



Trends and themes in pro-poor regulation

Author: David Schaub-Jones

Date: July 2007

Increasingly regulators are being assessed not only on how they drive utilities to greater efficiency and protect existing customers, but what role they play in ensuring that services reach poor communities. This is especially so in developing countries, where as many as 50% of the population (many of them poor) currently receive little or no service from the formal utility

This trend underpinned work recently completed in East Africa. BPD, a membership organisation that works with partnerships that get water and sanitation to poor communities, engaged four regulators to understand how they address services to the poor. The regulators from Zambia, Mozambique, Kenya and Rwanda came together in October 2005 to discuss their work with each other, with water sector representatives from Kenya, and with several donors. The World Bank has also been looking at the topic, and has recently published a review titled "*Taking account of the poor in water sector regulation*" (siteresources.worldbank.org/INTWSS/Resources/WN11.pdf).

The focus is on what regulators (or indeed, the broader 'regulatory framework' – see overleaf) can do to assist and encourage utilities to serve poorer communities. Some of the discussions are at an early stage. Yet it is helpful for utility managers, policymakers, NGOs and others to engage now with the issue. Being pro-active may allow stakeholders to adapt their operations to the evolution of the regulatory framework, but may also provide opportunities to have their say over why and how the rules of the game change.

Improving Services to the Poor – Key Regulatory Levers

There are essentially five key areas where the regulatory framework can have an impact.

Increasing Access

As many have highlighted (including notably the UN in General Comment 15 on the right to water), the poor have a keen interest in expansion of the service network. As the poor are largely unconnected to the formal utility, increasing access can be one of the most effective pro-poor measures. One way that regulators can do this is by not only policing, but also instigating, coverage targets (for public as well as private operators). Experience in enforcing such targets is very mixed though, and there is little that relates strictly to public service providers. In Zambia, Mozambique, Rwanda and Kenya, the regulators had few formal tools to enforce existing coverage obligations or targets. Worldwide, such targets are often unenforceable due to the lack of public funding allocated to them (the Devolution Trust Fund in Zambia was an interesting exception to this, but has yet to scale up its activities fully. See <http://www.zambia-water.org.zm/nwasco/admin/poor/user/news.php> for more).

Another way for the regulatory framework to encourage increased access is by allowing differentiated service levels. One route is to use alternative, more affordable technologies that deliver a lower, but still acceptable level of service.

Defining regulation and regulatory frameworks

This box is taken from “*Adapting regulation to the needs of the poor: Experience in 4 East African countries*” (Trémolet, BPD Water & Sanitation, 2006).

Regulation can be defined as a set of functions that ensure that water and sanitation service providers comply with existing rules and allow for those rules to be modified in order to cope with unforeseen events. In the water and sanitation sectors, regulatory functions can be broadly divided into three categories: economic (focusing on price and service quality), environmental, and public health regulation (focusing on drinking water standards). The way in which these functions are performed can have a significant impact on whether or not the poor have access to the service, and at a price they can afford.

A regulatory framework consists of the set of rules and processes that bind the water and sanitation service providers, including formal rules (laws, contracts, by-laws, etc.) and informal rules (personal commitments, financial incentives, reputation, etc.). It also defines how the main regulatory functions are allocated to various institutions, which can include an autonomous regulatory agency, a Ministry, an asset-holding company, a customer group, an independent expert, etcetera. As the poor often suffer from limited access to services, regulatory frameworks should generate increased access to water and sanitation services and improve the nature of this access with regards to the availability, affordability and sustainability of these services.

This reduces the ‘cost of compliance’ for utilities looking to serve poor neighbourhoods. The amendment to the operator’s contract in La Paz / El Alto to allow for condominium sewerage in the late 1990s remains one of the better examples. As in Durban (see box overleaf) it was in fact the operator that led the change by piloting alternative approaches. The regulations were altered later to allow replication nationwide.

A third way to increase access is to acknowledge and encourage the services provided by small providers distinct from the formal utility. In Manila, connections belonging to networks of small independent providers were allowed to count towards the concessionaires’ own coverage targets. More than a mere ‘accounting trick’, this fostered a co-operative attitude to service provision and ultimately benefited the ‘unserved’ (See <http://www.ppiaf.org/conference/docs/papers/manila.pdf> for more). While the relationship in Manila is no longer as smooth as this, interesting lessons came from it and were incorporated in later sector reform in Vietnam. Such providers are becoming a focus for regulators, as outlined later.

Quality Standards

As in La Paz and Durban, regulators are being urged to pay more attention to quality standards. This touches upon several aspects of a utility’s operations. Environmental standards can be a key determinant of costs, such as rules governing abstraction or discharge. Engineering and construction standards are also crucial in shaping the cost of providing the service, and especially the cost of extending access to the unserved. A third arena concerns service quality. Regulator’s tools here range from rules on hours of service, pressure and turbidity, to guidelines on leak response time or the time taken to fulfil applications for new connections.

In the setting and enforcement of such standards there is a sharp contrast between the concepts of ‘a regulator’ and the ‘regulatory framework’. Environmental, engineering and service standards are typically the responsibility of quite different stakeholders within the water sector. If there is an independent regulator, their ability to influence some of the standards may be limited at best.

Yet the ability of a utility to experiment with appropriate solutions can radically affect its performance in serving poor communities. This is especially true for the ‘level of service’ provided as Durban (box overleaf) demonstrates.

Adapting quality standards in Durban, South Africa

Durban Metro Water Services (DMWS) has introduced a series of innovations to provide services to poor neighbourhoods. In response to high levels of non-payment and experiments with providing limited amounts of water for free, DMWS developed non-pressurized water systems which filled a series of 200 litre roof tanks. This alternative to either full pressure systems or standpipe provision, uses small diameter piping and a manifold that connects around 20 houses. The service is cheaper for DMWS to provide, spares them from costly administration, and yet provides sufficient water to households to maintain a basic level of hygiene and health. See <http://www.wsp.org/publications/durban.pdf> for more details.

Tariff Regulation

A more traditional role for regulators is in setting tariffs. There is a common perception that the best way to help the poor is to keep tariffs low. Yet there is growing recognition that this can lead to poorly-targeted and regressive subsidies that end up benefiting the rich more than the poor (especially where many poor people are not connected to the network). (See

http://siteresources.worldbank.org/INTWSS/Resources/title_and_contents.pdf and <http://www.purc.ufl.edu/international/outreach/pricing.pdf> for pertinent discussion).

This confirms that it is vital for regulators in developing countries to understand how the market for water services in poor communities actually functions. Research here gives them a clear view of market structure (revealing that the poor are often served by a secondary provider or reseller), as well as highlighting whether existing subsidies are inappropriate.

Low tariffs may in fact hinder service to poor customers. Where revenues from the service are not sufficient to cover costs, the financial health of the entire sector is jeopardised. Plans for new connections are often the first to lose out, hurting the poor most. Network performance suffers, to which the poor are often the most vulnerable (e.g. in lacking pressure and storage tanks to begin with).

Unfortunately, the work in East Africa highlighted the challenges that regulators face in setting appropriate tariffs. There may be political imperatives to keep tariffs down. Or the restructuring of an entrenched system may be too daunting, however unfair it is.

Utilities themselves may face a dilemma. Should they be the ones to highlight how low tariffs undermine the utility without necessarily helping the poor? Or do they avoid the subject, reluctant to highlight their failure to meet universal service goals, and keen not to antagonise existing customers?

Alternative Providers

In many settings the poor get their services from providers other than the formal utility. Such 'alternative providers' may be re-selling utility water, or be independent of it. Often their activities fall outside the formal regulatory framework and may be technically illegal.

Yet the importance of these providers, in a context where utilities cannot or will not serve the poor, sees their role being increasingly recognised. Clearly it is territory that regulators should be treading, yet one they approach with some trepidation. This market is often opaque at best, and it is hard to define an adequate regulatory framework for it - one that harnesses the activity and resources of alternative providers, yet ensures access at an acceptable quality and price.

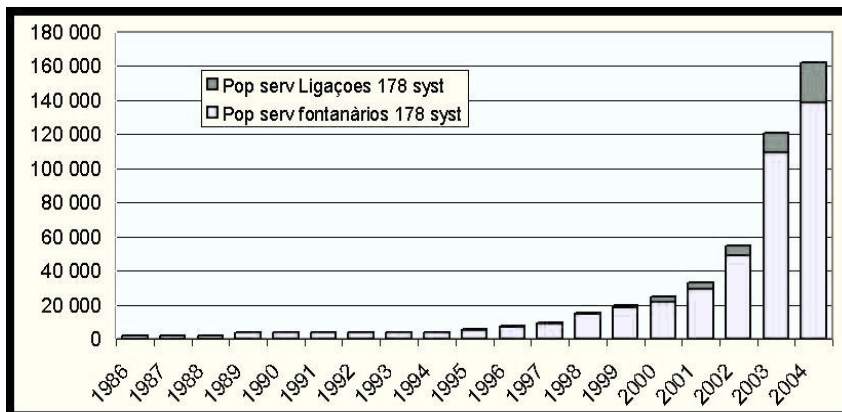
The issue is nevertheless a growing one and regulators in various settings are looking at how they can tackle it. A good place to start is the legal standing of these providers. In many settings the formal utility is the only entity licensed to provide water services in a given geographical area. While this may not reflect the reality on the ground, it relegates alternative providers to informality or illegality. Repealing the 'exclusivity' of the main provider can bring this informal market within the remit of the existing regulatory framework.

Ghana provides a good example of this, where the independent regulator PURC (the Public Utilities Regulatory Commission) “recognises the role and importance of secondary suppliers in the water distribution chain, particularly in reaching the urban poor. It will therefore support initiatives that enhance their capacity to deliver acceptable service at an affordable price”.

Regulating the price that these providers sell at can be a different proposition altogether. Often this is neither easy nor cost-effective, so regulators are increasingly looking at other ways to intervene, such as in quality regulation. PURC is going down this route, as did the regulatory framework in Manila. Manila’s local resellers were not bound by the same service standards – particularly for prices charged – as the concessionaires. Regulators elsewhere have been able to influence prices through price agreements on bulk water purchase by resellers. Interestingly, the tariffs of alternative providers using networks may well be comparable to those of formal utilities (as some recent work has suggested; see <http://rru.worldbank.org/PapersLinks/Open.aspx?id=7318>).

Other regulators may be in a good position to influence the terms of engagement between the formal utility and alternative providers (such as policing resale rates or service licences). In Zambia the regulator NWASCO (the National Water Supply and Sanitation Council) is overseeing the extension of the Lusaka utility’s licence to bring in autonomous Water Trusts. These serve up to 625 000 people in peri-urban settlements but until recently fell largely outside the regulatory framework. Notably, some of the prime advocates for the change have been the Trusts

The phenomenal growth of independent providers in Maputo



The graph above (© Hydroconseil) shows the explosion in the numbers served by independent providers (*178 syst*) in Maputo, Mozambique, either offering connections (*ligações*) or standpipes (*fontanários*).

themselves, who see benefits in being regulated properly.

Rather than viewing such providers as competitors, utilities can find them reliable clients, buying bulk water and selling it to customers that are beyond their reach (in Manila for instance land title issues prevent many users being ‘formal’ customers). They can also turn to such providers to help them meet coverage or service targets.



An independent operator in Bamako. Others in Mali provide up to 200 or more household connections.

Photograph © Hydroconseil, 2006

Consumer Voice

The final development of interest is in a field known as ‘consumer voice’. This emphasises the key role that consumers can play in informing regulation and in bringing discipline to service providers. A physical incarnation of this ‘voice’ is via consumer report cards. Bangalore has been a pioneer of these, which have been used to benchmark municipal services against each other and put pressure on providers to improve. Responsiveness is up and corruption down as a result, while consumers appreciate the chance to have their views heard. Indeed the initiative has proven a useful tool to utility managers, giving monopoly providers valuable feedback on performance (harder to come by when there is no competition) and on areas ripe for improvement. Water Watch Groups in Zambia perform a similar function (see box), while various regulators are investigating how they can work with NGOs and others to improve their understanding of what services poor communities are actually receiving.

Zambia’s Water Watch Groups

These are voluntary consumer groups responsible for ensuring that water consumer rights are protected and that consumers are aware of their rights and responsibilities. They monitor utilities’ technical performance on parameters such as service hours, pressure, billing, water quality or sewer flooding. Staffed by volunteers, they are supported and mentored by NWASCO.

Looking for Guidance?

What sort of guidance is out there, not only to regulators, but to other stakeholders who wish to understand how the regulatory framework can assist them engage with poorer customers? Although the field is growing, current experience actually documented remains patchy.

Below are four recommended sources. Between them these discuss the merits and drawbacks of ‘pro-poor regulation’, highlight the key trends and showcase experience to date. They also point the way to other resources relating to the five areas discussed in this article.

Report – “*Adapting regulation to the needs of the poor: Experience in 4 East African countries*” (Sophie Trémolet, BPD, 2006)
http://www.bpdws.org/web/w/www_47_en.aspx

Resource centre – BPD’s resource centre that highlights other case studies, reports and programmes related various aspects of pro-poor regulation.
<http://www.bpdws.org/> (forthcoming Aug 2007)

Reports – “Taking account of the poor in water sector regulation” (Trémolet & Hunt, World Bank, 2006) and “Regulation of water and sanitation services: getting better service to poor people” (Trémolet & Halpern, GPOBA, 2006) at
<http://www.gpoba.org/oba/wps.asp#8>

Webpage – The Water and Sanitation Program (WSP) are championing consumer report cards as part of consumer voice. See <http://www.habitatjam.com/viewIdea.php?iid=65§ion=6>.

Conclusions

Utilities and other stakeholders should be open-minded as to how they can engage with the regulatory framework. Work by BPD in 2002 (*“The interface between regulatory frameworks and partnerships”* by Trémolet & Browning) showed that regulatory frameworks had a large impact, not only on the operations of utilities, but in shaping how or whether they could engage with others in partnerships to provide water and sanitation services. It hinted at the merits of pro-active engagement by stakeholders – regulators are keen to see utilities and other providers giving good service and increasingly open to proactive suggestions about regulatory engagement. Zambia and Mozambique are two early examples of where this approach is bearing fruit, showing how regulators can work with others to ensure that services reach those who need them most. Others can no doubt push this envelope further.

BPD is keen to hear from those interested in exploring two particular issues further.

These can be characterized as 1) *‘regulating relationships’* and 2) *‘regulating the regulator’*.

1) In the partnerships we are exposed to we have observed that the regulator can play an important, often unstated role in managing and shaping relationships between stakeholders, in seeking consensus and resolving conflicts. This is akin to the *brokering role* that can be invaluable for partnerships.

2) It is important to understand the motivation that regulators themselves have to address the issue of services for the poor. The incentives for them to do so can express themselves in many ways, from the official mandate given to the regulator to the make up of its board, from the way that contracts with service providers are framed to the openness of the regulator to advocacy from groups that work with poor communities. How do these incentives work and what are their implications?

Please note that the opinions expressed herein are those of the author and not necessarily those of BPD or its members.

Building Partnerships for Development in Water and Sanitation (BPD) is a not-for-profit membership organisation that supports public, civil society and private sector decision-makers and practitioners engaged in partnerships that provide water and sanitation services in poor communities. Active since 1998, BPD focuses on how best to structure, manage and assess such multi-stakeholder collaborative arrangements.

Editor: David Schaub-Jones

Production: Tracey Keatman

BPD Water and Sanitation

2nd floor, 47-49 Durham Street
London, SE11 5JD, United Kingdom

Tel: +44 (0)20 7793 4557

Fax: +44 (0)20 7582 0962

Email: info@bpdws.org

Website: www.bpdws.org