have access to clean and affordable water.



## VII. FINANCING AND FISCAL ISSUES

It is often stated that a central motivation for seeking private sector participation is the government's inability to adequately finance water and sanitation services. Therefore, a key criteria upon which to assess the PSP proposal would be the amount of capital investment such actors would be able to provide. It is also important to examine the rate of return upon said investment required by the private sector companies, any fees paid to lessee or lessor, the impact on the balance of payments of hard currency repatriation by the lessee or private sector company, and all other revenues generated or forfeited by the lessee or lessor. In other words, this section of the report will examine all incoming and outgoing flows associated with the PSP proposal and their impact on the fiscal budget and the overall balance of payments.

Ghana is typical of most small developing countries that must manage complex pressures in an increasingly globalized environment. Successive governments have encouraged foreign investment with legislative and regulatory regimes that provide a range of foreign investment incentives such as exemptions from customs and import duties, tax exemptions, and the unconditional transfer of capital, profits and dividends in freely convertible currency.

As previously stated, the current version of the PSP proposal for the urban water sector will not bring substantial private capital investment. The draft lease proposes a minimum level of private sector investment at \$70 million per contract (Business Unit A - BUA and Business Unit B - BUB) for a total of \$140 million over a 10 year period. According to Peter Harold, World Bank Country Director for Ghana, there were very conscious attempts to balance the levels of private sector investment with multilateral and bilateral credit because the rates of return required by the private investors would make high levels of this source of capital uneconomic for the Government of Ghana (GOG).<sup>70</sup>

Various studies and assessments by the GOG have determined that the needed level of investment in the urban water system over 10 years (for BUA and BUB) would be about \$1 to \$1.3 billion. It appears that the government will try to fill some portion of this rather large "investment gap," (the difference between \$140 million and \$1 billion) through the usual array of multilateral and bilateral donors and creditors. Because private sector capital investment will play such a small role in the PSP proposal, the dependency on multilateral and bilateral creditors will remain fixed as a major problem. The only difference is whether the Ghanaian government and taxpayers will be using their debt service payments to subsidize a public company or a private company operating the urban water service. There may be some concern on the part of Ghanaian taxpayers as to the appropriateness of using public funds from multilateral and bilateral creditors for the purpose of financing private sector companies.

It is important to point out that, as in many other developing countries, a high level of external indebtedness has been a major problem in Ghana. The decision of the Government of Ghana (GOG) to enter the IMF and World Bank's Heavily Indebted Poor Country Initiative (HIPC) has been very controversial in Ghanaian civil society. The FFM was led to believe that the designation as a "HIPC country" is viewed as a major loss of national dignity among many sectors of civil society and a reflection of the failures of government policy makers.

As stated above, the PSP proposal will not bring substantial new sources of private sector financing. However, due to the ideological<sup>71</sup> preferences for “private sector participation” on the part of many multilateral and bilateral creditors, it is also clear that the PSP proposal will unlock funding from the World Bank, the Department for International Development (DFID) in the U.K., and other major creditors to provide further public financing for the water sector. For example, at a major Donor’s Conference held in Accra in November 2000, the PSP proposal in the urban water sector generated total commitments of about \$400 million within a 5-10 year time horizon from the World Bank, the British, Japanese, and Danish aid agencies and the European Union.<sup>72</sup>

### **The management of multilateral investment and investment priorities**

Stone & Webster, the transaction advisor, has proposed to the GOG that an Operating Investment Fund (OIF) be created to manage the use of creditor and donor financing for the urban water sector restructuring. It is unclear who would have the major decision-making responsibility for OIF management and oversight. There may be some tension between the GWCL, the GOG and the private sector companies over how OIF resources will be used. Under the current lease proposal, the GWCL has primary responsibility for the major task of extending the piped water grid. The private company has primary responsibility for renewals, rehabilitation and improvements of the existing system.

The problem of determining investment priorities was delegated to the foreign consultant firm, WS Atkins International, Ltd. WS Atkins developed a number of criteria to determine priorities among the different types of investment: renewals, rehabilitation, improvements and extensions. Four criteria were initially considered for determining investment priorities.

- Economic Criteria: The ratio of the revenue value of the additional water supplied over the investment costs.
- Level of Service Criteria: Assessment of reliability of water service, chlorination and overall water quality.
- Health Criteria: Incidence of water-related diseases
- Poverty Criteria: Poverty indicator developed from a variety of socio-economic variables.

However, WS Atkins determined that there was not sufficient data available to include the Health Criteria and the Poverty Criteria. The base case weighting scenario that WS Atkins adopted for the priority investment profile was:

- Economic Criteria – 67%
- Level of Service Criteria – 33%
- Health Criteria – 0%
- Poverty Criteria 0%

Following some concern expressed by the Advisory Committee regarding the dropping of the health and poverty criteria, WS Atkins included a “second pass” sensitivity analysis with the following weighting scenario:

- Economic Criteria – 60%
- Level of Service Criteria – 30%
- Health Criteria – 10%
- Poverty Criteria 0%

There is concern that these ranking systems, where the economic criteria overrule health and poverty concerns, will prioritize investment in wealthier areas where there is already significant infrastructure and relatively small capital investment will yield substantial revenue gain. Extensions, or new connections, are likely to lose out to this prioritization system. As stated in the W.S. Atkins report:

*The priority ranking exercise for the base case weightings also shows that for the larger systems the extension investments typically are in the lower half of the priority table with several notable systems missing the “cut” of available finance.*  
(Executive Summary, p. iii)

Low-income communities are also likely to lose out – especially where substantial investment is needed to rehabilitate the infrastructure and revenue potential is limited. Because this ranking system gives priority to rehabilitations, renewals and improvements (rather than extensions), it also may give private sector companies priority over the GWCL to accessing the multilateral funds deposited in the OIF. The Atkins report also notes that under the Enhanced Lease Contracts prepared by Stone & Webster, the Lessee (the private sector companies) will prepare a Monitorable Implementation Plan on a rolling basis for approval by the Lessor. In other words, the final investment plan will be prepared by the private sector companies.

### **The Fiscal Impacts of Unbundling or Cherry-picking**

The process of privatization has been accompanied by a phenomena titled *unbundling* by the World Bank, but often referred to as *cherry-picking* by trade unions and civil society groups. This has taken place in many sectors including electricity, telecommunications, oil, gas, mining, and water services. Bluntly stated, the unbundling process is one whereby the profitable and the unprofitable sectors of the production process of a good or service are separated. The unprofitable sectors remain in the public sector and the profitable sectors are transferred to the private sector. This is the only way that privatization could take place, quite obviously, because the private sector is not in the business of ensuring universal access to water services or health care, or a sound transportation system for an urban population, or any other public good. This has historically been the role of the state. And, the unique taxing powers of the state provide it with the capacity to redistribute income and implement cross-subsidies (hopefully) with the positive goal of increasing social equity and the well-being of the entire population. This is not a role that the private sector can play.

The details of the *unbundling* process vary from sector to sector. In electricity *unbundling* often means separation of production and distribution, and in telecommunications it may mean separation of local and long distance or international service. In water services it usually means the separation of rural and urban service and/or the removal of sewerage and sanitation services.

In the case of Ghana the process of *unbundling* in preparation for privatization included both the separation of rural and urban water and the removal of sewerage services. Below are the five steps of the *unbundling* process taken to date.

1. **Dissolution of the GWSC.** The Ghana Water and Sewerage Corporation (GWSC), which was responsible for the provision, distribution and conservation of both the rural and urban supply of water was dissolved in early 1999. It was replaced by two new institutions, the Ghana Water Company, Ltd. (GWCL) and the Community Water and Sanitation Agency (CWSA)
2. **Devolution of responsibility for rural water.** The water supply systems in 110 rural communities and small towns were transferred to local level government known as District Assemblies. Thus, the responsibility of rural water service was removed from the GWSC.
3. **Creation of the CWSA.** The government created the Community Water and Sanitation Agency (CWSA) in 1999 to facilitate the provision of safe water and sanitation services to rural communities and to provide technical assistance to the District Assemblies.
4. **Creation of the GWCL.** The Ghana Water Company, Ltd (GWCL), created in 1999, is authorized to provide, distribute and conserve the water supply for public, domestic and industrial purposes. It has responsibility for approximately 101 urban water systems which include approximately 216,700 connections. These are the water systems to be transferred to the private companies, as BUA and BUB, according to the PSP proposal.
5. **Devolution of responsibility for urban sewerage.** The responsibility for sewerage treatment in Accra was removed from the GWCL and transferred to the Metropolitan Authority.

**What are the fiscal impacts of the unbundling process?** When the profitable sectors of water service are removed from the public domain, a significant source of cross-subsidy is lost. For example, in Ghana the wealthier urban areas subsidized water in the rural areas prior to the unbundling process. In addition, the extension of sewerage services to a larger proportion of the population will only be possible through a cross-subsidy system. The expansion of sanitation services is an important public health and environmental priority (although not addressed by the PSP proposal). The unbundling process reduces the possibilities for sectoral cross-subsidy and therefore reduces the capacity of the government to use taxing systems to promote environmental, public health or social equity goals.

The greatest fiscal impact of the unbundling process (if the PSP proposal is implemented) will be to remove a significant revenue source from the GWCL. Upon review of the annual financial reports of the GWSC from 1992 to 1998 it is clear that the company has been running a deficit for some time. However, much of this deficit has been buffered by the revenue generated from the metered billing in the wealthier urban areas. All of the metered billing areas are included in BUA and BUB, the areas that will be leased to the private sector company, according to the PSP proposal. The combined revenue generating capacity of BUA and BUB was about \$63 million

in 1996. (Berger, p.6.2) This revenue will be lost to the GWCL and the GOG through the PSP proposal.

More information is needed about the decision-making process that determined the allocation of water systems into the rural and urban designations, i.e. managed under the jurisdiction of the GWCL or the CWSA. In many of the peri-urban areas and marginal communities, it appears that the decision could have been primarily determined by profitability factors. In other words, the wealthier areas were designated as part of the GWCL jurisdiction and the poorer areas devolved to the District Assemblies to be overseen by the CWSA. According to Stone & Webster, upon further review of the 101 systems that were allocated to the GWCL, a number of them were consolidated and others were subsequently transferred to the CWSA. There is no discussion of the criteria used in making this determination. The final number of systems to be managed by the GWCL, and slated to be leased to the private sector under the PSP proposal, was reduced to 74.

It would be important to understand more clearly the criteria used in determining whether a water system would be allocated to the jurisdiction of the GWCL or the CWSA. Making such determinations primarily on the potential revenue generation capacity of the water systems certainly makes sense from the perspective of private sector companies. However, the overall fiscal impact on the Government of Ghana (GOG) could be negative. The GWCL and the GOG will no longer accrue revenues from water billing, the \$63 million annually, yet it will still carry the deficit creating aspects of water service delivery. This includes loans incurred for the management of rural water in the areas designated under the jurisdiction of the CWSA (low revenue-generating areas), loans for the expansion of the urban water sector, expenditures for sewerage treatment, and debt payments (interest on past loans).

It is important to recognize that under the PSP proposal, the GOG will no longer incur the expenses of operation and maintenance of the urban water system. Instead, the GOG will pay the lessee fee to the private sector operators. However, the expenditures required to pay the lessee fee and the costs incurred for managing the deficit-creating aspects of the water system will no longer be balanced by any major incoming revenues from billings.

The on-going operating expenditures of the GWSC, according to accounting statements available from 1992 to 1998, included chemicals, power supply (electrical), fuel costs, personnel, repair and maintenance. Matching these operating expenditures with revenues results in a profit in most of the ten regions of Ghana.<sup>73</sup> However, if other expenses are added such as bank charges (interest on loans), insurance, training, transportation, and exchange losses the balance becomes negative.

In fact, exchange losses (losses due to the depreciation of the Ghanaian currency) are an extremely large item in the 1997 and 1998 GWSC accounts. Exchange losses and interest on loans taken together make up almost the entire operating deficit of the GWSC. In 1997 exchange losses and interest on loans composed about 72 percent of the operating deficit and in 1998 they composed 93 percent.<sup>74</sup> While many outside consultants appear to focus on high levels of non-revenue water (NRW) as the source of the GWSC's inefficiency, focusing on the problem of exchange losses would also seem to be appropriate. In fact, one could argue that a major source of the "inefficiency" of the GWSC is due to external factors such as exchange rate

volatility, dependency on foreign imports, and dependency on external financing. Formulating policies that address some of these underlying dependencies would be advisable. In addition, it would be useful to assess to what extent the PSP proposal will address (or exacerbate) these underlying dependencies.

**Will the PSP proposal reduce Ghana's vulnerability to exchange losses?** The PSP proposal will pass the daily operation and management of the GWCL to the private sector companies. The private sector company will then incur the basic operating expenditures (although the lease payment ensures that the private sector company is reimbursed for these expenditures). It is quite likely that the dependency on foreign inputs, including foreign labour, will be exacerbated under the PSP proposal. The private companies will purchase most of their inputs from their parent or sister companies, rather than using Ghanaian sources. This makes Ghana susceptible to transfer pricing – a common practice among transnationals whereby they mark-up the prices of purchases from their parent or sister companies. The expected increase in foreign inputs in the context of the PSP proposal will place an additional pressure on the balance of payments. In other words, Ghana's already sparse hard currency reserves will face some additional pressures from the foreign import needs of the private sector companies, as well as from the repatriation of profits, and this will have a negative impact on the overall balance of payments. Public information on the likely rates of return expected by the private sector companies and the levels of profit repatriation were not made available to the Fact-Finding Mission.

The private sector companies are not unconcerned about the problem of exchange losses. As major transnational companies, they do have more access to hard currency than the GWCL. However, since they will probably purchase more of their inputs from foreign sources than the GWCL did, and since the fees they collect from Ghanaian consumers and the GOG will be in cedis, they are quite vulnerable to this problem. The solution proposed by the private sector companies to the problem of exchange losses is an automatic tariff adjustment mechanism. The exact formula for this automatic tariff adjustment is currently under debate, however it will probably contain an exchange rate, inflation and interest rate adjustor. This will ensure that the exchange losses experienced by the GWCL will not be carried by the private sector companies. Instead, the problem of exchange losses will be passed to the Ghanaian consumer.

Unfortunately, while Ghanaian consumers will be charged international market rates for their water, most are not paid international market rate wages. The impact that this may have on the access to clean and affordable water for the population of Ghana is discussed in Section III of the report. In summary, the PSP proposal will transfer the problem of exchange losses from a deficit on the books of the GWCL to an automatic tariff adjustment mechanism borne by Ghanaian consumers. While this may have a positive effect on the deficit in the Ghanaian budget, it will likely have a negative impact on access to clean and affordable water.

## VIII. THE PUBLIC SECTOR OPTION

Globally, the majority of the world's population is serviced by public sector water services.<sup>75</sup> The alternative of a public sector water system has been the favored model historically, although currently international creditors and donors appear to favor some form of privatization. This section of the report examines some of the recent attempts to re-engineer or restructure public sector water services in order to improve their efficiency, management, accountability and service provision. The government of Ghana's private sector participation (PSP) proposal can usefully be evaluated in comparison with a range of successful public sector restructuring initiatives in various countries. These are discussed in further detail below.

However, first it is important to mention that the Water Sector Restructuring Secretariat (WSRS) states that efforts in the 1970s and 1980s to restructure the Ghana Water and Sewerage Company (GWSC) and improve its operational and financial viability failed. This was the reason that the decision was made in the early 1990s to increase the role of the private sector. In 1994 eight PSP options were reviewed and in 1995 the lease option was selected. The eight PSP options reviewed in 1994 did not include any public sector options. One could say that as early as 1994, the option of public sector restructuring or re-engineering had been dismissed.

However, re-engineering or restructuring the public water utility can be a viable and effective alternative to privatization. It can allow utilities to significantly reduce operation costs and generate the much needed savings that can help pay for capital improvements. At the same time, restructuring does not involve the many risks and hidden costs associated with privatization, such as increased regulatory challenges, legal burden, and a loss of accountability.

Although the mandate of the FFM does not include addressing specific shortcomings or concerns with the management, efficiency, accountability or operations of the Ghana Water Company, many issues are common to water utilities throughout the world. Below are the most common aspects of restructuring or re-engineering efforts undertaken in the water sector<sup>76</sup>.

### **1. Cross-training staff, improving labour-management relations and other organizational reforms**

Most water utilities don't operate as efficiently as they could. Poor labour/management relationships, bureaucratic obstacles to procurement and purchases, hierarchical workforce structure, lack of performance goals and means to measure their achievement are some of the factors that undercut efficiency and productivity.

Top down decision-making and poor communication can create a hostile work environment, sometimes fostered by the management, and discourages workers from performing at their full capacity.

Cumbersome bureaucratic requirements and procedures can hinder competitiveness and efficiency. Duplicate paperwork and inflexible requirements that prevent the utility from pursuing the least cost-effective solutions also undermine cost savings.

Hierarchical workforce structure, where information is not evenly distributed, is a significant impediment to efficiency. The organizational model should encourage a more even distribution of information among staff with different levels of authority and with different responsibilities. A team-based model, instead of a hierarchy, increases productivity and reduces absenteeism. Cross-training of staff enables staff to undertake multiple functions, increases workforce flexibility, and expands the overall knowledge base and capacity of the workforce.

## **2. Creating performance-based and gain-sharing incentive programs for staff**

Utilities can realize significant productivity gains and encourage cross-training through implementing performance-based and gain sharing incentive programs. The staff should be rewarded for meeting performance targets, for increasing its skill level, and for helping to reduce cost and improve service. Incentive programs will provide workforce with a stake in improving the utility operations and achieving savings.

## **3. Rightsizing, unattended operations, and human resource reforms**

Cross-training, team-based organization, and workforce flexibility can help eliminate idle time and reduce the need for certain positions. However, right-sizing of the workforce does not have to involve layoffs. Instead, the workforce can be reduced through attrition and transfer to other municipal departments. Because it is important that the staff sees itself as a stakeholder in the restructuring process and not its victim, management should involve the workforce and union representatives in the restructuring process and ensure the staff that no one will involuntarily lose his or her job as a result of restructuring.

## **4. Automating processes with enhanced instrumentation**

Automating operation processes and taking full advantage of the information technology can reduce workforce and improve the quality of service. Unfortunately, workers sometimes see technology as a threat to their jobs and management sees it as a luxury investment. It is important to assess the appropriateness of technological innovation to specific situations and identify the key priority areas where technological solutions can increase efficiency, improve the health, safety and quality of the job, and improve service to consumers.

## **5. Switching from reactive to predictive and preventive maintenance**

Reactive maintenance is usually more expensive than preventive. Preventive maintenance programs improve reliability of water and wastewater systems by 25 percent on average.<sup>77</sup> A program of predictive maintenance's that involves monitoring the system and equipment to predict maintenance needs improves a system's reliability by an average of 70 percent.

## **6. Reducing costs of materials and chemicals through new technologies or cooperative purchasing agreements**

Private companies often capitalize on their buying power to reduce the cost of chemicals and materials. Public utilities can take advantage of lower prices by forming cooperative purchasing



agreements to buy large quantities of products. New technologies can also reduce the cost of materials and chemicals.

## **7. Reducing energy consumption, through conservation techniques, new technologies, or contracts with multiple suppliers**

Energy costs generally amount to a significant portion of the operation costs. By investing in new technologies, implementing conservation techniques, diversifying suppliers and investigating alternative and innovative sources of energy utilities can achieve significant cost savings.

Some of the most successful public sector re-engineering initiatives are discussed below.

### **Examples of reforms of public sector water undertakings**

#### **Sao Paulo, Brazil**

SABESP, the state-owned water company covering the majority of the 22 million inhabitants of Sao Paulo state, is the world's largest water utility. Since 1995 it has undergone extensive restructuring aimed at organizational modernization and operating efficiency, through simultaneous efforts to expand revenue generation on the one hand and cut excessive costs and inefficiencies on the other. In the course of 1995 alone, the population in the service area supplied with treated water increased from 84% to 91%, the population receiving sewerage services increased from 64% to 73%, and non-functioning accounts plunged to 8%. Operating costs were reduced by 45%, partly by outsourcing. SABESP can now finance its investment programmes through loans and its own funds (its finances were affected, however, by the currency devaluation of 1999, which increased the cost of foreign debt). SABESP is also effectively carrying out its environmental responsibilities, including a major clean-up of the Tiet river, considered to be the largest environmental scheme in Latin America, completed in 1998.<sup>78</sup>

#### **Lilongwe, Malawi**

A project to improve the water and sanitation services of Lilongwe, Malawi, was a success, from the point of view of institution building, and provided the model for a national approach to managing water in cities and larger towns. Funded by the World Bank, the project produced a master plan and expanded the distribution system and strengthened the capacity of the water board.

Access to water improved significantly; the project helped develop an effective management support and training programme; the efficiency of operations increased considerably; the level of unaccounted-for water fell to 16 percent; labour costs were reduced; response time to new service applications and customer complaints has improved.<sup>79</sup>

#### **Sri Lanka**

In Sri Lanka, water and sanitation is operated by the National Water Supply and Drainage Board (NWSDB), which remains under the ownership and control of central government. In the 1990s the NWSDB carried out a series of reforms which successfully transformed the financial structure. A report states that "*Organizational restructuring and improved tariff management,*

*underpinned by government insistence on financial viability, have led to significantly improved performance” and concluded “change of ownership is not the key issue”.<sup>80</sup>*

### **Hyderabad, India**

The Hyderabad Metropolitan Water Supply and Sewerage Board has gradually changed its organizational approach. The changes made include: adopting a business and human resources development plan; decentralizing management of billing, revenue collection, and customer service; creating local ‘Customer Service offices’; a training programme at a local university; restructuring staffing responsibilities.<sup>81</sup>

### **Debrecen, Hungary**

In 1995 the city council of Debrecen, a 220,000 population city in Hungary, decided to reject privatisation proposals from two major multinationals in favour of its own municipal water undertaking, Debreceni Vizmu (Debrecen Waterworks). The company was created in 1995 as a corporatised separate entity from the municipality, with a business plan drawn up by the management with the support of the trade unions. The business plan ensured that all costs were covered, including depreciation, without generating unnecessary profits.

The cost of financing the necessary investments has proved to be much lower under public provision - 23 kilometres of pipework had been finished by April 1997, at a cost of Forint 320m, equal to 40% of the amount Eurawasser (a Suez-Lyonnaise-led consortium) would have spent on the same work, partly due to the use of local suppliers of equipment, such as meters and pipes. Employment considerations were internalized in Debreceni Vizmu’s business plan so that 300 more people are employed compared with the workforce planned by Eurawasser. The financial performance of the company compares favourably with that of privatised water companies in other cities in Hungary.<sup>82</sup>

### **Tegucigalpa, Honduras**

In four years from 1994 there was a successful restructuring of SANAA, the state-owned water company responsible for the capital Tegucigalpa, which dramatically improved efficiency, management and effectiveness. It was based on joint working with the trade unions, through a process aimed at positively involving the workforce. The restructuring involved decentralization of management, computerization of billing, a significant increase in tariffs to boost revenue, reduction in staffing levels, including some contracting out of work. SANAA established six regions, which were allowed to retain their tariff income and given substantial control over day-to-day operations. Leaks were reduced - in Tegucigalpa savings amounted to 100 litres per second - and the continuity and reliability of supply also improved allowing the majority of the population to receive piped water 24 hours a day.<sup>83</sup>

\*Source: David Hall. *Water in Public Hands*, Public Services International Research Unit, University of Greenwich, UK, May 2001.

Below are six case studies of public sector water utilities restructuring initiatives in the United States and Canada.<sup>84</sup>

1. **Phoenix, AZ.** In 1995, the Phoenix Water Department initiated a restructuring program to improve its customer service and environmental record, to reduce operating costs, to expand

and upgrade the infrastructure, and to limit rate increases. A joint management/trade union task force was formed to guide the process. Changes in staffing structure and work practices resulted in creation of a new multi-skilled workforce, capable of performing both maintenance and operation tasks. A new pay scale provided incentives to learn new skills. The restructuring initiative brought about a well-coordinated maintenance program, minimized off-shift staffing, and increased the use of technology. In just five years, the annual cost savings have exceeded \$12 million and customers continue to benefit from the improved customer service and from some of the lowest rates in the country.

2. **Colorado Springs, CO.** In the face of a privatization threat the municipal utility implemented a five-year program to improve efficiency, reduce operating costs, and find cost savings. After investing \$2 million in the restructuring program, the city has been able to reduce cost per million gallons by 32 percent. A staff reduction of 36 percent was achieved through attrition with no layoffs. Workforce flexibility and skill-based compensation were introduced and the management layer reduced. The restructuring program brought more than \$2 million in annual savings, increased competitiveness, improved productivity and involvement of the employees, and left customers satisfied.
3. **Houston, TX.** In 1995, a private company approached the city officials with an offer to operate and maintain the water system at a lower cost. The city did not feel that privatization of a system serving 3 million customers was in the best interest of the public. However, when in 1996, when employees were invited to bid to operate one of the water purification plants, previously operated privately, the employees' bid was not selected. The municipal utility then embarked on a restructuring program to become more competitive. Cross training improved workforce flexibility and compensation programs were developed to reward skill-based development. The number of supervisors was trimmed down. Reduction of personnel by over 200 through attrition, coupled with savings from reduced electricity and chemical consumption, produced tens of millions of dollars in savings.
4. **Toronto, ON, Canada.** Faced with the threat of privatization, the municipal water department that provides water for the city's 2.4 million residents embarked on a restructuring program to improve efficiency, provide better service, and find cost savings. The program involved increasing the workforce flexibility, cutting payroll and reducing the cost of energy, chemical, and parts. The 2002 budget estimated that Cnd\$65 million has already been saved. When the full implementation of the restructuring program is complete, the annual savings are expected to reach \$36 million.
5. **Orange County, FL.** Orange County Utilities have achieved remarkable results by reducing its workforce, cross-training its staff, implementing new technologies, introducing and incentive-based pay scale, and setting ambitious performance targets. In just two years since 1996, the utilities reduced their operating budget by \$4.7 million and projected further reductions.
6. **Akron, OH.** The city sought to stabilize its water rates, some of the highest in the state, by reducing operating cost. A consultant's analysis showed that some \$10 million could be saved in annual controllable operating costs. A Blue Ribbon Commission issued a report that

initiated a significant change in the way the utility operated. A steering team representing a cross-section of workers and management commissioned six core design teams and smaller work teams to encourage the team concept. As a result of the restructuring efforts, the employees are becoming highly trained, flexible, and efficient. The best business practices are making the utility highly competitive. In 1999-2000, Akron utilities achieved \$4.6 million in savings.

There is considerable experience across the world in the restructuring and re-engineering of public water utilities. This expertise may be useful in assessing the multitude of water sector reform options. The FFM encountered a deep concern among many civil society and professional organizations that bringing a foreign private corporation to manage the water utility would marginalize local talent and capacity, at best, and possibly result in a reduction of the future engineering, managerial, and technical capacity of the Ghanaian workforce to manage water service delivery. The restructuring or re-engineering of the public sector water utility would have the advantage of building and strengthening local Ghanaian capacity for effective water service delivery. This objective should be a critical part of any water sector reform proposal.

## IX. HUMAN RIGHTS ISSUES

Water is an essential precondition for the enjoyment of both civil and political rights as well as economic, social and cultural rights. Indeed, it is so fundamental to all aspects of human existence and fulfillment that if water does not constitute a basic right, it is difficult to imagine what would. International human rights law recognizes that without access to “adequate water,”<sup>85</sup> it is not possible to attain many other explicit rights, such as life, health and an adequate standard of living. In a human rights framework, the issue is whether government and other actors' policies and actions meet the basic elements of Ghanaians' right to water. Do policy actions ensure access to affordable water supplies, with particular attention to vulnerable and marginalized sectors of society, and eliminate all discrimination in access to water?

Understanding that the management and distribution of water is a basic rights issue changes both how we understand the problems involved in urban water supply and the criteria that we use to evaluate the Ghanaian water system. Asserting a right to adequate water means that the Government of Ghana (GOG) has not only moral or humanitarian responsibilities to attend to the water needs of the most vulnerable and economically disenfranchised of the population, but also legal obligations which require the GOG to reflect water as a priority in its budget.<sup>86</sup>

Second, the normative framework of human rights requires adequate progress to be made toward universal access to water. There is no doubt that the current system for water provision and distribution in Ghana is seriously deficient and that everyone will not receive access to adequate amounts of piped water in the immediate future. In a statement made in October of 2001, President Kufour himself stated that: “The state, ... has been solely in charge all along and society at large is now beset by deficiencies, corruption and the unrequited high cost of the utility services.”<sup>87</sup> However, the question is what is to be done? International human rights law requires a clear plan and deliberate steps to be taken continuously toward the progressive realization of the rights and does not permit policies or acts, even under pressure from international financial institutions (IFI's), which would entail regression in terms of access or affordability to water.<sup>88</sup>

Third, as water is not simply a handout or a market commodity, a human rights perspective demands authentic popular consultation and participation in decisions affecting the production and distribution of water. Consultation cannot be a new formality, but must reflect a recognition that people have the right to control their own resources. Fourth, access to water must be realized on a non-discriminatory basis, without distinction of any kind such as race, ethnic group, color, gender, language, religion, political or any other opinion, national or social origin, property, birth or other status. Discrimination based on any of the above which has the purpose or effect of nullifying or impairing the enjoyment or exercise of economic, social and cultural rights constitutes a violation of international law.<sup>89</sup> Finally, a human rights framework requires that a system of accountability be put in place, which includes a functioning regulatory structure empowered to effectively police water providers and provide remedies to victims in the event of violations.

As noted above, under international law, the right to water is protected as part of many other human rights. Indeed, it is commonly understood that the original Universal Declaration of Human Rights, which forms the basis for all subsequent instruments, was not intended to be all-

inclusive but rather to establish “component elements of an adequate standard of living.”<sup>90</sup> The omission of water as an explicit right was due to its being so essential to human existence—like air—that its explicit inclusion was deemed unnecessary.<sup>91</sup> The Government of Ghana (GOG) is a party to a series of international and regional instruments that have a bearing on the provision and distribution of water, which are discussed below. Under Ghanaian law, these international obligations have constitutional status. Furthermore, IFI’s and third-party States also have obligations with respect to water provision and a functioning legal system capable of providing access to and remedies for victims of violations under international law.

### **Water as a Human Right: The Right to Self-Determination**

The United Nations Charter affirms the principle of self-determination in Article 1 on the "Fundamental Purposes and Principles."<sup>92</sup> Moreover, both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) share a common Article 1 on self-determination: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>93</sup> The United Nations Committee that monitors compliance with the ICCPR (Human Rights Committee) has affirmed the central importance of this right: “the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”<sup>94</sup>

Article 1(2) of the ICCPR, to which the GOG is a party, states that “all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”<sup>95</sup> Article 21 of the African Charter on Human and Peoples’ Rights (Banjul Charter) to which the GOG is a party, declares even more forcefully that the right of all peoples to freely dispose of their wealth and natural resources “shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.”<sup>96</sup> It goes on to say that the free disposal of wealth shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.”<sup>97</sup> The relevance of self-determination to the issue of water in Ghana lies in its affirmation of the right of all individuals and communities to participate in development policies involving basic resources fundamental to human rights and development. Water is not simply a commercial commodity that can be priced through contractual arrangements with no regard for the voices of Ghanaian citizens and communities. It is a human right that implicates basic elements of self-determination.

### **Water and the Right to Life**

Given that water is indispensable for life, it is foreseeable that State policies that are likely to lead directly to diminished accessibility and affordability of water in effect will deprive people of life. Article 6(1) of the ICCPR clearly sets forth a right to life and states that “this right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>98</sup> Article 4 of the Banjul Charter also sets out the right of every human being to “respect for life and integrity of his

person and states that no one may be arbitrarily deprived of this right.”<sup>99</sup> Increasingly, policies on health-related issues, such as water, are being construed by the Human Rights Committee as having a bearing on the right to life.

In addition to these international obligations, the Ghanaian Constitution of 1992 also sets out in Article 13 of Chapter 5 on Fundamental Rights and Freedoms that “no person shall be deprived of his life intentionally except in the execution of a sentence of a court in respect of a criminal offence...”<sup>100</sup> If it is reasonably foreseeable that the current PSP proposal, in particular aspects such as automatic tariff adjustment mechanisms, will increase the price of water for the poor and decrease access to adequate water, which is vital to life, the pursuit of this policy could be construed as an intentional deprivation of life under both international and Ghanaian law.

### **The Right to Health**

Under the ICESCR, to which the GOG is also a party, there is a right to the highest attainable standard of physical and mental health.<sup>101</sup> Water is clearly essential to the realization of the right to health, due to its role in nutrition, sanitation and environmental and industrial hygiene. The FFM’s findings with respect to both current public health problems stemming from lack of adequate water and the public health implications of the PSP proposal are discussed at length in other sections of this report .

With respect to international law, in its recent General Comment No. 14 on the right to health, the Committee that monitors the implementation and authoritatively interprets the ICESCR (ESC Committee), clarified that the provision of basic water and sanitation constitutes a “minimum core obligation” of States parties, which at a minimum would require budgetary priority and a national plan to achieve adequate services.<sup>102</sup> These minimum obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties, such as pressure from IFI’s.<sup>103</sup> Water and sanitation are also considered fundamental aspects of quality of care in health facilities by the ESC Committee.<sup>104</sup>

Article 16 of the Banjul Charter also sets out the right of every individual to enjoy the “best attainable state of physical and mental health” and declares that States shall take “the necessary measures to protect the health of their people...”<sup>105</sup> Providing adequate water and sanitation—and conversely avoiding any arrangement that is likely to reduce affordability and accessibility of water-- must be among the first priorities for any State in “protecting the health” of its people.

### **Adequate Standard of Living**

Water is also essential for the fulfillment of the rights to food and an adequate standard of living. Even apart from the role of water in safe and acceptable working conditions, the right to an adequate standard of living for an individual and one’s family includes “adequate food... [and] the continuous improvement of living conditions.”<sup>106</sup> The realization of this right under Article 11 of the ICESCR in turn requires access to adequate water because of its central role in producing food and in making living conditions safe and acceptable. Further, in Chapter 6 of the Ghanaian Constitution, which sets forth the Directive Principles of State Policy, Article 35(3) explicitly states that “the State shall promote just and reasonable access by all citizens to public

facilities and services in accordance with law”<sup>107</sup> as part of promoting a reasonable standard of living.

With regard to an adequate standard of living and access to services, the Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention), which the GOG has also ratified, addresses the rights of rural women. Article 14(2) declares that States parties shall ensure that women in rural areas have access to “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.”<sup>108</sup> Although the PSP proposal will not directly affect rural women, the FFM found evidence that the condition of women who live in peri-urban areas often suffer with respect to access to water. (See Section X, Gender Issues)

### **Water as a Gender Issue under International Law**

Access to adequate water dramatically affects the rights of women not only to life, health and an adequate standard of living, but also to other fundamental human rights such as education. In particular the FFM was repeatedly told that when families have to choose between paying for water and paying for school fees, it is the girl children who “had to make the sacrifice” to forego education and who overwhelmingly are the ones to assist their mothers in the collection of water.<sup>109</sup> This directly contradicts the obligation of the GOG under Article 10(f) of the Women’s Convention to work toward the “reduction of female student drop-out rates.”<sup>110</sup> Moreover, as noted below, the FFM also found credible and alarming evidence that lack of access to water becomes an issue of gender-based violence, where women are subjected to beatings and other abuses for not having collected sufficient water for their families.<sup>111</sup>

The declarations that emerged from the International Convention on Population and Development held in Cairo in 1994 (The Cairo Programme) and the Fourth World Conference on Women held in Beijing (Beijing Platform) further elaborated on the binding norms in the ICESCR and the Women’s Convention with respect to promoting equality between men and women in access to health, standard of living and education.<sup>112</sup> Language in the 5-year follow-up documents to the Cairo and Beijing Conferences, again reiterated the critical need to address issues such as gender-based violence within national legal systems and policies, including policies that result in reduced public subsidies for basic services such as health care and water, and result in heavier household burdens for women.

### **Disproportionate Effects on Children**

Water is also an issue that particularly affects the rights of children. Article 24 of the Convention on the Rights of the Child (Children’s Convention), to which the GOG is a party, sets out the obligation of States parties to provide the highest attainable standard of health for children and in particular to take appropriate measures “to combat disease and malnutrition... through the provision of adequate and nutritious foods and clean drinking water.”<sup>113</sup> Article 27 of the Children’s Convention makes clear that States parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and that the State shall assist parents in the realization of that standard of living.<sup>114</sup> Article 28(1)(d) of the Ghanaian Constitution states that children and young persons receive



“special protection against exposure to physical...hazards.”<sup>115</sup> Lack of access to water and sanitation is perhaps one of the greatest physical hazards a child can face in terms of the public health consequences.

Article 28(e) of the Children’s Convention requires States parties to take measures to encourage regular attendance at schools and reduce drop-out rates, which as mentioned above increase when families have to choose between locating water to survive or sending their children to school.<sup>116</sup> Article 25(1) of the Ghanaian Constitution sets out the right of all persons to “equal educational opportunities and facilities” and elaborates steps whereby the GOG is to pursue the realization of such rights.<sup>117</sup> As mentioned above, the FFM heard repeated concerns that the difficulties accessing water have a disproportionately detrimental impact on girls’ rights to education.

### **Other vulnerable groups**

In addition to the disproportionate impact on women and children that the increased cost of water has had, the FFM is concerned that marginalized or vulnerable groups, such as the elderly and disabled, will also have their rights to food, health and adequate standard of living compromised by reduced access to water.

### **Obligations under International Law**

Under international law, the Government of Ghana (GOG) has certain obligations with respect to these rights, which are relevant to consider in the context of the current PSP proposal.

*Respect:* The obligation to respect these various rights which bear on water requires that States parties refrain from acts, practices or policies that interfere with the affordability and accessibility of adequate water. Before any action is taken that could interfere with the provision of water is taken, there must be a process of genuine consultation with the people who will be affected and an opportunity for recourse in the event that people’s rights are violated. Under international law, regressive measures with respect to water provision, such as the raising of tariffs instituted in 2001 or full cost recovery and automatic tariff adjustment mechanisms proposed under the PSP, would presumptively constitute a violation of the GOG’s obligations under international law.

*Protect:* The GOG has an obligation under international law to protect the enjoyment of these rights --and accessibility and affordability of adequate water as part of them --from direct or indirect infringement by corporations and other third parties. Just as the GOG would be expected to take action against a private corporation that was polluting the water supply, so too must the GOG assume responsibility for protecting the public’s access to affordable water on a non-discriminatory basis and ensure that a functioning regulatory system is in place to oversee and monitor the performance of private corporations in the water sector. These regulatory mandates relate both to water system operators under the PSP and to private water tanker operators currently in business and projected to continue under the PSP arrangement. Without such regulatory protections, which the FFM found to be currently lacking, the GOG would fall short of its international legal obligations to protect the right to adequate water.

*Fulfill*: The GOG has an obligation to move progressively toward universal access of adequate water through piped water systems and sanitation systems. Although it would be absurd to assert that rights relating to water could be implemented from one day to the next in Ghana, the GOG does have immediate obligations to take deliberate steps toward the full realization of these rights and to provide interim solutions, such as the current water lifeline, to support the purchasing power of indigent persons and populations in order that they might access water.<sup>118</sup> Moreover, the ESC Committee has forcefully stated that violations of the ICESCR occur when a State fails to satisfy a “minimum core obligation to ensure the satisfaction of, at the very least, *minimum essential levels* of each of the rights” set forth under the Covenant.<sup>119</sup> The adoption of policies that will foreseeably lead away from, rather than toward, universal access, which the FFM found to be highly probable with the current PSP proposal, could constitute violations of the obligation to fulfill the rights related to water.<sup>120</sup>

It is widely agreed that failure to satisfy essential human needs, based on the minimum core content of ESCR, is an immediate and absolute violation of human rights that can never be excused by a country’s level of development.<sup>121</sup> This recognizes that people’s very survival depends upon access to essential services and that no state is too poor to meet those basic needs. As noted by Danilo Turk, the UN Special Rapporteur on ESCR: “States are obliged, regardless of their level of economic development, to ensure respect for minimum subsistence rights for all.”<sup>122</sup> Courts that have addressed the enforceability of economic and social rights have stated that at a minimum the obligation to fulfill these rights requires that there be a national plan with full consultation with civil society and continuous improvement of accessibility and availability of a service, such as water.

### **Obligations of International Financial Institutions (IFIs) under International Law**

The International Monetary Fund (IMF) and World Bank have obligations to assist in the realization of rights relating to water. As specialized agencies of the United Nations, the World Bank and the IMF have obligations to promote the UN’s human rights mission and at a minimum are responsible for not violating customary international law.<sup>123</sup> Both the IMF and World Bank, “like any other United Nations body or any other subject of international law, are bound by the Charter of the United Nations and have a duty to respect the postulates formulated in the preamble to the Charter...the objectives of the [UN] in the area of economic and social cooperation (Arts. 55 and 56), specific provisions aimed at their realization and which are contained in the Charter as well as in other international instruments, including, *inter alia*, the International Covenants on Human Rights, international conventions...and resolutions and declarations of the United Nations.”<sup>124</sup>

The UN Commission on Human Rights has recently issued various resolutions concerning the responsibilities of IFIs.<sup>125</sup> Also, in keeping with the ESC Committee’s General Comment No 2, paragraph 9, in any structural adjustment program or other loan program, IFIs have an obligation to ensure that: (1) the right to water is protected in policies promoting or enabling the privatization of water services or the creation of water markets; (2) the human rights implications of such policies have been thoroughly considered and addressed through a broad process of

consultation; and (3) necessary checks and balances have been put in place to protect the interests of the most vulnerable and indigent members of society.<sup>126</sup>

It is worth noting that these obligations are stated in the IFIs' own internal documents and mandates. All official World Bank and IMF documents now include the reduction of poverty as an integral part of their development strategies and the World Bank's Articles of Agreement state as one of its mandates "assisting in raising productivity, the standard of living and conditions of labour..."<sup>127</sup>

It is therefore clear that the requirements imposed by the IMF, under *inter alia* its Poverty Reduction and Growth Facility Loan, fifth tranche, and the conditioning of a number of loans from the World Bank on privatization in the water sector are not consistent with the obligations of these institutions under international law. Indeed, the World Bank's withholding of \$100 million for a pipeline loan, which is depriving Ghanaians of access to water right now, and the insistence on increases in water tariffs as part of prior actions in several loans are in direct violation of their obligations to promote the human rights mission of the United Nations, as described above.

### **Obligations of Third-Party States**

The United Nations Charter calls on members to take "joint and several action" to promote *inter alia*: "(A) a higher standard of living...and conditions of economic and social progress and development; (b) solutions of international economic, social health and related problems;...and (c) universal respect for, and observance of, human rights."<sup>128</sup> The ESC Committee has emphasized that development assistance and cooperation are issues of human rights: "in accordance with articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States."<sup>129</sup>

Thus, member governments of the IMF and World Bank, such as the United States, the United Kingdom and the Netherlands, also have relevant obligations under international law to promote the progressive realization of all rights relating to water which can and should be implemented by imposing legislative conditions on funding for these institutions. In the past, such conditioning by the United States Congress in particular has been successful in having the World Bank reverse its position with respect to user fees in primary education and there is no reason that major shareholders of the IFIs cannot prevent full cost recovery policies or other actions, which have been shown repeatedly to deprive the most vulnerable sectors of society of their basic right to water.<sup>130</sup>

These governments also have bilateral obligations through their own development aid. For example, the conditionality that the United Kingdom is placing on the release of a water loan for Ghana, through its Department for International Development (DFID) contravenes obligations under the UN Charter.<sup>131</sup>

## **X. GENDER ISSUES**

1. Given the roles of women within the care economy, (that is defined as community support and unpaid household work provided by women, including provisioning water) it is clear that women carry heavier threats, burden and risks under this situation of water scarcity.

2. Testimonies of women's organizations and women living in poverty in communities visited by the FFM have confirmed the following facts.<sup>132</sup>

\*As it is their responsibility to provide water to the household by any means necessary, and whatever the difficult conditions, the situation of unavailability of water leads to serious despair, reduced income that was already very limited, aggravated poor health and sanitation situations, and even violence. Some women have indicated lack of water means lack of dignity and even sometimes violence in the home.

\*Because of their social position and high level of vulnerability women tend to have less access to water for their personal needs when the resource is lacking. Despite the fact that they are the household water providers they serve themselves last. This situation of very limited access to water has dramatic impact on women's health in particular on pregnant women and those giving birth. Scarcity of water as well as skyrocketing water prices put poor women in situations where they are obliged to walk long distances to find cheaper water and use unsafe water from hand-dug wells.

\*Water is the very first necessary good women will substitute without hesitation for other necessary items in their food basket. Therefore a tariff policy that is centered on cost recovery and automatic tariff adjustment, overlooking women's and children's rights to water, develops mechanisms for aggravating their poverty. Increased cost of water will push poor families towards consumption of unsafe water and consequently higher incidence of water borne diseases and women and children's morbidity.

\*This situation is worsened when it threatens education, the very basic fabric for building human resource capacity in a developing country. It is common practice to withdraw children from school in particular girls to send them fetch water to supplement mothers' heavier work burden. Other students, especially girls simply choose to not go to school because they have no water to bathe.

## **XI. LABOUR ISSUES**

The PSP proposal envisions a major restructuring both of the GWC management structure and the water system's workforce. The proposal envisions cutting employment in half, raising concerns about the economic prospects of the laid-off workers, working conditions and protections for remaining staff, and the ability of the depleted company to satisfy service demands. The FFM found these concerns not adequately addressed in the PSP proposal, with important questions relating to these crucial matters insufficiently examined and remaining unanswered.

### **GWC Staff**

The Ghana Water Company Limited (GWC) currently employs approximately 4,300 staff. Approximately 6% of these staff are located in the Head Office, 87% in the regions, and the balance spread between the Base Workshop, Central Workshop, Central Stores, and the Drilling Unit.

Internal and external reviews of the GWC have concluded that management structures are inflexible and centered on preserving the status quo, as opposed to targeting delivery of quality service at a minimal price.<sup>133</sup>

These reviews found deficient financial and management information systems.<sup>134</sup> The quality and consistency of management data available at the Head Office and at the 10 Regions was variable and often poor, with some Regions having no access to desktop computers for processing data. A national telecommunications network limited to the major commercial and administrative centers in Ghana has meant that the Regional offices communicated with District Offices by Motorola radios, many of which are old and unreliable. This has resulted in inefficiency, with staff undertaking time-consuming journeys of up to 3 hours each way to enable communication between Regional and District offices. Skilled technical or operational staff are insufficient in number.<sup>135</sup>

The major area of concern is that for the past 5 years no training has been given to any of the operatives (Staff at treatment works or the repair and maintenance crews). Because there has been no investment in training the FFM believe that if PSP were to go ahead the expertise needed in a program of work to expand the infrastructure is not available. A rapid training exercise would be needed for the workforce.

Another area of concern for the FFM centres on the basic principles in the operation of any water distribution system and that is leak detection. No staff in GWC is dedicated to this important function and again no training has been given.

Foreign donors and lenders have supported management training programs with a central focus on capacity building, but these have not been deemed successful.<sup>136</sup> In one such program, Thames Water International (TWI) provided specialists in a wide range of activities to visit Ghana and selected staff from the GWSC visited Thames Water in the UK. This program, which ran from 1988 until 1991, did not result in improved GWSC performance. Possible explanations for the lack of success of these Twinning arrangements included: little or no knowledge by the

Thames Water staff of working conditions overseas; no incentive for Thames Water to make sure that the Ghana water staff put into practice skills obtained while in the UK; and lack of opportunity to put these skills into practice in Ghana, owing to a lack of requisite equipment and upper level encouragement.

According to Government staff, under the PSP, the contract with the private operators is intended to require the private operator(s) to prepare a human resources development program, in which operators will demonstrate how they intend to pass on certain skills to staff. The details of such a program were not available during the visit of the Fact Finding Mission. These details, however, are of crucial importance, given the failure of past skills-transfer efforts and the claim by PSP backers that one measure of the PSP effectiveness will be whether Ghanaians are prepared to resume control of the water system at the end of the 10-year concession. There is evidence to suggest that a number of the multi-nationals bidding for the contract have included human resources development programmes in contracts secured elsewhere including Africa, but complaints from the Trade Unions in those countries centre on the lack of training and scant regard to basic health and safety.

In several Regions, previous attempts to outsource specific functional areas including building maintenance, vehicle maintenance, and pump maintenance to private companies have yielded mixed results, with problems arising which have been attributed to poor contract formulation and selection of contractors who were not competent.<sup>137</sup> The current PSP proposal anticipates outsourcing of building maintenance, security, and unskilled labour, with an open door to outsource any other aspect of work that may be deemed to be advantageous.

### **Bid Process and Award to Lowest**

Under the PSP, the bid process is bifurcated, with bidders first evaluated on technical grounds, and then undergoing a financial evaluation. From the bidders who successfully meet the technical requirements, the lowest bidder will be selected. While the prequalification process is intended to screen out companies with troubling prior histories, it did not appear to test for some important performance indicators; and the exclusive reliance on bid price to choose among prequalified bidders means no assessment can be made of their varying past records, and also precludes competition based on quality. It does not appear that the performance incentives are sufficient to offset this concern.

While the government obviously needs to protect its fiscal interests, allocating the lease solely on the bid price may be problematic. Rather than running the most efficient operation, the lowest bidder might shave costs, resulting in a detrimental industrial relations environment, problematic customer service, and increased requirements for maintenance and repair. While the pre-bid qualification process screened for contract litigation history, it did not screen for past industrial relations history. A lowest bidder might have a history of substandard industrial relations, and submit a low bid that is reliant on payment of substandard wages, and cutting costs on employee benefits and on-the-job protections, such as health and safety training and equipment. In addition, while there are specifications for levels of experience of top private sector administrators<sup>138</sup>, there does not appear to be a prescription against employing junior, inexperienced workers at lower organizational levels, which may help reduce a bidders price, but also have implications for the quality of customer service and efficiency. A lowest bidder might

also effectively achieve a lower bid by using cheaper and less durable inputs, which may save money in the short run, but require more intensive and expensive repair and replacement in the long run.

It is unclear whether there will be an obligation on the successful bidder to (1) recognize the trade unions and freedom of association; and (2) ensure that collective bargaining (pay, terms and conditions redundancies) for all members of staff will be honored by the contractor.

### **Union participation in the development of the PSP proposal**

According to government sources, consultation with Ghanaians on the PSP started in 1994 when a study of PSP options was commissioned. A study was commissioned from Halcrow & Partners Ltd (UK), entitled Consultancy Services for the Restructuring of the Water Sector. The study culminated in a three-day review workshop from February 6-8, 1995. At this workshop, attended by approximately 60 participants representing various organizations, several options for PSP were debated, final analysis conducted, and the PSP option was selected. A final report was issued in March 1995. In the course of the study, the consultant met with 173 individuals, from the Ministry of Works and Housing, the Steering Committee on restructuring, the head office and all regions of the GWSC, Metropolitan Assemblies, consultants, contractors/operators, aid agencies, ministerial/state enterprises, and the commercial sector.

However, there were no consultations or meetings during the course of the entire study of the restructuring of the water sector with any representatives of the Public Utilities Workers Union or with the Trades Union Congress of Ghana.

No representatives from the Public Utilities Workers Union or from the Trades Union Congress of Ghana participated in the pivotal Ghana Water Sector Restructuring Workshop, February 6-8, 1995, which debated, endorsed, and launched the PSP process.

An Advisory Committee, established subsequently in 1996 to implement the PSP process, did include the Public Utilities Workers Union among others.

### **Current Issues and Proposals Regarding Labour in the PSP**

#### **Retrenchment of Personnel**

The GWSC reduced staff from 4,900 in 1990 to approximately 4,200 in 1995. Laid-off workers have had to wait for severance pay, which was not received.<sup>139</sup> A multilateral source indicated that there is a commitment currently that adequate resources will be available for immediate payment to workers who are laid-off.<sup>140</sup> One of the bidders for the contract (Biwater) undertook the contract for water in Nelspruit South Africa and although in the contract it said that pension contributions and health care insurance would be paid it has not.

Under the current PSP proposal, the current workforce of approximately 4,300 in the Ghana Water Company will be reduced to about half prior to the private operators assuming their leases. Approximately 80 workers will continue working directly for the GWC.

Consultant reports have justified such a major staffing scale-back on the grounds that Ghana's water employee-to-consumer ratio is higher than other countries,<sup>141</sup> but lower staffing levels do not automatically imply or result in greater efficiency; rather they may reflect inadequate resources. There is unanimous agreement on a substantial need for maintenance, rehabilitation and expansion of the current water system in Ghana. It would appear the an in-depth analysis of the deployment of current staff to avoid redundancies and meet these current and future needs is warranted, but there is insufficient evidence to support a conclusion that reducing the current staff by half will improve efficiencies to meet the current needs of the population for safe, accessible water.

According to government sources, the GWC is working with the Public Utilities Workers Union (PUWU) of the TUC to determine which workers will remain and which workers will be laid-off.<sup>142</sup> The workers who will be laid-off are intended to receive a severance award. This severance award is expected to be the product of an agreement between the management of the GWC and the PUWU.

Laid-off workers are also intended to be assisted in forming small-scale companies, which are expected to enter into subcontracts with private operators for maintenance jobs and other works. The District Assemblies will be encouraged to employ some of the redundant staff for community water supply operations. It is envisaged that these local enterprises would be given the first option to carry out work to ensure that they are regularly in business. But the plans to realize this arrangement appear vague at best. It is not clear that this first option is either part of current law, or regulation, or that it will be a part of the lease agreements. Under the current system, to save costs, inexperienced labourers have been hired by the GWC to lay pipes, instead of hiring trained and licensed journey level workers to do this work.<sup>143</sup> Concern has also been expressed that there has not been a good track record of laid-off workers in Ghana being able to successfully engage in small or micro enterprises; rather, successful transition in this area is said to be largely illusory.

There will be no successorship of the current union contract, whereby the current union contract with GWC would be assumed by the private operator(s). The new company will be sure to seek new contracting, and is unlikely to agree to a public sector contract in a private company setting.<sup>144</sup> For example, there are zero performance elements in the current contract; the new operators, according to the World Bank, will likely want to introduce pay for performance measures now absent in the current agreement.

In the absence of a successorship arrangement, whether and to what extent water employees will maintain and continue to improve present wage scales, benefits and employment rights are crucial, unanswered questions. There appears to be little attention paid to these issues by the government and World Bank. In South Africa and in many other countries, privatization of municipal water systems has left workers frustrated. South African Municipal Workers (SAMWU) General Secretary Roger Ronnie says, "services to communities have become worse and the costs of water services have increased. The company promised workers at these plants that their lives would be better than at the council. Now the company wants the workers to accept a lower increase than council workers."<sup>145</sup>



### **The trade union perspective on the PSP proposal**

A major issue for the trade unions in the restructuring of the water sector is that an equitable access and distribution of safe drinking water that will be affordable to all levels of society. There is abiding concern that the PSP proposal will not adequately meet the needs of the majority of the Ghanaian population, including ordinary workers and the poor, for access to water. There is serious concern that with privatization of the water sector, and with profit as a primary motive for production and delivery of water, prices will increase and become unaffordable and thereby inaccessible to many ordinary people. Trade unions also express concern about the process of expanding the pipe system under the PSP. As discussed in other sections, the FFM believes these concerns have merit.

Ghanaian trade unions argue that many options exist for restructuring the water sector besides the PSP approach, and that an efficient, restructured system could be maintained in the public sector. Alternative options need to be explored, they say, including deeper reforms of the current public system that will ensure proper management and supervision, and analysis of public sector options that are properly reformed and fully resourced. Many cite physical planning as a pressing need to ensure, for example, that residential areas are not developed haphazardly. Current lack of adequate planning has resulted in residential construction that is unrelated to available access to water, further complicating the process of providing water to these new developments.

From their perspective, management has strapped public workers in the Ghana water sector with insufficient resources to produce and deliver water to meet the needs of the population. They also insist that any reform options which include setting performance targets must include widespread worker involvement in decision-making to ensure realistic, attainable targets.

The union representing the water sector workers, the Public Workers Utility Union, is negotiating with the GWC in an effort to secure the best severance package possible for laid-off workers, and to strengthen protections for workers who will stay, should the PSP be finally adopted.

## **XII. CIVIL SOCIETY PARTICIPATION**

Civil society participation in the decision-making process regarding the PSP proposal is crucial both as a matter of human rights principles and utilitarian effectiveness. As noted above, a right to water implies that individuals and communities, and organized representative of civil society should have a voice in diagnosing the problems with water production and distribution as well as in defining potential solutions. In a rights framework, these members of society are not simply passive recipients of services but active agents and advocates. Further, as a pragmatic matter, without civil society participation in such a crucial issue of public concern, the process will lack legitimacy and therefore be likely to fail, at least in so far as it seeks to meet Ghana's social needs as well as provide profit for private multinationals.

The FFM found that there has been an extremely limited consultation process with civil society and that many – indeed the great majority -- of stakeholders who will be directly affected by the PSP proposal were unaware of its basic components. Bishop Palmer-Buckle, for example, noted that “the government is afraid to give information” about the process and everything related to privatization is happening in “a flurry.”<sup>146</sup> Palmer-Buckle also pointed out that “in a growing democracy people must be informed. In the long run, a democracy cannot work without the larger mass of people being involved and having a debate at the grassroots level.”<sup>147</sup>

The FFM found there to be a radically different understanding of what constitutes “consultation” and “civil society participation” between the GOG, as represented through interviews with the Public Utilities Regulatory Commission (PURC) and the Water Sector Restructuring Secretariat (WSRS), on the one hand, and civil society organizations and citizens of poor peri-urban neighborhoods, on the other. For example, the WSRS in its document dated March 8, 2002, entitled “Response to Christian Aid/ISODEC Anti-PSP Campaign” stated with respect to the issue of consultation that:

[c]onsultation with Ghanaians on the PSP started in 1994 when a study of PSP options was commissioned. The study culminated into a three-day review workshop in February 6-8, 1995. At this workshop 60 participants from the Ministry of Works and Housing, Ministry of Local Government and Rural Department, Ministry of Transport and Communication, Members of Parliament, State Enterprises Commission, Public Services Commission, Office of Chief of Staff, Ghana Water and Sewerage Corporation, Water Resources Research Institute, GIMPA, Private Vision Int.), and individual consumers. Since then this participatory approach has been used in implementing the process.<sup>148</sup>

Members of the PURC also referred to public meetings with governmental bodies and consumers in the FFM's interview with them.<sup>149</sup> In 2001, PURC indeed held fora on rate structure hikes, but input from citizens was limited to consumers and did not reflect the views of grass-roots organizations representing people who do not receive piped water.<sup>150</sup>

Although the plan for privatization may have been on paper since 1994, the FFM found that most people were not aware of it. As Bishop Palmer-Buckle stated, the real question was how many people really knew, understood, or talked about it.<sup>151</sup> The overwhelming proportion of “external” consultations on rate adjustments and on the PSP proposal itself have been with other government ministries, business communities and, to some extent, consumers’ groups. By the nature of consultation, it is clear that water is being considered as a commodity, rather than a rights issue, which would require a different kind of consultation with a far broader group of stakeholders, as noted above.

The WSRS also claims that “other stakeholders such as Public Utility Regulatory Commission, Ghana Standards Board, Water Resources Commission, Environmental Protection Agency and NGOs such as ISODEC, TREND and Pronet have all made input to the process, through workshops, meetings, and review of reports. In addition, a public awareness programme to inform and educate the public is ongoing and as part of the awareness programme, opportunity is being given to the poor to comment on the process. Presentations on the PSP have been made to institutions such as the Council of State, Ghana Bar Association, the TUC, the Media, Regional coordinating councils, Sub-urban communities and students.”<sup>152</sup> However, the FFM heard from and met with most of the groups mentioned by the WSRS and found these assertions to be contested. A public awareness program designed to promote the PSP option is very different from an approach designed to listen to and gather the viewpoints of all consumer groups and citizens seeking redress on issues related to access to clean and affordable water.

Although a few consultations and public fora were held by the WSRS in 2001, these were deemed by many informants to be simply “formalities.”<sup>153</sup> Informants alleged that the conclusions with respect to pursuing the PSP option had already been defined and they were simply going through an exercise to be able to say “civil society” endorsed the idea.<sup>154</sup> Indeed, the FFM found that among those who had some knowledge of the PSP proposal, groups as diverse as church organizations, the Trade Union Congress (TUC), the student union of Ghana’s National University, Third World Network, and Civil Society Council all opposed privatization of water and that their opposing views had not been permitted to be expressed at these public meetings or in the process more generally.

For example, in the case of students, in the first public forum held at the University of Ghana in September of 2001, the WSRS, PURC and GWCL made presentations and no room was left for discussion or dissent. The meeting ended on a hostile note with the government representatives hastily leaving. A second forum held at the University in November was essentially boycotted to demonstrate the students’ non-conformity with the process.<sup>155</sup>

Civil society participation is impeded when critical information is not available in the public domain. The FFM received assurances from representatives of the World Bank in Washington, DC and Hugh Bredenkamp of the IMF in Washington, DC that they supported disclosure to the public of the revised terms of reference for the PSP proposal, but that the document had to be released by the GOG. In Ghana, the PURC also affirmed that the terms of the PSP proposal should be available and the FFM was told by the PURC that we would be able to collect the new terms of reference at the WSRS archive room. However the WSRS did not provide the FFM with that document. The WSRS was willing to release the reports produced by WS Atkins and

Louis Berger, which were cited as conceptually driving the PSP process. However, the FFM had to enter into protracted negotiations with representatives of the WSRS, which initially attempted to limit the ways in which those documents might be placed in the public domain.

The WSRS asserted in its “Response to Christian Aid/ISODEC” that the views of the poor were sought under a variety of studies and that “Consultation with the poor is continuing under an ongoing study on Service to Low Income Groups.”<sup>156</sup> However, as stated above, through non-randomized questioning of poor inhabitants of peri-urban communities, such as Nima and Medina, who will be directly affected by the PSP proposal the FFM found an extremely low level of awareness. For example, even the Mayor of Medina, was deeply concerned about lack of sufficient water in her district but was unfamiliar with the basic details of the PSP proposal.<sup>157</sup> Community members had no information whatsoever. Similarly, GWCL workers at a treatment facility in Korfidua were unaware of the outlines of the PSP proposal.<sup>158</sup> Particularly striking to the FFM was the lack of information on the part of women’s groups and women themselves because of how disproportionately they will be affected.<sup>159</sup>

After the PSP proposal became a controversial issue in 2001, the GOG launched a dramatic attack on the Integrated Social Development Centre (ISODEC) and the National Coalition against Privatization of Water (NCAP), which was formed in May 2001. The FFM was confronted with and told about ads in newspapers and spots on radio to portray NCAP, and especially ISODEC, as “anti-patriotic” and “un-Christian.” In fact, an official of the WSRS used those words with the FFM in describing ISODEC in an interview at the Ministry of Housing and Works.<sup>160</sup> It is essential to underscore that this campaign has been led by the WSRS, which is funded directly by the World Bank. The FFM heard no allegations that other Ghanaian government institutions had been involved in the attack campaign. For example, NCAP was granted an audience with the non-partisan Council of State in January 2002 and prepared a written submission / memorandum outlining their views on water sector reform to inform the public debate.

One editorial in an Accra paper captured the tone of the attacks in questioning:

How desperate could the government be over its water policy? What pressure is so tough for the government on its water policy that its representatives in the water business would wield such a hatchet against critics of that policy... The Water Sector Restructuring Secretariat (WSRS), until now not a very well known technical agency, has all of a sudden assumed the frightful character of a propaganda unit of a tyrannical regime. Somebody there exposes levels of intolerance that could hurt the government and ruling party should it be allowed to grow. Name-calling never served any political movement any useful purpose in the end. In fact, the resort to labeling exposes how weak one’s arguments are. ...<sup>161</sup>

Indeed, the FFM was given the strong impression that the GOG is under intense pressure from the World Bank to move forward on the PSP proposal as quickly as possible and that its reaction to civil society opposition has been driven by the need to show results and have the water sector loans held by the World Bank released.<sup>162</sup> According to Palmer-Buckle, the government has not used civil society’s opposition to stand up to the IFIs.<sup>163</sup> The GOG’s response is of particular

concern because it suggests that the World Bank is exerting such strong pressure that full and open discussion cannot take place, which undermines the young democracy and otherwise democratic culture appearing in Ghana

### **XIII. CONCLUSION OF THE FACT-FINDING MISSION**

The final assessment of the FFM must be conditioned on the fact that complete information on the proposed terms of the contract was not made available to the delegation. The FFM recommends that the proposed terms for the lease contract be available to the Ghanaian public for comment as soon as possible. The FFM itself would also request an opportunity to comment on the proposed terms of the lease contract when it is publicly available.

Based on the information available, the analysis of the members of the FFM, summarized above and discussed in detail in the full report, points to some major shortcomings in the PSP proposal. Key shortcomings include:

- increased cost recovery will reduce access by low-income consumers;
- investment priorities and lack of capital are likely to privilege wealthier communities and make significant expansion to unserved areas unlikely;
- the separation of water and sanitation services reduces opportunities to address public health problems;
- there is no attempt, using PURC's regulatory mandate or other mechanisms, to address the excessive prices borne by those dependent on tanker trucks;
- there is no plan for ensuring access to low-income consumers;
- there is no provision for an independent evaluator to establish performance baselines;
- the lifeline tariff is not established as a contractual obligation;
- there are no performance targets related to poverty or public health indicator
- union participation in the original development of the PSP proposal was noticeably absent;
- the lease formula may encourage transfer pricing;
- PURC's regulatory mandate is weak and many consumer protections appear absent from the PURC rate-setting and other oversight processes;
- IMF loan conditions interfere with PURC's independent regulatory function;
- PURC's approach of supporting self-auditing by utilities has not been shown to protect consumers; and
- the great majority of citizens and civil society organizations, who will be directly affected by the PSP proposal, were unaware of its basic components and were not involved in the decision-making process.

This leads the members of the FFM to conclude that the current PSP proposal is not the optimal option for ensuring expanded access to clean and affordable water for the people of Ghana.

The FFM comes to this conclusion recognizing the gravity of the current situation. Lack of endorsement for the PSP proposal does not in any way condone the unsatisfactory status quo. There is an immediate need to expand access to clean and affordable water. However, it would not be appropriate or feasible for an international delegation – one that spent less than two weeks in Ghana -- to develop a comprehensive alternative proposal for managing the urban water sector. This task should be undertaken by government, parliament and a broad cross-section of Ghanaian civil society.

### **Recommendation**

Given the shared objectives among government, parliament and civil society to expand and improve water service delivery, the FFM would recommend that the Government of Ghana continue to open dialogue and consultation with a broad representation of stakeholders regarding alternative approaches to expanding access to clean and affordable water.

## **APPENDIX I**

### **MEETINGS AND CONTACTS OF THE INTERNATIONAL FACT FINDING MISSION ON WATER SECTOR REFORM**

#### **Meetings in Washington, D.C.**

##### **April 24<sup>th</sup>**

Department of the Treasury

Office of African Affairs

Office of Multilateral Development Banks

Address: 1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

Contact: Ed Barber, Acting Director, Africa Department

Contact: Katerina A. Sloniewsky, Loan Review Manager

The World Bank

Address: 1818 H Street, N.W.  
Washington, D.C. 20433

Contact: Nichola J. Dyer, Country Program Coordinator-Ghana

##### **April 25<sup>th</sup>**

U.S. Agency for International Development

Address: 1300 Pennsylvania Ave, N.W.  
4<sup>th</sup> Floor,  
Washington, D.C. 20523

Contact: Carlos Gallegos, Africa Bureau on Sustainable Development

Contact: Alan R. Hurdus, Water Team Leader

Public Forum, Friends of the Earth

Address: 1025 Vermont Avenue, N.W.  
3<sup>rd</sup> Floor  
Washington, D.C. 20005

Contact: Carol Welch

International Monetary Fund

Address: 700 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20431

Contact: Hugh Bredenkamp, West African Director

##### **April 26<sup>th</sup>**

Congressional Briefing:

U.S. House of Representatives

Address: 515 Cannon Building



Washington, D.C. 20515  
Contact: Allison Friedrich, Legislative Assistant for Rep. Dennis Kucinich  
Contact: Josh P. Nassar, Legislative Assistant for Rep. Jan Schakowsky  
Contact: Sabine Philippe, Legislative Assistant for Rep. Maxine Waters  
Contact: Pepper Santalucia, House Budget Committee  
Contact: Jonathan Newton, Legislative Assistant for Rep. Conyers  
Contact: Lynne Preston, Legislative Assistant for Rep. Millender-McDonald

## **MEETINGS IN GHANA**

### **April 29<sup>th</sup>**

Tour and meeting with Medina community in Accra to see local water services. Present were the Mayor, the head of Plumbers Association and many members of the community.

### **April 30, 2002**

Ghana Ministry of Works and Housing

Address: P. O. Box M27 – Ministries  
Accra

Contact: Theresa Tagoe, Deputy Minister

Christian Council of Ghana

Contact: Rev. R. Aboagye-Mensah, General Secretary

### **May 1, 2002**

Visit to Koforidua hosted by Bishop Palmer-Buckle,  
Member of the ISODEC Executive Council.

### **May 2, 2002**

Meetings with Civil Society Organizations:

Organisation of African Trade Union Unity (OATUU)

Address: Box M3865, Accra  
Ghana

Contact: Awudu Ahmed Gumah

NETRIGHT/ University of Ghana, Legon

Address: Institute of African Studies  
Box L973, Legon  
Ghana

Contact: Akosuer Adomeeko Aupfo

Great Consolidated Popular Party (GCPP)

Address: Box 3077, Accra  
Contact: John Anmekah, Gen. Secretary

Third World Network-Africa

Address: 9 Ollennu St. East Legon  
P.O. Box AN 19452 Accra-Ghana  
Contact: Abdulai Darimani, Programme Officer-Environment Unit

Students' Representative Council (S.R.C.)

Address: UG, Legon  
Contact: Benjamin Ampoma-Baoten, President

Islamic Council for Development and Human Services

Address: P.O. Box 17070 ARN  
Contact: Alliap Alhasan Abdulai

Consumer Association of Ghana

Address: P.O. Box 10630  
Accra-North  
Contact: S.B. Aliuffo

Save the Children

Address: P.O. Box C976  
Accra Ghana  
Contact: Greg Ramm

Assembly Member, West Maamobi Accra

Address: P.O. Box C1511  
Accra Ghana  
Contact: Abus Hamidu

Gender and Economic Reforms in Africa Programme (GERA)

Address: TWN-Africa-GERA Programme  
P.O. Box AN 19U52 - Accra  
Contact: Zo Randriamaro

Meeting with Water Sector Restructuring Secretariat:

Ministry of Works and Housing

Address: Water Sector Restructuring Secretariat  
P.O. Box M43  
Accra Ghana  
Contact: Ing. Ebenezer Martey, Coordinator-Water Sector Restructuring Secretariat and  
Mr. David Amoah

Public Utilities & Regulatory Commission (PURC)

Address: P.O. Box C3094  
Cantonments  
Accra, Ghana  
Contact: William Kwasi Gboney, Technical Director

**May 3, 2001**

Meeting with Association of Consultants:

MIME Consult Ltd.

Address: P.O. Box CT901  
Cantonments, Accra  
Contact: Kwabena Sarpong Manu, Executive Director

ABP Consult Ltd.-Consulting Engineers

Address: 1 Milne Close  
Airport Residential Area  
P.O. Box AN 7186  
Accra-North, Ghana  
Contact: Ing. A.A. Ogyiri, Associate Director

Meeting with Ghana Water Company

Address: P.O. Box M194  
Accra Ghana  
Contact: Cephas T. Oguah, Head of Projects

Meeting with Community Water & Sanitation Agency

Address: Private Mail Bag  
Kotoka International Airport  
Accra Ghana  
Contact: Ernest Kwame Doe, Water & Sanitation Systems Coordinator

Meeting with Plumbers Association Representative:

Caesam Plumbing & Const. Services

Address: Avenida Lodge  
Kojo Thompson Road  
P.O. Box 4234  
Accra  
Contact: Archibald R.K. Caesar, Managing Director

Meeting with Ghana Institution of Engineers Representative:

Ferro Fabrik Ltd.

Address: P.O. Box 303  
Tema-Ghana  
Contact: Dr. Joseph K.D. Annan, Director

Meeting with National Coalition Against Privatization of Water:

Address: c/o Globalisation Response Programme/ISODEC  
P.O. Box 19452  
Accra North, Ghana

Contact: Rudolf Amenga-Etego

Meeting with Water Resources Commission (WRC)

Address: No. E4 Leshie Crescent  
Labone Estates  
P.O. Box CT 5630  
Accra Ghana

Contact: Dr. Daniel N. Adom, Ag. Executive Secretary

#### **May 4, 2002**

Visit to Mafi Kumase water project.

#### **May 6, 2002**

Meeting with International Monetary Fund

Address: c/o Ministry of Finance  
PO Box M40  
Accra, Ghana

Contact: Enrique G. de la Piedra, Resident Representative

Meeting with World Bank Resident Representative

Address: P.O. Box M27  
Accra, Ghana

Contact: Peter Harrold, Country Director

Meeting with Ghana Health Service

Contact: Dr. S.O. Sackey, Md, MPH, Head-Disease Control Unit,  
Public Health Specialist

Meeting with Ghana Water Company

Contact: Samuel Lamptey, Director (O&M)

#### **May 7, 2002**

Meeting with Friends of the Earth-Ghana

Address: PMB, GPO, Accra,  
Ghana, West Africa

Contact: George Awudi

Meeting with Community Water and Sanitation Agency.

Contacts: RKD Van Ess, Director Technical, Benedict Kubabom, Dir Planning and Investment and William Humoo, Director of Finance.

#### **May 8, 2002**

Visit to Maamobi community to see local water provision.

Meeting with Department of International Development (DFID)

Ghana Office

Contact: Jessica Robbins, Program Manager for Ghana

Meeting with the National Coalition Against Privatization of Water

**May 9, 2002**

Meeting with Director, School of Public Health

Contact: Mr. Federic K. Wurapa, MD, MPH, FWACP

Meeting with Members of Parliament

Ghana Parliament Representatives:

Office of Parliament

Address: Parliament House  
Accra, Ghana

Contact: Hon. Osei Kyei-Mensah Bonsu, Chief Whip

Contact: Hon. Kofi Attor, Shadow Minister for Foreign Affairs

Contact: Hon. Abraham Ossei Aidoo, Deputy Majority Leader

Contact: Hon. Papa Owusu-Ankomah, Leader of the House and Minister for Parliamentary Affairs

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- <sup>35</sup> WS Atkins International Limited. Ghana-Increased Private Sector Participation – Urban Water Sector – Business Framework Report. Executive Summary pp 16-22, and Appendix M. 4/17/2001
- <sup>36</sup> Schedule 6 of draft lease agreement, Schedule for periodic lessee adjustment, dated April 4, 2002. Provided for viewing by the Water Sector Restructuring Secretariat on May 9, 2002.
- <sup>37</sup> Esrey SA. Water, waste, and well-being: a multicountry study. *American Journal of Epidemiology*. 1997 Aug. 15; 146(4): 359-361
- <sup>38</sup> The Information Memorandum by Stone & Webster also lists expansion of water production for the Accra metropolitan area for the operator of Business Unit A, but this responsibility is probably no longer applicable. In the Information Memorandum, it was contemplated that the lease for Business Unit A would be for 25 years. According to the Water Sector Restructuring Secretariat, this is no longer the case.
- <sup>39</sup> The FFM does not know if the inclusion of non-revenue water a performance target means that independent adjustment for attainment of non-revenue water reductions from the 2001 Information Memorandum has been eliminated. Because elimination of non-revenue water is a top priority, it is possible that incentives to achieve these goals appear twice.
- <sup>40</sup> Although some suggestive information is contained in the Berger report.
- <sup>41</sup> While transfer pricing is a common practice, it is a serious disadvantage to the GOG.
- <sup>42</sup> There may not in fact be such incentives. See discussion above on inflated costs.
- <sup>43</sup> The 2001 Information Memorandum says partial financing by the World Bank is under consideration: “This financing would be capped, time-bound, and declining according to a pre-set calendar ensuring that operation became self-sufficient.
- <sup>44</sup> The 2001 Information Memorandum specifies a contractual duty of the lessee to coordinate with the GWC on efficient use of the donor funding. (p. 14)
- <sup>45</sup> There is also a strong case to be made that profiteering might be best eliminated by having the water supplier operate tankers. See Regulatory Issues, section VI, .
- <sup>46</sup> One mitigating factor in this regard is the contractual incentive to provide new connections, for these, the lessee will be reimbursed for expenses plus a ten percent commission.
- <sup>47</sup> It is also striking that there is no specific public health criteria in the performance multiplier, apart from the indirect criteria of residual chlorine –an important measure, but one that obviously does not reach broader public health issues, Public health issues are discussed in depth in section III.
- <sup>48</sup> The Push for Water Privatization and Full Cost Recovery, News and Notices, Volume 2, Number 4, Spring 2001, Globalization Challenge Initiative, [www.challengeglobalization.org](http://www.challengeglobalization.org)
- <sup>49</sup> Full cost recovery is the term used by the World Bank to mean removing public subsidies for water and increasing consumer fees or tariffs until they cover the full costs of operation and maintenance of the water utility. Imposing “full cost recovery” commonly precedes privatization in order to improve the financial standing of the company prior to its sale.
- <sup>50</sup> Automatic tariff adjustment formulae require that tariffs reflect shifts in the international exchange rate of the cedi. In other words, consumer rates go up when the value of the cedi depreciates in international markets. This is a common requirement of multinational corporations who want to be shielded from the effects of shifts in soft currency exchange rates when they invest in developing countries.
- <sup>51</sup> Ghana – Fourth Review under the Poverty Reduction and Growth Facility, International Monetary Fund, Washington, D.C. February 1, 2002, p. 15.
- <sup>52</sup> Fact Finding Mission with DFID: Jessica Robbin, Program Manager for Ghana (based in London), Amanda Duff, Engineering Advisor on Ghana Program (based in Ghana), Osu Mensa, DFID Ghana Program Manager, and Desmond Wood, Deputy Program Manager, May 8, 2002
- <sup>53</sup> "Increased Private Sector Participation in the Urban Water Sector: Final Business Framework Report" prepared for the Ministry of Works and Housing by Louis Berger S.A., 71 rue Fondary, 75015, Paris France, September 1998.
- <sup>54</sup> The section on the relationship between the GWC and the Private Operator in expanding then waterworks infrastructure is missing in the copy of the "Increased Private Sector Participation in the Urban Water Sector: Final Business Framework Report" that the WSRS supplied to the FFM.

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- <sup>55</sup> "Ghana Urban Water Supply: Demand Assessment and Willingness to Pay Study Progress Report," London Economics in association with John Young & Associates. February 12, 1999. This is another one of the reports that the PURC indicated laid the foundation for the Terms of Reference.
- <sup>56</sup> Ghana - Fourth Review Under the Poverty Reduction and Growth Facility," International Monetary Fund, Washington, D.C., February 1, 2002, p. 56.
- <sup>57</sup> Ibid.
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- <sup>59</sup> "Economic Regulation of Water Utilities: A Primer, sponsored by the National Association of Water Companies and prepared by Janice A. Beecher, Ph.d., September 2001.
- <sup>60</sup> <http://www.naruc.org/Programs/IRCP/Partnerships.htm>
- <sup>61</sup> [http://www1.worldbank.org/afur/news\\_events-e.html](http://www1.worldbank.org/afur/news_events-e.html)
- <sup>62</sup> The Public Utility Research Center (PURC) is located in the Warrington College of Business Administration at the University of Florida. Founded in 1972, PURC strives to enhance executives', regulators', academics', and students' knowledge of issues confronting public utilities and regulatory agencies.
- <sup>63</sup> Ibid.
- <sup>64</sup> "Economic Regulation of Water Utilities: A Primer, sponsored by the National Association of Water Companies and prepared by Janice A. Beecher, Ph.D., September 2001.
- <sup>65</sup> More information on the HHI can be found at the following websites: <http://www.energybuyer.org/glossaryGK.htm> and <http://www.ftc.gov/os/1999/9904/981-0345.%20c3868%20british%20petroleum%20cmp.htm>
- <sup>66</sup> Information Memorandum: Enhanced Leases for the Operation, Maintenance and Management, Stone & Webster Consultants, March 2001, p. 37.
- <sup>67</sup> Shrybman, Steven, "Thirst for Control: New Rules in the Global Water Grab." Published by the Council of Canadians, 2002. <http://www.canadians.org/blueplanet/pubs.html>
- <sup>68</sup> <http://www.naruc.org/Programs/IRCP/Partnerships.htm>
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- <sup>70</sup> Meeting with Peter Harrold, World Bank Country Director for Ghana, Washington, D.C., May 25, 2002.
- <sup>71</sup> Preferences for private over public service provision is labeled ideological because it is not based on empirical evidence of improved service or efficiency but rather on an elaborate belief system and historical alliances with major transnational corporations. In fact, in Canada, the U.S. and many European countries public provision of water service is the norm.
- <sup>72</sup> *Information memorandum*, Stone & Webster Consultants, March 2001
- <sup>73</sup> *Increased Private Sector Participation in the Urban Water Sector*, Final Business Framework Report, prepared by Louis Berger, SA, Paris, France, September 1998, Section 5.6
- <sup>74</sup> Stone and Webster Consultants, *Information Memorandum*, March 2001, GWSC Consolidated Revenue and Expenditure Account, page 27.
- <sup>75</sup> David Hall. *Water in Public Hands*, Public Services International, May 2001.
- <sup>76</sup> The following information is based on "Thinking, Getting, and Staying Competitive: A Public Sector Handbook" produced by the Association of Metropolitan Sewer Agencies and the Association of Metropolitan Water Agencies.
- <sup>77</sup> EMA Services, Inc. "York City Sewer Authority Wastewater Treatment Plant Competitiveness Assessment." 1997.
- <sup>78</sup> Source: PSIRU database; "Brazil looks for Foreign Investors", Global Water Report, FT Bus Rep: Energy: 8 May 1997.
- <sup>79</sup> World Bank: Two water projects in Malawi (OED précis No 146 May 1997)
- <sup>80</sup> Sri Lanka: Urban Water Supply, [Role of Government in Adjusting Economies](#), Paper 17, R Franceys (1997). School of Public Policy, University of Birmingham.
- <sup>81</sup> Quoted in DfID guidance manual on WSSP, 1998, 2.6.10 p.139
- <sup>82</sup> Lobina & D.Hall op. Cit.
- <sup>83</sup> Lobina and Hall, op.cit.
- <sup>84</sup> Summarized from reports from the Working for America Institute of the AFL-CIO, Washington, D.C.

- <sup>85</sup> The World Health Organization, the World Bank and the United States Agency for International Development define adequate water as between 20 and 40 liters per person per day.
- <sup>86</sup> Non-governmental organizations have expressed concerns that the Ghanaian budget does not in fact prioritize the distribution of water and other basic social services to the poor. See *The 2001 Budget; A Call to Honor The Social Contract*, The Centre for Budget Advocacy of the Integrated Social Development Centre (2001). Pp.vii, 45-46
- <sup>87</sup> President Kufuor Speaks on Water Sector. (Address delivered by President, Mr. J.A. Kufuor on the occasion of the commissioning of the Weija Water Treatment Plant-Rehabilitation & Expansion Project on Thursday, October 18, 2001, p.1.
- <sup>88</sup> Maastricht Guidelines On Violations of Economic, Social and Cultural rights, (Maastricht Guidelines), 20 Hum. Rts. Q 691,694 (1998) para 14 [“Maastricht Guidelines”].
- <sup>89</sup> Eg. Id, at paras 11-12.
- <sup>90</sup> *Universal Declaration of Human Rights*, G.A. res 217A of 10 December 1948, UN Doc. A/810 (1948); Yearbook of the United Nations 1956. Columbia University Press/United Nations Publications. New York. cited in “Right to Water Fact Sheet #2: Why a Human Right?,” Center for Economic and Social Rights (2001).
- <sup>91</sup> *The World’s Water 2000-2001*, Peter Gleick, Island Press (2000) cited in “Right to Water Fact Sheet #2: Why a Human Right?,” *supra* note 6.
- <sup>92</sup> United Nations Charter, June 26, 1945, 1 U.N.T.S. 16, reprinted in 1976 Y.B.U.N. 1043.
- <sup>93</sup> *International Covenant on Civil and Political Rights*, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No.16) 52, U.N. Doc. A/6316 (1967), Article 1; *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16) 49, U.N. Doc. A/6319 (1967), Article 1.
- <sup>94</sup> Human Rts. Committee General Comment 12(21), para.1 (G.A. Official Records Doc.A/39/40, pp.142-143)
- <sup>95</sup> Art. 1, ICCPR, *supra* note 9. Ghana ratified the ICCPR on September 8, 2000.
- <sup>96</sup> Art. 21, *African Charter of Peoples and Human Rights*, adopted by the OAU on 17 June 1981 (entered into force on 21 October 1986) reprinted in *Twenty-five Human Rights Documents*. Center for the Study of Human Rights, Columbia University [Banjul Charter]. Ghana ratified the Banjul Charter on January 24, 1989. Ghana ratified the Banjul Charter on January 24, 1989.
- <sup>97</sup> Id.
- <sup>98</sup> ICCPR, *supra* note 9, art 6.
- <sup>99</sup> Banjul Charter, *supra* note 12, at art 4.
- <sup>100</sup> THE CONSTITUTION OF GHANA [GHANA CONST.] (1992).
- <sup>101</sup> ICESCR, *supra* note 9, Art. 12. Ghana ratified the ICESCR on September 8, 2000.
- <sup>102</sup> United Nations Committee on Economic, Social and Cultural Rights General Comment Relating to the Right to the Highest Attainable Standard of Health, 20<sup>th</sup> Session .May 2000 (CESCR General Comment No. 14), para. 43.
- <sup>103</sup> Maastricht Guidelines, *supra* note 4, at para 9.
- <sup>104</sup> CESCR General Comment No.14. *supra* note 18, para. 12
- <sup>105</sup> Banjul Charter, *supra* note 9, art. 17 .
- <sup>106</sup> ICESCR, *supra* note 9, art 11.
- <sup>107</sup> GHANA CONST. *supra* note 16, art 35.
- <sup>108</sup> Art. 14, *Convention on the Elimination of All Forms of Discrimination against Women*, Un Doc A/RES/34/180 (1979)[Women’s Convention]. Ghana ratified the Women’s Convention on June 2, 1986.
- <sup>109</sup> E.g., Interview. Alva Ansre, program officer, NetRight. May 3, 2002; Interview/discussion, Ampome-Boaten Benjamin and Idrissu Atanko, representatives of student union of University of Ghana, May 30, 2002.
- <sup>110</sup> Women’s Convention, *supra* note 24 ,art. 10(f).
- <sup>111</sup> E.g., Interview. Alva Ansre, program officer, NetRight. May 3, 2002.
- <sup>112</sup> *Programme of Action of the International Conference on Population and Development: Report of the International Conference on Population and Development*, U.N. GAOR, 29<sup>th</sup> Sess, UN Doc A/Conf.171/13 (1994); *Action for Equality, Development and Peace: Beijing Declaration and Platform for Action*, UN GAOR, Fourth World Conf. On Women, Un Doc A/Conf.177/20 (1995).
- <sup>113</sup> Article 24 (2)(d), *Convention on the Rights of the Child*, G.A. Res. 44/25, 44 U.N. GAOR, Supp. No 49, U.N. Doc A/44/736 (1989) [Children’s Convention]. Ghana ratified the Children’s Convention on February 5, 1990.
- <sup>114</sup> Id, art 27.
- <sup>115</sup> GHANA CONST., *supra* note 16, art. 28.
- <sup>116</sup> Children’s Convention, *supra* note 29, art 28.
- <sup>117</sup> GHANA CONST., *supra* note 16, art. 25.

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<sup>118</sup> See United Nations Committee on Econ, Social and Cultural Rts, General Comment No. 3 “The Nature of states’ Parties Obligations” (Fifth Session, 1990), UN doc. E/1991/23, Annex III, at paras. 9-11.[CESCR General Comment No. 3].

<sup>119</sup> Id, at para. 10.

<sup>120</sup> Id, at para. 12.

<sup>121</sup> See, Turk, Second Progress Report of the UN Special Rapporteur on Economic, Social and Cultural Rights, UN Doc. E/CN.4/Sub.2/1991/17, p. 18, para. 10; General Comment 3, see note 24, UN Doc. E/C.12/1990/8, para. 10.

<sup>122</sup> See Turk, Id.

<sup>123</sup> Jochnick, *Non-State Actors and the Promotion of Human Rights*, 21 Hum. Rts. Q. 56, 71 (1999).

<sup>124</sup> Question of the Realization in All Countries of the Economic, Social and Cultural rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and Study of Special problems Which developing Countries Face in their Efforts to Achieve These Human Rights: Ways and means to carry out a Political Dialogue Between Creditor and Debtor Countries in the United Nations System Based on principles of Shared Responsibility, report of the Secretary-General, UN ESCOR, Comm’n on Hum. Rts. Para 50, U.N. Doc. E/CN.4/1996/22 (1996).

<sup>125</sup> See The Realization of Economic, Social and Cultural rights: Preliminary Set of Basic Guidelines on Structural Adjustment Programs and Economic, Social and Cultural Rights, Report of the Secretary-General in Pursuance of Resolution 1994/37, UN ESCOR, Comm’n on Hum. Rts., Sub-Comm’n on the prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1995/10 (1995).

<sup>126</sup> CESCR General Comment No. 3, *supra* note 34, at paras. 9-11; United Nations Committee on Economic, Social and Cultural Rights General Comment No. 2, “International Technical Assistance Measures (Fourth Session) 2 February 1990, at para 9. See also CESCR General Comment No. 3, *supra* note 34.

<sup>127</sup> Articles of Agreement, International Bank for Reconstruction and Development, 7 Dec. 1945, art IV, Section 10, 60 Stat. 1440, 2 U.N.T.S. 134, as amended, 16 U.S.T. 1942 (17 Dec. 1965)[World Bank Articles].

<sup>128</sup> United Nations Charter, art 56, signed 26 June 1945, 59 stat. 1031, T.S. No. 993, 3 Bevans 1153 (entered into force 24 Oct. 1945).

<sup>129</sup> CESCR General Comment No. 3, *supra* note 34.

<sup>130</sup> 106th Congress, House of Representatives, 2nd session, 106-997, Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes, Section 596, language on user fees to accompany H.R. 4811.

<sup>131</sup> Fact Finding Mission meeting with DFID: Jessica Robbin, Program Manager for Ghana (based in London), Amanda Duff, Engineering Advisor on Ghana Program (based in Ghana), Osu Mensa, DFID Ghana Program Manager, and Desmond Wood, Deputy Program Manager, May 8, 2002.

<sup>132</sup> Members of the FFM met with women in the communities of Medina and Mamobi in Accra metropolitan area. Meetings were also held with members of Netright, a women’s organization.

<sup>133</sup> Meeting with Water Sector Restructuring Secretariat, May 6, 2002; Sir William Halcrow & Partners Ltd, *Consultancy Services for the Restructuring of the Water Sector*, Republic of Ghana, Ministry of Works & Housing, Final Report, March 1995.

<sup>134</sup> Halcrow & Partners.

<sup>135</sup> FFM Meeting with Water Sector Restructuring Secretariat, May 6, 2002.

<sup>136</sup> *Ibid.*

<sup>137</sup> Halcrow & Partners; Ministry of Works & Housing, Water Sector Restructuring Secretariat, “Responses to Christian Aid/ISODEC Anti-PSP Campaign,” Attachment, March 8, 2002.

<sup>138</sup> Ministry of Works & Housing, Republic of Ghana, *Invitation for Prequalification*, May 22, 2000.

<sup>139</sup> Halcrow & Partners; FFM Meeting with World Bank, May 6, 2002.

<sup>140</sup> FFM Meeting with World Bank, May 6, 2002.

<sup>141</sup> Halcrow, *op.cit.*

<sup>142</sup> FFM Meeting with Water Sector Restructuring Secretariat, May 6, 2002; Ministry of Works & Housing, Water Sector Restructuring Secretariat, “Responses to Christian Aid/ISODEC Anti-PSP Campaign,” Attachment, March 8, 2002.

<sup>143</sup> FFM Meeting with Plumbers Association, May 3, 2002.

<sup>144</sup> FFM Meeting with World Bank, May 6, 2002; FFM Meeting with Water Sector Restructuring Secretariat, May 6, 2002.

<sup>145</sup> Suez Corporate Profile, April 8, 2002.

<sup>147</sup> Interview, Bishop Palmer-Buckle, May 1, 2002

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<sup>148</sup> Ibid.

<sup>149</sup> Ministry of Works and Housing. Water Sector Restructuring Secretariat. Response to Christian AID/ISODEC Anti-PSP Campaign. Page 1,2.(March 8, 2002)[WSRS Response to Christian Aid/ISOCDEC Campaign]

<sup>150</sup> Interview, Stephen Adu, Andrew Quayson, et al, Public Utilities Regulatory Commission, May 2, 2002

<sup>151</sup> Ibid.

<sup>152</sup> Interview, Bishop Palmer-Buckle, May 1, 2002.

<sup>153</sup> WSRS Response to Christian Aid/ISOCDEC Campaign, *supra* note 45, pp. 1,2.

<sup>154</sup> E.g., Public submissions by representatives of student union of University of Ghana, May 29, 2002. Meeting with NCAP, May 3, 2002. Also TWN meeting, May 3, 2002.; NCAP meeting, May 3, 2002

<sup>155</sup> E.g., Public submissions by representatives of student union of University of Ghana, May 29, 2002. Meeting with NCAP, May 3, 2002.

<sup>156</sup> Public Submission, worker of the University of Ghana and student. April 29, 2002.

<sup>157</sup> Ministry of Works and Housing. Water Sector Restructuring Secretariat. Response to Christian AID/ISODEC Anti-PSP Campaign. Page 1,2.

<sup>158</sup> Interview with Mayor of Medina, April 29, 2002.

<sup>159</sup> Interview with workers in Kofuridua, May 1, 2002; discussions with women in Medina, April 29, 2002.

<sup>160</sup> E.g., Interview. Alva Ansre, program officer, NetRight. May 3, 2002..

<sup>161</sup> Interview, Ministry of Housing and Works, April 29, 2002.

<sup>162</sup> Viewpoints Kwame Karikari on '*I wonder as I wander*' *Water in the gutter*. The Accra Mail, Monday, October 8, 2001.

<sup>163</sup> Interview/statement, Charles Obugre, ISODEC, April 28, 2002; NCAP meeting, May 3, 2002; TWN meeting, May 3, 2002; Interview/statement, Bishop Palmer-Buckle, May 1, 2002.

<sup>164</sup> Interview/statement, Bishop Palmer-Buckle, May 1, 2002.