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The Roles of the IMF, the World Bank, and the WTO in Liberalization and Privatization of the Water Services Sector[1]

By
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[1] In addition to the World Bank, there are four regional development banks: the Asian Development Bank, the African Development Bank, the Inter-American Development Bank, and the European Bank for Reconstruction and Development. With respect to project lending, these banks play a role similar to that of the World Bank.

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I. Scaling-Up Public Private Partnership (PPPs) in the Water and Sanitation Sector

A. Scaling-Up. Since 1980, donor and creditor agencies (e.g., the IMF and World Bank) have exerted pressure on governments to downsize, decentralize, and privatize (or "contract out") their functions. In 2002, after sustained pressure from the U.S. government, the Board of Executive Directors of the World Bank adopted a new overarching strategy for the institution – the Private Sector Development (PSD) Strategy – which aimed to advance privatization in the so-called "frontier" sectors: health care, education and water. In fiscal year 2005, the World Bank spent over $7 billion in these sectors, including about $3 billion in the water and sanitation sector.[4]

The World Bank has expanded its lending operations in infrastructure by $1 billion per year for the last three years until infrastructure comprises 33% of its total portfolio. This trend will continue for the next two to three years until infrastructure operations comprise 40% of the Bank's total portfolio.[5]

In addition, its private sector affiliate, the International Finance Corporation (IFC) is planning "quantum growth" beginning in 2006, in areas such as infrastructure, health care, and education. The World Bank provides loan and grant assistance to governments, whereas the IFC lends to, and takes equity positions in, private sector projects. Although the IFC's level of commitments grew by 40% in the last three years, commitments could expand by an additional 50% in the coming three years to as much as $7.2 billion, with commitments to Africa and the Middle East doubling.

The IMF has been a significant driver of water privatization and the institution is poised to expand its role in promoting trade in services, including water supply.

Both the IMF and World Bank are more actively ensuring that low-income country governments integrate reforms related to privatization and trade reforms into their medium-term development strategies, or Poverty Reduction Strategy Papers (PRSPs). The institutions require governments to prepare PRSPs as a condition for receiving financial assistance.[6]

Bartering Away the Right to Water. In industrialized countries, national and local governments have provided most basic services for more than a century. The main reason is that earlier experiences with private provision were

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[4] Of the World Bank's total of $22.3 billion in lending, $2.3 billion was spent in the health, nutrition and population sectors; $1.8 billion in the education sector, and $3 billion in water, sanitation and flood protection.

[5] Infrastructure and the World Bank: A World Bank Progress Report to the Development Committee Meeting, September, 25, 2005, pp. i-ii.

[6] At an April 2005 meeting of the IMF's Board of Executive Directors, Directors stated that the IMF "should continue to give trade-related policy advice to low-income countries with the aim of integrating trade reforms more systematically into their Poverty Reduction Strategy Papers (PRSPs)."

dismal.[7] That's because the same market incentives that increase efficiency and profitability tend to undersupply "public goods."

In many places, public water services have also been deficient, however, the ideological nature of the "drive to privatize" is evident in the fact that the IFIs promote the privatization of even successful public water systems. Indeed, water privatizations have an improved chance of succeeding when they inherit a viable public water system.

Over 40% of the world's population lives less than $2 per day; thus, as fees are imposed on social and infrastructure services, their survival is threatened. Water is a basic human right. Yet, from a market perspective, each basic service industry has trillions of dollars of untapped value; in the case of water and energy, the value of controlling scarce resources is incalculable.

Governments are pressured by corporations to help them penetrate lucrative overseas markets. While the US has a trade deficit in goods of unprecedented proportions, it runs a robust surplus in services.

For corporate investors, the acceptable rate of return on an investment depends on the risk factor. Hence, the expected rate of return in Africa is 25.3%, compared to 16.2 percent for Asia and the Pacific, 14 percent for "all developing countries," and 12.5 percent for Latin America and the Caribbean.

B. The Risks relating to PPPs

The World Bank states that, "Where the public sector does continue to play a major role as a service provider…it is important that these public service providers are *corporatized* and their operations ring-fenced from the regulatory and policy operations of the government."[8] A corporatized utility operates as a commercial entity.

Where PPPs are established, management contracts or similar arrangements are likely to become a much more common form of PPP. As Estache notes, "Demand and costs uncertainty – in particular exchange risks – have become too tough to handle for foreign operators under most common regulatory arrangements."[9] Management contracts are frequently a prelude to privatization.

In 2005, World Bank infrastructure expert Antonio Estache released a study of PPPs in infrastructure from 1994 to 2004. During this period, investments in public-private partnerships (PPPs)[10] in water and sewerage infrastructure came to $39 billion – compared to energy ($242 billion), telecom ($332 billion), and transport ($129 billion) in the developing world.

Estache concluded that poorly structured PPP projects have been pervasive over the past decade and have generated considerable fiscal risks, and that countries risk giving priority to PPPs at the expense of improving systems for public investment.[11] The study, identified problems related to:

- Affordability. "…efficiency gains were achieved at the cost of an increase in the burden imposed on the lowest income groups connected." The World Bank promotes targeted subsidies to poor people, however, such subsidies rarely function as intended, as upper and middle-income classes generally capture the subsidy benefits.

[7] See *Public Services Work!* Public Service International Research Unit, London, 2004.

[8] J. Briscoe, U. Qamar, M. Contijoch, P. Amir, D. Blackmore, "Pakistan's Water Economy: Running Dry," World Bank, June 23, 2005 draft.

[9] Estache in "Experiences in Latin American PPPs."
[10] In this paper, the term "privatization" is used to refer to all variants of privatization.
[11] Antonio Estache, "PPI Partnerships versus PPI Divorces in Developing Countries," World Bank and Universite Libre de Bruxelles, January 2005.

- Cherry picking or cream skimming. Profitable and unprofitable markets are segregated so that private firms can take the profitable markets. Thus, Estache states, "The design of reforms has often left rural and suburban areas out of the service obligations." Private firms have strong incentives to invest in consumers that use the most water and can pay for it, while neglecting poor areas in which per capita consumption is limited and bill collection is harder. Estache predicts, "Cream-skimming is likely to be much more common from now on."[12]
- Fiscal stability. One of the more surprising risks of privatization is fiscal deterioration, since increased revenue is touted as one of its main justifications. However, as private firms have become more risk averse, especially in areas with poor people and weak governance, they have increasingly insisted on guarantees and financial supports that ensure profitability, minimize capital outlays, and greatly increase the fiscal exposure of government.

  For instance, in Eastern Europe, there was an average increase in electricity prices of 16% between 2000 and 2002. But the combination of high losses, non-payment of bills, and below-cost recovery tariffs added up to a fiscal cost of, on average, 7.5% of GDP at the end of the 1990s," which declined to 5.9% of GDP by the end of 2002. Comparable figures for water are not available.
- Corruption. Corruption increased during the timeframe.
- Reporting. For now, there are no internationally agreed fiscal accounting and reporting standards for PPPs, which exacerbates risks.

Efficiency. In the study, "Infrastructure performance and reform in developing and transition economies: evidence from a survey of productivity measures," the authors find that, for utilities, ownership often does not matter as much as sometimes argued. Most cross-country studies find no statistically significant difference in efficiency scores between public and private providers.[13] However, private providers generally fire a significant proportion of workers to boost efficiency.

Collusion. Risks of collusion grow in sectors, such as water and sanitation, which are dominated by only a few transnational corporations: the French companies, Suez (Ondeo), Veolia Environment (formerly Vivendi), and SAUR; and the German company, RwE (which owns Thames Water and American Water Works).[14] The U.S.'s Bechtel Corporation is also a significant player.

In their study, "How Concentrated are Global Infrastructure Markets?" the authors found that infrastructure projects were highly political, in part, due to the degree of concentration of corporate investors, which can pose the risk of collusion.[15] They found that concentration was present in 20% of their sample, while presumed concentration was found in an additional 30% of the sample. The authors explore the need for a supranational competition or regulatory agency.

[12] Antonio Estache, "Experiences in Latin American PPPs," in www.infrastructurejournal.com.

[13] Estache, Antonio; Perelman, Sergio; Trujillo, Lourdes; Policy Research Working Paper, No. WPS3524, World Bank, January 2, 2004. Clarke, George R. G.; Kosec, Katrina; Wallsten, Scott; World Bank Policy Research Working Paper 3445, 2004/11/01 found that connection rates improved in both in public and PPP cases.

[14] **Veolia** Water of France is the No. 1 provider of water services, serving more than 110 million people in over 100 countries. In 1999, Veolia Environment purchased U.S. Filter Co. and today serves more than 600 communities and 14 million people in No. America. American Water Works Co., purchased by RWE of Germany in 2003, operates in 29 U.S. states. Worldwide, **RWE** serves about 70 million people in over 20 countries and had total water revenues of $1.2 billion in 2002. **Suez/Ondeo** supplies water to about 125 million people in 130 countries.

[15] D. Benitez and A. Estache, "How Concentrated are Global Infrastructure Markets?," World Bank, February 2005.

Fink, Matoo and Rathindran (2001) state that GATS should require domestic competition law to consider the effect of collusive agreements on foreign markets. They suggest that foreign consumers should have the right to take actions in foreign courts against corporations that abuse their market power.[16]

Currency Risk.[17] When the value of a domestic currency falls in relation to the dollar, the amount of the dollar-denominated corporate debt and cost of imports balloon. Currency risk was a major factor causing the collapse of corporate contracts for water and electricity provision in Manila and Buenos Aires, among others. In June 2005, Suez withdrew from its contract to supply water and sanitation services to Buenos Aires after a long-simmering dispute dating back to the 2001 Argentine economic crisis, when the government froze utility tariffs and converted them from U.S. dollars into pesos, making contracts held by Suez and other companies unprofitable.[18]

Non-Economic Externalities. The referenced infrastructure studies did not examine additional environmental and social costs traditionally associated with large infrastructure. With the World Bank's issuance of its 2003 Water Resources Sector Strategy (WRSS), the Bank re-entered the business of large infrastructure after a hiatus in the 1990s. The WRSS adopted a controversial "high risk, high reward" strategy that entails a significant investment in large infrastructure, such as dams, just after the institution refused to adopt the standards recommended by the World Commission on Dams (WCD). Such projects have a record of non-compliance with the World Bank's own standards for resettlement and compensation of displaced persons, environmental damage, and social costs.

II. Policies and Instruments that Promote Water Privatization

A. Steps to Water Privatization

1. Decentralizing State Responsibilities

Donors and creditors are using subnational adjustment operations and special facilities to expedite financing of infrastructure at subnational levels.

Decentralization to the municipal level has not led to the most efficient provision of services and, according to Avendaño, "decentralization has had a negative effect on the structure of the drinking water industry by fragmenting it and compromising its viability" – including in the following areas: loss of economies of scale; lack of attention to rural areas; obstacles to protecting water sources and lack of incentives for the control of water pollution.[19]

In **India**, a state's access to credit depends, in part, on whether the state commits to decentralization guidelines, including those calling for "1) implementing a legal framework that supports administrative and fiscal decentralization; and 2) supporting the role of sub-national government entities to provide services and basic infrastructure to their constituents."[20] For irrigation and drainage, the Bank's "guidelines" call upon the state to "establish and operationalize decentralized service delivery mechanisms (including corporatization, public-private partnerships and water user associations." Between 1996-2002, the Second Tamil Nadu Urban Development Project (TNUDP II) increased revenue collections due to decentralization as well as property tax increases.

[16] Joseph Stiglitz, An agenda for the development round of trade negotiations in the aftermath of Cancun, Commonwealth Secretariat, p. 116.
[17] Currency risk is not addressed in the referenced study by Estache.
[18] Suez took Argentina to the World Bank's international arbitration tribunal that, in May 2005, determined that it has the power to accept "friends of the court" briefs from civil society organizations, even in the face of objections from the parties.
[19] In Andrei Jouravlev, "Drinking water supply and sanitation services on the threshold of the XXI century," CEPAL, Santiago, Chile, December 2004.
[20] World Bank 2004 CAS for India, Annex 5, page 6.

Since the responsibility for water privatization in **Peru** was decentralized to the subnational level, the IMF is supporting the authorities as they "kill two birds with one stone" by 1) increasing tax revenues by eliminating exemptions for regional governments and 2) accelerating privatization of infrastructure. Specifically, the central government has persuaded regional authorities to give up their precious tax exemptions (despite resistance from regions and members of congress) in exchange for resources for infrastructure (e.g., water, electricity, roads).

One official said that the IMF and the government have attempted to "buy the consent" of the regional governments through offering them an increase in infrastructure spending in exchange for their sacrifice of tax exemptions. Meanwhile, there are doubts whether the newly created and still nascent regional governments can manage the infrastructure spending, as some of the regional government officials have been prosecuted for corruption.

A U. of California Berkeley researcher, Pranab Bardhan, argues that the idea of decentralization may need protection against its own enthusiasts – free market advocates, who see decentralization as an opportunity to cripple the state and to so-called anarcho-communitarians, who ignore community failures. [21]

2. Creating "fiscal space" for infrastructure investment

Creating "fiscal space" for public investment is important. Over two decades, the structural adjustment programs of the IFIs have required governments to slash public investment.

Hence, the IMF's budget targets are notorious for constraining growth and investment. In his article in Time magazine (March 14, 2005), economist Jeffrey Sachs recognizes that "For a quarter century and changing only recently, the main IMF prescription has been budgetary belt-tightening for patients much too poor to own belts. IMF led austerity has frequently resulted in riots, coups and the collapse of public services." The level of IMF spending targets affects wages and the level of expenditures for critical sectors.

Brazilian and Argentine leaders Lula and Kirschner led Latin American leaders to declare at their 2003 Summit that the IFIs were constraining investment in infrastructure necessary to foster growth.

The World Bank took up their case and pressed the IMF to ensure that governments have sufficient "fiscal space" for water-related and other infrastructure investment. In turn, the IMF has been working with several countries on a "Public Investment and Fiscal Policy" project for two years to identify ways to create the "fiscal space" for major investments.[22]

The project has concluded that capital spending cannot be off-budget, as proposed by the leaders, and that savings are required to mobilize resources for infrastructure spending. It also proposes a change in IMF rules so that government guarantees to private operators do not count as explicit debt. Hence, these liabilities will be "off-budget." The bottom line is that the IMF will continue to constrain growth due to its tight budget targets and accounting rules.

3. Establishing legal frameworks for private water supply

When the World Bank drafts water laws for its borrowing governments, it generally requires passage of an acceptable version of these laws as a condition for future financing or debt relief. Hence, if legislatures fail to pass laws that are acceptable to the Bank, the

[21] In F. Tarp and T.B. Anderson, Development Economics Research Group, Institute of Economics, University of Copenhagen. November 13, 2003.

[22] The framework has now been applied in eight pilot country studies, namely Brazil, Chile, Colombia, Ethiopia, Ghana, India, Jordan, and Peru.

government's access to loans, grants and debt relief will be jeopardized.

In **Brazil**, the government promulgated a law[23] permitting public-private partnerships in December 2004. In March 2005, a presidential decree established a public governing body (a steering committee formed by three representatives picked from the Ministry of Planning, Ministry of Finance and the Chief of Staff of the Presidency) to administer the law. Now, there are attempts to resolve the legal ambiguity about which government level – state or municipal – had the jurisdiction to offer concessions of water and sanitation services to private operators.[24]

In Bolivia, Brazil, Ecuador and Peru, the World Bank drafted water laws that lacked the requirement that purchasers of water rights must use them for "effective and beneficial use" (an important requirement in U.S. water laws). Such a policy is designed to protect smaller users from large, powerful users based upon the small user's established access to water based upon their "beneficial use" of the resource. Due to the actions of regional policy-makers, legislatures were effectively mobilized to defeat the World Bank version of water law in these countries. Bolivia, Ecuador and Peru still do not have new water laws. However, the designated laws are frequently passed, often with great struggle, as in the case of Indonesia.

In **Indonesia,** the controversial Bank-financed water structural adjustment loan supported the amendment of water resources legislation to, among other things, enable private participation in water resources development.

Especially when legislators are unlikely to pass the designated laws, the World Bank may require a country Executive to issue a "Supreme Decree." The Government of **Bolivia** complied with Bank requirements by enacting a Water and Basic Sanitation Law and regulations and drafting "Supreme Decrees." When the Bolivian President issues Decrees, he bypasses the machinery of representative government. The Government issued Decrees calling for water tariff increases and, then, given the increase in poverty and unrest after the Cochabamba riots, sought a waiver for implementation of the Decrees. (See Box 3 for a description of the Cochabamba case.) The Government complied other loan requirements directing it to enter into six concession agreements with eligible water and sanitation providers and four concession agreements with eligible electricity distribution providers.[25]

In **Peru**, among many other countries, the Bank is engaged in supporting the creation of commercial courts to expedite claims of private sector operators.

Legal Frameworks establish Market Mechanisms to Allocate Water Rights. The World Bank and the regional development banks are promoting systems that allocate water to "high value users" – e.g., industry and agro-business. If "low value users," such as subsistence farmers, are deprived of water, it could cost them their lives or their livelihoods. Historically, governments have allocated water, but now the financiers are requiring that governments allocate water through market mechanisms. This was being done in Chile, which is why there has been rampant water speculation and dominance of hydroelectric companies and agribusiness over allocation systems.[26]

It is one thing to promote participatory management by water users through river basin

[23] Lei nº 11.079, de 30 de Dezembro de 2004.
[24] Brazil Country Assistance Evaluation, Report No. 27629-BA, OED, World Bank, 14 January 2004.

[25] See Tranche Release Document for a 1998 Regulatory Reform Sector Adjustment Credit, July 18, 2002. The document also requires the government to limit deposit guarantees, permit Italian and U.S. service providers into the telecommunications sector, and divest natural gas distribution networks.

[26] The new, 2005 water law establishes greater public control over water use in the public interest, including by imposing a license fee where there are no water abstraction works.

associations or water users' associations. It is quite another to require that such associations employ policies which will marginalize or ruin their poor and powerless members.

In **Pakistan**, the Bank states "those requiring additional water (such as high-value agriculture and people living in growing cities) will frequently be able to meet their needs by acquiring the entitlements of those who are using water for low-value purposes."[27]

In **Brazil,** the Bank's Country Assistance Strategy is aiming to "increase the number of states where the allocation of water rights is regulated and where bulk water is regularly charged."[28]

In **India**, the World Bank's Country Assistance Strategy aims to promote private sector-led growth by "ensuring that water is allocated to the highest-value uses" by implementing "state water policy and rules on inter-sectoral water allocation" and piloting "tradable water rights and entitlements where possible." Based on the productivity of water for different uses, the Bank is developing a prioritized investment program.[29]

4. Ending Cross-Subsidies Among Infrastructure Services

The IFIs are ending cross-subsidization between service sectors. In most cases, the water sector is not profitable and requires subsidies from profitable services, such as telecommunications. When the IFIs require discontinuation of cross-subsidies, then the government must provide costly subsidies for water services from the national budget.

At that point, the IFIs need not prescribe water privatization because it may be the only option if a government wants to meet IMF and World Bank budget targets. The terrible irony is that, as described on p. 4-5, government subsidies of private providers are also draining the treasury. The IFIs consider subsidies of corporations as a challenge to address, while they consider subsidies of public services as an abomination.

5. Commercializing Tariffs

IFIs as tariff regulators. The IMF and World Bank take a major role as the "de facto" tariff regulator for countries. The IMF usually works with governments to design automatic tariff formula that can be applied independent of the political process. In recent years, the IMF has required major water tariff escalations in Ghana. In 2002, it refused a request from the government of Ghana to cushion the blow of price shocks on the poor.[30] In 2004, the IMF required that the government ensure that electricity and water tariffs were in line with their respective automatic adjustment formulas.[31]

Subsidies to consumers. For several years, the World Bank supported subsidies for connection of users to the water network and opposed consumption subsidies, including cross-subsidization of poor consumers by wealthier consumers. It opposed consumption subsidies, saying that corporations would not provide satisfactory services to poor customers unless they paid full cost.[32]

[27] Pakistan's Water Economy: Running Dry," World Bank, June 23, 2005 draft, p. 95.

[28] Brazil Country Assistance Strategy: 2004-07, World Bank, p. 207.

[29] India Country Assistance Strategy, World Bank and IFC, 15 September 2004, Annex 4, page 6.

[30] Fifth Review of Ghana's Poverty Reduction and Growth Facility (PRGF) Arrangement, IMF, March 5, 2002.

[31] Ghana: 2004 Second Review Under the Poverty Reduction and Growth Facility and Request for Waiver of Nonobservance of Performance Criteria.

[32] The World Bank's former Director of Infrastructure, Nemat Shafik said "We're operationalizing thinking on social tariffs…As a rule of thumb, a poor household shouldn't spend more than about 15% of its expenditures on infrastructure services." (June 14, 2003 Press Conference) An income of $1 per day would not go far based upon such a policy and factoring in fees for other basic services.

Today, in some instances, the Bank permits governments to establish five to ten year plans to subsidize consumers or corporations that would not otherwise serve poor populations. It is presumed that, during that time, public or private service providers would implement full cost recovery by the "boil the frog" method. This method assumes that, just as a frog will not jump out of water if it comes to a boil gradually, so too, water users will not rebel if full cost recovery is introduced gradually over several years.

In general, private operators have increased water tariffs after taking over a water supply system. In Tucuman, Argentina, the consortia (led by General-dex-Eaux, now Veolia) increased water bills by about 100%, supplied low quality water, and failed to extend service to the poor, leading to premature termination of its contract in October 1998. Even though the operator failed in many regards, it is suing the government in the international tribunal at the World Bank Group, the International Centre for the Settlement of Investment Disputes (ICSID).

In Buenos Aires, Argentina, costs for expanding the secondary water network and connection to the grid were charged to individual beneficiaries. Users of new connections (most of them poor) were required to pay a capital cost of $415 and $606 for water and sewerage respectively. These payments represent about 20% of family income of the poorest and 10% of those under the poverty line. In November 1997, the government eliminated the charges and added a fixed increment to the tariffs paid by all customers.[33]

Conditionalities promote user fees. The World Bank's August 2005, "Review of Conditionality," says that it does not impose user fees on water services. This is not accurate. The World Bank's 2004 Country Assistance Strategy for **India** stipulates in its "guidelines for engagement" that the institution's investment lending for rural water supply and sanitation will focus on states that 1) recover through user charges recurrent operations and maintenance costs of services ("except for multi-village schemes and water quality-affected habitations where a partial subsidy may be necessary") and 2) "capital cost sharing by users, in proportion to service levels demanded by them. The Bank also recommends partial subsidies for basic water supply service (40 liters per capita per day); 100% user-financing of incremental service levels over the basic service level; and declining and targeted subsidies to households for sanitation."[34]

Importantly, the Bank offers investment lending to the central government of India only if the government channels all central funds to state schemes meeting these and other criteria. In effect, ***this policy exercises control over all of the resources of the government of India in the relevant sectors, not just the resources of the World Bank.***

The Second Tamil Nadu Urban Development Project encouraged improved cost recovery in water by requiring tariff increases before approving loans to municipalities for water privatization.

6. Cherry-picking

Water systems in developing countries are not inherently attractive to investors. To increase their appeal for investors, the Banks work with governments to neatly separate profit-making from loss-making markets in the water sector. However, fencing off (or "unbundling") profit-making markets promotes "cherry picking" or "cream skimming" by private investors. That is, private interests can manage or buy the profitable components of the water system (e.g., urban water) and either serve the loss-making portions with subsidies or leave these portions to the government (e.g., sanitation, peri-urban and rural water). In order to facilitate this process, the World Bank usually finances several years of public sector reform in order to restore the financial viability of water systems prior to their sale or lease.

[33] The descriptions of the Argentine cases are taken from the World Bank's Project Appraisal Document for a Water Sector Reform Program, May 10, 1999.

[34] 2004 India CAS, page 5.

7. Establishing pro-corporate regulators

Human rights law requires that public and private water providers ensure "universal service obligations" (USOs) – that is safe and affordable water to all citizens. These obligations can only be achieved through effective regulatory measures. Hence, it is a significant problem when there is "regulatory capture" by powerful transnational corporations or when regulation is weak to non-existent.

In the study, "How widespread were private investment and regulatory reform in infrastructure utilities during the 1990s?" the World Bank's Ioannis Kessides[35] found that, for privatization to generate widely shared social benefits, infrastructure industries must be thoroughly restructured and regulated ***before*** privatization.[36] Yet a 2004 review identifies the share of countries with an independent regulatory agency and with at least some private sector financing of its sectoral investment needs for water and sanitation and other service sectors. Twenty-one percent (21%) of countries had an independent regulator for water and sanitation; 35% of countries have private sector financing for the sector.

Despite such findings, the World Bank has often promoted privatization in the context of a PPP contract rather than an independent regulatory agency. In such cases, contracts are often renegotiated – that is, the private enterprise is able to "hold up" the government – for example, by insisting on renegotiating the contract, seeking more favorable terms, or using regulatory capture.
In Latin America, from the mid-1980s to 2000, 74% of water and sanitation contracts were renegotiated on an average of only 1.6 years after the contract award.[37]

In April 2004, the World Bank issued its "Operational Guidance on Public and Private Sector Roles in Water and Sanitation Services," which says that "superimposing a national regulatory body with broad powers on to decentralized service providers that operate under local or state oversight should be avoided." As the Bank is aware, subnational regulators are weak or nonexistent. In effect, the Bank is condoning the absence of regulation or weak regulation in the water sector, which is a "natural monopoly."

In the near-absence of regulation, the Bank is recommending creation of independent expert panels for water supply and sanitation utilities, with clear mandate and monitoring skills.
The institution notes the reluctance of governments to take up this idea because, among other things, selection of experts has been controversial and the panel requires that governments give up their discretionary power to decide tariffs on political grounds. The authors of one study state, "the fact that the panel members are outside the government or state could, in some circumstances, undermine their legitimacy; but in other circumstances this fact might strengthen it. The analysis will have to be country-specific." [38]

The trend toward "expert" or "external" regulation and control of water supply could end public control of water and, thus, the power of governments to ensure the right to water.

This right is ensconced in the UN "Right to Water," which stated that rights to water are

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[35] "Reforming infrastructure - privatization, regulation; and competition, World Bank Policy Research Report, January 1, 2004.
[36] Estache, Antonio and Goicoechea, Ana; Policy Research Working Paper Series, No. WPS3595, World Bank, 5 January 2005.
[37] Source: J. Luis Guasch, "Granting and Renegotiating Infrastructure Concessions: Doing it Right," World Bank Institute, 2004. Guash notes that, in Latin America, the incidence of renegotiation was much higher under price-cap regulation (42%) than rate-of-return regulation (13%) and when a regulatory agency was not in place (61%) than when one was in place (17%). Finally, renegotiation was more likely when the regulatory framework was embedded in the contract (40%) than when embedded in a decree (28%) or a law (17%).
[38] Chris Shugart and Tony Balance, "Export Panels: Regulating Water Companies in Developing Countries," 22 June 2005.

"indispensable for leading a life in human dignity" and "a prerequisite for the realization of other human rights." Through its "General Comment 15," the Committee on Economic, Social and Cultural Rights of the UN Economic and Social Council (ECOSOC) explicitly focused on the right to water and the responsibility of governments to deliver clean water and adequate sanitation services. It stated: "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." (ECOSOC, 2002)

In 1997, Article 10 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, approved by the General Assembly states that in the event of a conflict between uses of water in an international watercourse, special regard shall be given "to the requirements of vital human needs."

Labor rights should be protected by making the conventions of the International Labor Organization (ILO) enforceable.

Box 1

Chile's Famous Water Regulatory System

Chile's water system is famous for its presumed regulatory successes.

What company to regulate? Chilean regulators interviewed by the author were utterly frustrated that the water conglomerate had indefinite boundaries encompassing so many investors and subsidiaries that it was impossible to know what was being regulating.
The Imaginary Company. Chilean regulators construct a "model" water company and create regulatory benchmarks for corporations based upon this imaginary model. When the idea of regulating U.S. companies based upon a "model" company was proposed, a U.S. Circuit Court of Appeals stated: "It is clear from the language of the statute that Congress intended the rates to be based on the cost … of providing the interconnection or network element, not on the cost some imaginary carrier would incur by providing the newest, most-efficient, and least-cost substitute for the actual item or element."[39]

Illegal gains. For treating water, the conglomerate recouped costs from consumers, industrial customers, and from issuing no-bid contracts to its subsidiary (in violation of Chilean laws).

Overruling the regulators. The principal problem with all regulation is that there is an "information asymmetry" between the government regulator and the private water provider. The private provider has disincentives to disclose operating and financial data to regulators.

Chile's regulators propose a water tariff, but the company usually proposes a different (higher) tariff. If the regulator and the company cannot agree, as is usually the case, then the matter is decided by a board of independent experts, one nominated by the company, another by the regulator, and the third one by mutual agreement. The result is that, normally, the final tariff is higher that the one proposed by the regulator.

8. Weakening Transparency

Privatization processes are usually characterized by poor transparency on the part of the executive branch of central (and local) governments, donors and creditors.

In circles of financiers, the word "transparency" refers to the level of information disclosure that governments provide to the private sector. Little attention is generally paid to whether or how governments disclose information to the public.

In an unusual move, the IMF raised this matter in regard to Peru, stating that the parliament, regulatory bodies, and the public had "no opportunity to scrutinize and weigh in on the

[39] The 8th U.S. Circuit Court of Appeals in Iowa Utilities Board vs. the FCC, on 18 July 2000.

privatization plans and contract provisions….Privatization policies are adopted by executive decree and "neither the Congress nor supervisory agencies exercised any oversight . . . Agencies responsible for regulating privatized utilities were sometimes created only after privatization and without the sufficient autonomy vis a vis the government."[40] During the 1990s, of $9.2 billion in revenues from privatization, only $4.4 billion was actually deposited in the national treasury. The remaining $4.8 billion is unaccounted for.[41]

Despite these conditions, the government of Peru is moving ahead with significant efforts to privatize water.

Importantly, governments design public-private contracts without any public oversight. For instance, the contracts will contain promises to investors by which generations of citizens will be required to abide, yet final contracts, much less draft contracts are not available to the public. This is even true in the "model" water privatization projects being carried out by the World Bank-Netherlands Water Partnership.

9. Facilitating privatization by liberalizing financial services and opening the capital account

As part of liberalizing services, the IMF is under pressure from its major shareholders to promote liberalization of financial services and opening of the capital account, so that foreign investors can easily obtain financing, establish "commercial presence" (i.e., operations in the host country) and repatriate capital.

[40] "Peru: Report on the Observance of Standards and Codes – Fiscal Transparency Module," IMF, Country Report No. 04/109, April 2004, p. 10.
[41] Barbara Fraser, "Selling the Public Sector," NACLA Report, January/February 2003.

B. Instruments for Promoting Water Privatization

1. Conditionality: Modulating Financing Flows and Debt Relief

Under contract to the World Bank, Princeton Survey Research Associates[42] surveyed over 2400 opinion leaders in every region of the world. One finding has been obvious to most observers of the World Bank, *".... Most opinion leaders think the World Bank forces its agenda on developing countries. This finding is consistent and overwhelming in all regions and in virtually all countries…"*

The IFIs resort to pressure because they have a "conflict of interest" in providing assistance to countries, since the IFIs' major shareholding countries have investors that stand to gain from economic liberalization and privatization, particularly when it is premature and poorly sequenced. As economist Jeffrey Sachs writes, the IMF and World Bank are the "*handmaidens of creditor governments"* that do not fairly serve the interests of all of their members.[43]

2. IMF: Starving Public Services

If the IMF requires a government to privatize public services, e.g., water, and the government fails to comply, the institution can send a signal to private and official creditors and donors, indicating that the government is "off track." Since the IMF is the head of an "aid cartel," these donors and creditors often withhold assistance and debt relief from any government that is deemed "off track" by the IMF. [44]

[42] The Global Poll: Multinational Survey of Opinion Leaders 2002," Princeton Survey Research Associates for the World Bank, May 2003.
[43] Sachs, *The End of Poverty,* Earthscan, 2005, p. 366.
[44] This powerful "signaling" tool is used especially in the case of low-income countries. For instance, the IMF would never "blacklist" India, but has readily "blacklisted" poor countries causing the withdrawal of aid, credit and debt relief. For instance, Malawi has been subject to punitive action for three and a half

b. The World Bank. The World Bank also modulates each government's access to financing through a "carrot" and "stick" approach.

i. Flows over the medium term: 3-5 years. The Bank prepares its business plan, or "Country Assistance Strategy" (CAS), for each borrowing country.[45] The CAS, which describes the investments that the Bank plans to make in the country over the medium-term, outlines three lending scenarios (high case, base case and low case scenarios) for a 3 to 5 year timeframe. A government in the "low case scenario" has little access to World Bank credit. As a government fulfills "trigger" conditions, it is often given access to more loans and a higher credit limit. For instance, Ghana's CASs have required increases in water tariff rates.

The World Bank's CAS (2004-2007) for Mozambique stated that, for the government to access a high level of credit, it must implement public sector reform. The CAS envisioned a National Water Development Project supporting private urban water supply.

Increasingly, due to the World Bank's heavy hand in their affairs, middle-income countries are obtaining financing from the international capital markets. To attract the business of these borrowers, the World Bank sometimes provides countries with "guidelines for engagement" instead of CAS trigger conditions.[46] For instance, in **India,** state governments' access to credit depends on the extent to which they abide by the guidelines. Among other things, the Bank will only consider full-scale water-related investment lending for State governments and cities that agree to "support actions to develop domestic private sector capacities for delivering urban water supply and sanitation services."[47]

ii. Flows to the Water Sector. If a government rejects a World Bank policy prescription for the water sector, such as water privatization, external actors will act in concert to withdraw financial support to the water sector. For instance, when **Ghana** failed to comply with World Bank water privatization pressure, the U.K. aid agency withheld its bilateral support for that country's water sector. When a government becomes desperate enough for resources, it generally consents to the privatization policy.

In the case of the 1999 Water Sector Reform loan to **Argentina**, the World Bank required that, in order for the loan to become effective, the government must have awarded and signed PSP contracts to two utilities.

iii. Loan Flows. Parts i and ii, above describe how financial flows are modulated to a country or a sector. Financing for individual loans is also modulated. The World Bank will prematurely close, or suspend, its loans if a government fails to comply with its policy prescriptions. The Bank closed its "Public Services and Social Sectors Structural Adjustment Loan" to **Uruguay** when there were "serious setbacks caused by the results of the referendums that…amended the Constitution precluding private sector participation in water supply and sanitation."[48] The loan was closed pending the approval by Congress and the

years, until it entered a major drought in the past few months.

[45] All creditors and donors have medium-term strategies, e.g., The Country Operational Strategy Study (COSS) of the Asian Development Bank; the Country Strategy Paper of the African Development Bank; and the Country Cooperation Framework of the U.N. Development Program.

[46] One reason that the Bank claims that there has been a sharp decline in conditionality is that it has re-packaged its conditions in "guidelines for engagement" for some middle-income countries. While these "guidelines" are not technically conditions, they operate just like conditions in the sense that governments can only obtain financing to the degree that they abide by the guidelines.

[47] World Bank CAS for India, 2004.

[48] See "Report to the Executive Directors on Bank and IDA Operations (through June 30, 20095)," World Bank/IDA, 15 August 2005, Attachment I, page 5. The Bank also requires the government to issue decrees relating to electricity tariffs, petroleum prices, regulatory frameworks for petroleum and postal services, and administration of petroleum businesses and ports and logistics.

Executive of a "law establishing the legal and regulatory framework for the water supply and sanitation sector" (presumably one permitting privatization) and pending the government's offer of a performance-based contract to a private operator for the management of the UFW (Unaccounted-For-Water) reduction program in Montevideo.

2. Project Lending

a. Urban Water

In some countries, the World Bank's water privatization schemes face implacable opposition. For instance according to the World Bank's water strategy for Pakistan, the government of **Pakistan** was pressured by labor unions and NGOs to reject privatization of Karachi's water system and eventually the project was scrapped following a decision by Sindh High Court that water is a national asset and cannot be handed over to foreign countries. The case is still pending in Supreme Court of Pakistan, while at the same time, water privatization is being introduced in Lahore.

Against widespread public opposition, the World Bank and some allies in the government have promoted private provision in **Ghana** for years. The World Bank's Urban Water Project (July 1, 2004) provides support for expanding and rehabilitating the water system, paying the private operator,[49] providing capacity-building, technical assistance and severance payments. The private company will operate the 85 urban water supply systems of the Ghana Water Company Ltd.

Major water-related lending operations in **Honduras, Brazil, Mexico** and in **Argentina** are designed in order to allow many municipalities that meet eligibility criteria to request financing for public or private water provision.[50] In most cases, preferential financial support will be provided to utilities that operate on a commercial basis.

Project loans generally include a "Strategic Communications," or public relations component. In order to advance the prospect of a public-private water contract in **Tanzania**'s capital, the British aid agency supported the Adam Smith Institute's production and dissemination of a video, saying that: "Our old industries are dry like crops and privatization brings the rain." (*London Guardian*, 25 May 2005)

Powerful donors and creditors required that the government of Tanzania privatize the water supply in the capital, Dar es Salaam, or lose access to financing. On December 30, 2002, the Bank placed a requirement on the release of a loan installment – namely that "The Borrower has brought DAWASA (Dar es Salaam Water Supply and Sanitation) to a point of concession/lease." In 2005, after privatization, the government of Tanzania charged its private water supplier, the U.K. firm, Biwater, with malfeasance, withdrew from its contract with the firm, and kicked Biwater executives out of the country.

Ideally, representative governments would determine the appropriate modalities for water supply in a participatory manner. However, a necessary component of any privatization package is a "strategic communications" program to persuade citizens to drop their opposition to water privatization processes. Hence, these programs supplant democratic processes, where they exist.

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[49] The private operator will have a 5-year management contract. The project will pay 100 percent of the private operator's fees in the initial four years of the contract and 75% of its fees in year five. In year five, the operator is expected to obtain 25% of its fees from the improved cash flow of the urban water systems.

[50] Honduras: Barrio Ciudad Project, May 2005; Brazil: Bahia Integrated Urban Development Project, June 2005; Mexico: Modernization of the Water and Sanitation Sector – Technical Assistance Project, 7 July 2005; and Argentina: Buenos Aires Infrastructure Sustainable Investment Development Project, November 2005.

b. Rural Water

Due to the fact that liberalization and decentralization often has adverse impacts on basic service delivery systems, donors and creditors have spent billions of dollars on Community-Driven Development (CDD) and Social Fund (SF) projects. CDD and SF projects usually finance communities engaged in contracting out health, education and infrastructure services. In many countries, these projects provide the main source of finance for rural water supply; in Ethiopia, they provide 40% of all rural water.

According to the World Bank's evaluators, only one in every four water components of CDD and SF projects are viable.[51] The projects are also unregulated and, hence, subject to abuses that regulation is designed to curb.

Nevertheless, the projects are being scaled up in Africa, notwithstanding the fact that the World Bank's evaluators have declared that these programs often have negative outcomes.[52]

The draft Annual Review of Development Effectiveness (ARDE) 2004, prepared by the World Bank's evaluators, finds that CDD and SF projects have failed to effectively target beneficiaries. The ARDE stated:

The welfare impact of some social development activities has typically been minimal. The experience with community development shows that despite sophisticated targeting mechanisms, the poorest and most vulnerable generally appear to have been missed while the better off among the community have gained more of the benefits... The Bank has encountered similar difficulties in its social fund activities. Where social funds have accounted for a substantial share of public expenditure, such as in Bolivia, Honduras, and Nicaragua, they have distorted the efficiency of resource allocation and have negatively affected sectoral and budgetary planning. And where community development projects have been implemented by setting up parallel structures for community participation rather than by working through local governments, they have actually weakened the capacity of local governments and the decentralization process.

Due to this finding, the U.S. Government representative on the World Bank's Board of Executive Directors requested an audit of these operations. European representatives shot down this proposal.

c. Adaptable Program Loans

Adaptable program loans (APLs) represent a significant, long-term intervention aimed at changing the structure and incentives of water utilities in a country. The examples of Ghana and the Philippines are provided below.

In general, resources are provided for communities that opt for private provision.

Ghana. A $27.5 million Community Water and Sanitation Project (CWSP) II (1999) is part of a nine-year series of adaptable program loans (APL) being implemented in three, 3-year phases. The purpose of the CWSP II is to increase water and sanitation service coverage to about 550,000 people in villages and small towns in four regions.

Philippines. Between the years 1998 and 2010, the Philippine APLs seek to attract private participation in many of the approximately 1000 Local Government Units (LGUs) in which municipal offices manage town water system. They aim to increase service to 90% of the population, compared to the current estimate of

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[51] "Efficient, Sustainable Service for All? An OED Review of the World Bank's Assistance to Water Supply and Sanitation," OED, World Bank, Report 26443, September 1, 2003.

[52] See the work of Judith Tendler, Massachusetts Institute of Technology (MIT),, "Why are Social Funds so Popular?" in Yusuf and Evenett, eds., *Local Dynamics in an Era of Globalization: 21st Century Catalysts for Development,* World Bank, 2000 or S. Dossani, "Sideswiping the State: Social Funds and the Future of Health, Education and Water Services," CNES, June 2002.

55% to 60%. Many communities dropped out of the program due to high tariffs.

d. Natural resource protection

In **Brazil**, the Bank closed two projects toward the end of fiscal year 2003: Prodeagro in Mato Grosso and Planafloro in Rondonia which aimed to manage the development and protection of the Amazon basin in Rondonia and improve natural resource management through, among other things, a land-use zoning system in the two states. However, according to the CAS completion report, "zoning laws failed to take into account sufficiently the interests of many stakeholders in the Amazonian frontier and that the zoning was largely ignored by private agents."

3. Technical Assistance (TA)

In **Peru**, an the Inter-American Development Bank (IBD) loan would provide resources of about $1 million in technical assistance to local governments to assess the feasibility of private water provision. The Mayors who find that private provision is not feasible, repay $1 million in costs for the feasibility study. For Mayors who find that private water provision is feasible, the money is a grant. Mayors need major incentives to stand down the widespread opposition to privatization across Peru.

In **Honduras,** the World Bank's Barrio Cuidad Project (May 27, 2005) involves transferring responsibility for water and sanitation from the National Water and Sewerage Authority to ten municipalities by September 2008. The municipalities can procure technical assistance to design viable water and sanitation projects with cost recovery and collection of revenue streams. Once the designed projects are approved, the TA costs are folded into the loan. If denied financing, the municipality would repay most of the TA costs. Municipalities are responsible for delegating service delivery to public or private entities. In this case, the municipalities are required to either commercialize or privatize their water and sewerage systems.

In both countries, guarantee facilities are available to provide assurance to private providers.

Studies of the feasibility of private provision are mechanisms to "tie" aid. For example, the Japanese government may approach another Asian government with a list of privatization priorities and provide resources for studies of the feasibility of privatization, which its firms bid on. At the Asian Development Bank, U.S. firms don't even bid if Japanese firms perform feasibility projects. Once the feasibility is established, they know the Japanese firm will win the project bid.

4. Extending Guarantees to Private Corporations

Private lenders and investors in infrastructure projects seek to protect themselves from risks by obtaining guarantees from export credit agencies, private insurers, and multilateral institutions. Such guarantees shift private sector risk onto taxpayers – precisely the reverse of what privatization proponents promise for greater private sector participation in services.

Several donors created the "Private Infrastructure Development Group Trust" which will provide partial guarantees as well as the services of GuarantCo -- a facility that will guarantee local bond issues and local government investments involving the private sector. The World Bank group also created a Municipal Fund, which has piloted several municipal operations without "sovereign guarantees," the guarantees that are backed by central governments.

As discussed on page 5-6, exchange rate or currency risk has caused the demise of many water privatization schemes. For instance, in Manila, when the peso was devalued in 1997, the private water providers' debt (denominated in dollars) ballooned to about 8 times its original level. In **Honduras**, the government agreed to take on the enormous responsibility for currency risk in the Barrio Ciudad water project (May 2005).

The World Bank's private sector affiliates, the IFC and MIGA, offer two types of guarantees[53]:

***partial credit guarantees** cover all events of non-payment for a specified part of financing. This helps to extend maturity periods, which is often significant in obtaining longer-term financing for large construction projects.

The IFC's credit enhancement, or guarantee, resulted in a three-notch upgrade for a bond issue by the water and wastewater concessionaire for the District of Barranquilla, Alcantarillado y Aseo de Barranquilla (AAA) of Colombia.

***partial risk guarantees** cover government obligations spelled out in agreements with the project entity and ensure payment in the case of debt service default resulting from non-performance of contractual obligations undertaken by governments or their agencies in private sector projects.

III. Trade in Water Services

A. Coherence between policies of the IMF, World Bank and WTO

Subsequent to their 1996 Cooperation Agreement, the IMF, World Bank, and WTO collaborate in the globalization enterprise. All three institutions foster the progressive liberalization of trade in services, such as water supply and sanitation, and goods. The IMF focuses on the overall policy framework; the World Bank, on development and sectoral trade issues; and the WTO, on the rules for liberalization and transparency.

As they learn about the World Trade Organization, many people make the mistake of thinking that the organization deals only with trade. In fact, it deals with wide-ranging commercial issues.

One of 18 WTO trade agreements, the General Agreement on Trade in Services (GATS) restricts government regulation or subsidies of service providers, especially if they provide advantages that might discriminate against an existing or potentially existing foreign competitor. In a number of ways, it is the most far-reaching trade agreement[54] because:

- GATS negotiations at the WTO are never-ending, and with no approval by legislatures.
- GATS is being used as the starting point for bilateral and regional trade agreements.[55]
- GATS covers trade, but also investment – a right to establish commercial presence.
- GATS rules can reinforce policies of the IMF and World Bank that promote privatization of services.

Through the application of its rules, or disciplines, to 12 sectors and about 160 sub-sectors, the GATS aims to progressively liberalize economies. Water services are categorized in the "environmental services" sector. GATS rules, if implemented, would affect services that are traditionally regulated or provided by state and local governments. GATS is the most "local" global agreement.

Given the manner in which the GATS curtails the power of governments in nearly-irreversible ways, GATS negotiations should be transparent and respect democratic process. This has not occurred. Although the GATS is a multilateral agreement, negotiations occur on a secretive, bilateral basis. The European Union claimed that it

[53] Other types of guarantees include: (1) subsovereign guarantees in states/municipalities; (2) enclave guarantees projects in poor (IDA-only) countries which generate foreign exchange and is isolated from the host country economy (3) IBRD partial risk guarantees ensures compensation to lenders up to 25% of the exposure of lenders/investors if the host government violated its contractual obligations (e.g. war or expropriation).

[54] See Robert Stumberg, "What is the GATS," Harrison Institute, Georgetown Law School, undated.

[55] The US government has negotiated regional (e.g., NAFTA and the proposed CAFTA) and bilateral (e.g., US-Chile, US-Singapore) trade agreements that open up virtually all basic services to U.S. investors.

had no interest in the liberalization of water markets by developing countries. Subsequently, the European Union's requests to 109 countries for liberalization of water markets was leaked to the public revealing that the EU was pressuring over 70 countries (e.g., Tanzania, Mozambique and Bangladesh) to open up their services markets (including drinking water and energy) to European services corporations. Without transparency, deception is inevitable.

When a government's human rights norms and trade rules come into conflict, the conflict would not be resolved in a domestic court, but rather in a secret international trade tribunal, beyond the public "eye." If a particular law or regulation is contested by a foreign corporation, trade tribunals may apply a 'necessity test' that would compel governments to *prove* that certain laws and regulations are the "least burdensome" [to private firms] to ensure the quality of the service. Under the GATS, regulations must not be "more burdensome than necessary" [to private investors] to ensure the quality of a utility service. Given the prospect of a loss in sovereignty and policy flexibility due to applications of the GATS, the California legislature wrote to the U.S. Trade Representative, saying:

The Trade Task Force of the UN Millennium Project [coordinated by Ernesto Zedillo (Mexico) and Patrick Messerlin (France)] concludes that given the complexities and uncertainties relating to the water sector, "Each WTO Member should assess for itself whether liberalization of these [environmental] services serves its development interests more than liberalization of other services and what sort of regulatory flexibility it requires."[56]

[56] UN Millennium Project Trade Task Force Report, Chapter 4: Services, p. 123.

Box 2

Pincers on the Bolivia's Public Sector: Financing and Trade Agreements[57]

As a condition for a 1999 loan to the government of Bolivia (GOB), the IMF promoted the privatization of public enterprises, including the water utility in Cochabamba. Ultimately, the government entered into an agreement with the consortium, Aguas del Tunari (AdT), of which International Water Co., a subsidiary of Bechtel Corporation, was the largest shareholder. AdT hiked water prices to a level unaffordable by ordinary Bolivians. Families living on the local minimum wage of $60 per month were billed up to 25 percent of their monthly income. Since AdT's contract granted the company exclusive rights to water supply, peasants were charged for withdrawing well water. During 2000, "water wars" erupted, killing one and injuring about 175 persons. AdT was forced to withdraw from its contract.

In February 2002, AdT filed a case with the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) based upon a bilateral investment treaty (BIT) between Bolivia and the Netherlands, where Bechtel's subsidiary, International Water Co., established a presence in order to make use of the treaty. AdT and Bechtel seek $25 million in damages for breach of its 40-year, multi-million dollar contract.

In February 2005, the Bechtel Corporation was handed a powerful victory when a secretive trade court announced that it would not allow the public or media to participate in, or even witness, proceedings in which Bechtel is suing the people of Bolivia, South America's poorest nation.

[57] "Secretive World Bank Tribunal Banks Public and Media Participation in Bechtel Lawsuit Over Access to Water: Citizens excluded from $25 million suit against Bolivia for company's failed water privatization scheme," Center for International Environmental Law, News Release February 12, 2003. From a chronology of events, see: http://www.pbs.org/frontlineworld/stories/bolivia/timeline.html

In contrast, in the case of Suez's claim against Argentina, the World Bank's trade court decided on 19 May 2005 that it had the power to accept "friends of the court" briefs from civil society, even in the face of objections from parties. In its determination, the tribunal said, "these systems provide basic public services to millions of people and, as a result, may raise a variety of complex public and international law questions, including human rights considerations."[58] However, as in the Bechtel case, the Suez case will be closed to the public.

IFI Conditionality and Over-reach. Recently, the IMF and World Bank conducted reviews of their conditionality, including their trade conditionality. Overall, the number of IMF conditions has not declined over time, however, the institution reports a decline in trade conditionality. Overall, the World Bank reports (misleadingly) that the number of its conditions has declined[59] and that "the frequency of trade conditions and benchmarks has gradually declined to the point that it is no longer a relevant component.[60]

The IMF and World Bank are misrepresenting their engagement in trade. A significant part of the conditions of the IMF and World Bank are trade-related, in the sense that they correspond to issues under negotiation at the WTO, such as trade in services.

Indeed, on April 11, 2005, the Board of the IMF directed the staff to *increase* the coverage of trade in services, including water services, as part of the institution's oversight, or "surveillance," of governments' policy regimes.

Box 3

Defining Trade Conditionality

The IMF's Definition of Trade-Related Conditions

*Customs Reform
*Quantitative Restrictions
*State Trading
*Tariffs and Surcharges
*Licensing
*Exemptions

The World Bank's Definition of Trade-Related Conditions

*Export Development and Competitiveness
*International Financial Architecture
*Regional Integration
*Technology Diffusion
*Trade Facilitation and Market Access

Other conditions relate to the "Singapore" issues that, at the WTO's Fifth Ministerial in Cancun, developing countries refused to negotiate; these are the issues of investment, competition and transparency in government procurement. As a top priority, the IMF and World Bank implement the Singapore issues. In 2002, the World Bank launched a new generation of structural adjustment programs aimed at liberalizing investment and boosting competition.

The IFIs are promoting not only transparency in government procurement, but also liberalization

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[58] See CELS, ACIJ, CEIL, Consumidores Libres, and Union de Usuarios y Consumidores, "ICSID Tribunal Affirms its Power to Admit Amicus Curiae Participation," June 2005.

[59] The number of conditions rose in low-income countries, e.g., Benin moved from 58 conditions in its first PRSC to 130 conditions in its second PRSC, according to Eurodad. One reason that the number of conditions declined in middle-income countries is that the Bank employed "guidelines of engagement," which work like conditions in the sense that if Indian states do not adhere to the "guidelines," their access to resources is cut. The Bank does not count the trigger conditions of CASs as conditions; nor does it count the ex ante conditionality employed by the Country Policy and Institutional Assessment.

[60] See "Review of World Bank Conditionality: Content of Conditionality in World Bank Policy-based operations: Public Sector Governance, Privatization, User Fees, and Trade," PREM Group, Background Paper 4, p. 21. The paper also reports that "the emphasis of the minimal remaining conditions and benchmarks has shifted to trade facilitation, focusing on issues such as certification, improving quality and removal internal restrictions to external trade."

in procurement. When asked by what authority the World Bank is implementing (and going beyond) issues that were rejected for negotiation in Cancun, World Bank President Paul Wolfowitz said, "Just because the issues were rejected doesn't mean that they aren't a good idea."[61]

Objections by Borrowing Countries to Liberalization of Services. The advice or conditionality of the IMF and World Bank may call for deeper, broader, or faster market access concessions compared with what countries would undertake their schedule of GATS commitments.

The IMF hears several objections by governments to making commitments on services trade. First, capital account liberalization (CAL) must accompany liberalization of trade in services and CAL increases economic volatility and shocks, as it did in the East Asian financial crises of 1996-97. These crises spawned massive poverty. The IMF states, "Liberalization of trade in services will require the lifting of any exchange controls on current payments for scheduled services transactions and income repatriations…"[62]

Second, privatizing domestic services, such as water supply and sanitation, may raise prices and, thus, have a significant adverse impact on household expenditures. Third, "the local establishment of foreign service providers… may, of course, displace unskilled labor or put at risk the universal provision of utility services. Mitigating these risks requires careful sequencing and pacing of services liberalization, particularly in relation to broader regulatory, fiscal and social reforms."[63]

Indeed, privatization has spawned broken labor contracts and significant levels of unemployment. In Peru, workers for private water firms make less than half the salary of workers for public water agencies, leading to a legal battle for "equal pay for equal work."

Finally, countries are concerned that, as a result of this liberalization, they do not obtain negotiating credit in the ongoing negotiations.

Box 4

If the GATS was "Development Friendly, " It Isn't Anymore

According to Bhagirath Lal Das,[64] outcomes of the Hong Kong Ministerial Conference may be threatened by proposals that would drastically change the format of the WTO services negotiations in ways that appear to be inconsistent with the GATS. Thus, the proposals may lead to the kind of rebellion seen in Cancun when developing countries rejected the proposal put forth by developed countries to negotiate "new" issues: investment, competition, transparency in government procurement, and trade facilitation.

Interestingly, the same countries that "led the charge" in favor of the "new" issues – the European Commission and Japan -- are leading the charge for changing the GATS negotiating format. They are joined by Switzerland and Korea. The proponents have a feature in common: they all have deep interest in avoiding pressure on them for eliminating or reducing their agricultural protection. Now, as Lal Das suggests, "their proposals will keep developing countries busy in defense of the service sectors with limited time and energy for important matters like agriculture. At the Cancun Ministerial, attention was diverted from agriculture while the "new" issues remained on the table.

[61] Conversation with the author, Thursday, September 22, 2005.
[62] A. Lehmann, N.T. Tamirisa, and J. Wieczorek, "International Trade in Services: Implications for the IMF, IMF Policy Discussion Paper, PDP/03/6, 2003.
[63] Ibid., p. 20.

[64] "Services proposals rocking the WTO boat once again," South-North Development Monitor SUNS, Third World Network, 18 October 2005.

The proposed changes in the negotiating format would put considerable pressure on developing countries to accelerate their commitments to open up greater numbers of sectors to foreign participation. At this stage, the number of commitments under the GATS is viewed as woefully inadequate. *(As of mid-2005, about 60 countries had made binding commitments to liberalize wastewater treatment and wastewater management.)*

Such pressure would militate against the more flexible negotiating approaches used to date:

Positive list approach. The GATS is known as being development-friendly because negotiations occur on the basis of a "positive list" approach. With this approach, governments can elect which sectors to schedule commitments in. This is in contrast to the "negative list" approach generally taken in bilateral and regional trade and investment agreements in which governments are automatically committed to liberalizing all sectors unless they take action to limit their commitments in selected sectors. For instance, a negative list approach was taken in the Central America Free Trade Agreement, which will leads to sweeping and irreversible liberalization of services sectors, including water-related sectors.

Theoretically, the positive list approach provides governments with considerable flexibility with regard to the question of which service sectors they "bind" under the GATS and which limitations they make with regard to these binding commitments to liberalization. ***Each government can choose to liberalize and privatize services, without making binding commitments under the GATS.*** However, the IFIs make the case that governments will attract foreign investment if they bind service sectors in the context of trade and investment agreements, such as the GATS. In practice, this has not proved true.

Binding commitments under the GATS makes liberalization nearly irreversible and, as a result, service providers have a relatively permanent and predictable presence in a host country.

It is no accident that WTO negotiations on services run parallel to initiatives by donors and creditors to promote the privatization of services. The WTO's General Agreement on Trade in Services (GATS) excludes services that are supplied in the "exercise of government authority." Hence, many people assume that public services, such as water provision, are excluded from the jurisdiction of the GATS. However, the GATS defines services that are supplied in the "exercise of government authority" as those supplied *neither on a commercial basis, nor in competition with one or more service providers*.[65]

Commercialization. For many years, the IFIs (and the bilateral donors) have systematically required that governments introduce commercial pricing to the basic services sector – health, education and water. Such commercialization by the IFIs facilitates the application of the GATS.

Competition. As the Bank water expert, John Briscoe, puts it "The one over-riding lesson from the global revolution in the provision of public services is that competition matters."[66]

However, water is a "natural monopoly," meaning that there is generally no competition in provision of water services, particularly in urban areas with piped networks. Hence, regulation rather than competition provides discipline for private providers.

[65] Article I:3(b) of the GATS should be amended to read: "'services' include any service in any sector except services supplied in the exercise of governmental authority *as determined by the national laws and regulations of each member."*

[66] "Pakistan's Water Economy: Running Dry, The World Bank, June 23, 2005 draft, p. 91.

Should governments choose to commit to liberalizing water services in the context of GATS, government authority and capacity to protect the natural environment and the well-being of citizens would be seriously constrained. It would be constrained because, as the WTO says, the GATS must achieve a balance between two potentially conflicting priorities: "expanding trade and the rights of governments to regulate." The rules of the GATS are biased in favor of expanding trade by protecting the rights of private investors.

Where a service sector is subject to the jurisdiction of GATS, it is "locked in," meaning that it is difficult or impossible to re-introduce a government role in provision of such services at any future point in time.

When policy space and flexibility are constrained, a government cannot adequately fulfill its sovereign obligations to guarantee universal service obligations. Many governments have rotated modalities of service delivery. That is, they have switched back and forth from private to public provision. This flexibility is imperative for governments to protect the human right to water.

For instance, if the Government of Argentina (GOA) committed to liberalizing water supply under the GATS, then it might not have the option of renationalizing the water. For instance, Suez has withdrawn from its service contract in Buenos Aires and filed a claim against the GOA at the World Bank's international trade tribunal. In order to renationalize water provision, the GOA would need to compensate any and all private parties that might be harmed by the decisions, which could be a costly proposition.

B. Decentralization and Trade Authority

When lending operations take place at a regional or decentralized level, they may elude the close scrutiny of legislatures and interest groups at the national level. Increasingly, the lenders are using trade-based subregions[67] as a basis for their lending operations or local government units.

Decentralization is generally viewed as a critical means by which to execute tasks at the level of government as close as possible to affected groups in order to build accountability between governments and citizens (i.e., the principal of "subsidiarity").

However, although *national* authorities negotiate GATS commitments, trade rules are also enforced on the domestic regulatory activities of "*regional*, or *local* governments" and "nongovernmental bodies in the exercise of powers delegated" by any and all government jurisdictions.

In an April 25, 2005 letter to the U.S. Senate,[68] three important bodies (National Conference of State Legislatures, National League of Cities, and National Association of Towns and Townships) declare that:

"State and local governmental support for free trade is conditioned by our commitment to the authority of states and municipalities to regulate land-use, health, safety, welfare, public morals, and environment measures."

C. Obstacles to Trade in Services

Whereas, tariffs (and non-tariff barriers) block trade in goods, certain domestic laws and regulations are the obstacles to trade in services*. The IFIs pressure governments to* ***unilaterally*** *enact GATS-compliant laws and*

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[67] An example of a trade-based subregion the West African Economic and Monetary Union (WAEMU) which overlaps with the World Bank's Regional Integration Assistance Strategy (RIAS) for the Region. The members of the Central American Free Trade Agreement (CAFTA) overlap with the Plan Pueblo Panama region where donors and creditors are financing cross-border projects and programs.

[68] The letter is addressed to Senator Charles Grassley, Chair of the Senate Committee on Finance.

regulations. This means that developing countries may not form a body of "public interest" laws and regulations, as industrialized countries have done.

Governments' "right to regulate," under the GATS is qualified. "The requirement that regulatory measures be no more "trade restrictive" than necessary is the means by which an effort is made to

"The proposed rules on "domestic regulation" could allow foreign corporations and governments to challenge a wide range of California health care regulations as `more burdensome than necessary'…Drinking water standards, pesticide application standards, renewable energy laws and toxic waste laws could also be challenged… These implications are very troubling and strike at the heart of our ability to regulate in the public interest. …The European Union not only seeks market access to our service sectors, but explicitly requests future limits on state and local regulatory authority."[69] *(March 28, 2003)*

What might be construed as "trade-restrictive" or "more burdensome than necessary" for investors?

1. Licensing. Corporations may find certain licensing requirements unduly burdensome. Water providers often have conditions imposed on their licenses in order to protect consumers, and breaches result in frequent consumer complaints to utility watchdogs. These licensing obligations can include: giving sufficient notice and delay before services are terminated due to non-payment, prohibitions on requiring consumers to buy related services, limitations on telemarketing, and requirements to provide pricing information in a clear and comparable way.[70]

2. Public interest standards. In the U.S., public utility regulatory commissions establish standards for regulating water utilities by, for instance, approving or denying the acquisition of a company based upon whether the company would serve the public interest. Such a "public interest" standard could be ruled "trade restrictive," as defined by trade law.

3. Cross-subsidization. ***The WTO Secretariat has highlighted that an important objective of GATS (Article VIII) is to prevent cross-subsidization from occurring across activities or sectors.*** The IFIs routinely break up cross-subsidies among service sectors, so that profitable services, such as telecommunications, are no longer subsidizing water services. Trade rules favor providing subsidies to households rather than supplying a subsidized service, such as water supply, at the point of purchase. Services that are subsidized at the point of use reach poor people, while household subsidies often do not.

The WTO's Working Party on GATS Rules is considering whether subsidy-like effects of regulatory measures could be considered a form of "income or price support" or "subsidy," which could distort trade. If so, regulatory bodies could be crippled. Already they experience "regulatory chill" – namely, an aversion to regulations that could be challenged under the GATS. When governments list sectors in their GATS schedule of commitments, they may need to inscribe subsidy limitations if they intend to employ subsidies.

[69] In February 2003, as part of the EU-U.S. GATS negotiations, the EU requested that: nine states reduce restrictions on foreign ownership of land; foreign companies and governments permit 100% foreign ownership of U.S. radio stations; and that the U.S. Postal Service end its monopoly over bulk, first-class letter delivery.

[70] Ellen Gould, Background Paper on Trade in Services, Trans-Atlantic Consumer Dialogue, October 2002

One non-discriminatory rule, "national treatment,"does not permit a government to favor domestic firms or disfavor foreign firms engaged in "like" activities. Such rules, where they apply, could require that, where a government subsidizes domestic health care or water companies, it must also subsidize "like" foreign companies.[71]

4. Quantitative restrictions. When governments include market access to water services in their list of scheduled GATS commitments, they are prohibited from using "quantitative restrictions," e.g., by restricting the quantities of water collected from lakes, rivers, and groundwater sources by private service operators. To protect water and other natural resources, governments may need to specifically schedule limitations on market access.

5. Standards for regulatory measures. The GATS stipulates that regulatory measures must be "reasonable and objective." In the U.S., water regulators take general factors into account when establishing regulatory measures: the interest of consumers, the interest of competing users, conservation of the environment, and the financial stability of the utility company. According to this trade rule, if regulators have the authority to balance all four factors, then their judgment would be deemed subjective and potentially contrary to the GATS.

[71] In 2004, in a Mexico vs US telecoms case, a WTO dispute settlement panel denied Mexico the right to use a rate structure that charged U.S. interconnections at a higher rate than it charged for domestic interconnections. Mexico had used the higher rates to subsidize infrastructure that was needed to maintain universal service obligations. Specifically, Mexico violated the provisions of the "reference paper" on telecommunications that required access to transmission facilities based upon rates that are reasonable and based upon costs.

D. Basic Services and Liberalization of Government Procurement

The IFIs are forging ahead supporting liberalization efforts precisely in those areas that, since the Cancun WTO trade ministerial, have been off-limits for negotiations – investment, competition, and transparency in government procurement. In international trade negotiations, negotiations in "transparency in government procurement" were nixed, not because <u>transparency</u> is a bad idea, but rather because it represents the "slippery slope" to <u>liberalization</u> of government procurement.

Liberalization of government procurement by central or local governments is a "back door" route to liberalizing and privatizing government services, including agricultural extension, health care, education and water services. This raises human rights questions.

Donors and creditors are increasingly providing budget support to recipient governments, which puts them in a good position to liberalize government procurement.

The market for government procurement is vast; it represents 15% of global product. Through the IFIs, Northern governments are exerting significant pressure on developing country governments to ensure transparency in, and liberalization of, government procurement. In doing so, Northern governments promote unsound estimates of benefits that could accrue to developing countries. Historically, governments have preferred domestic labor, service providers and goods with "local content," to reliance on importing foreign goods and services and expanding the pool for foreign workers.

In the U.S., states are fighting actions by the U.S. Trade Representative that would rob them of the power and authority to maintain procurement rights, including those that would protect job-creation and locally-provided goods and services from foreign take-over. Indeed, 37 states have introduced bills that would prohibit "off-shoring" of procurement and jobs.

Ghana. The World Bank forced Ghana to open up government procurement to global competition, even though this measure is beyond the scope of the WTO.[72] Although national-only procurement is a longstanding policy vehicle that governments at all development levels use to promote certain productive or employment sectors, the government agreed to sacrifice this policy instrument in order to qualify for IFI lending. In terms of development, local suppliers and workers must now compete for government contracts with global suppliers.

The conditionalities were so invasive that a World Bank Board member expressed concern that the World Bank's heavy pressure was forcing Ghana to liberalize well beyond WTO requirements, and to ask why Ghana should be the vanguard for procurement liberalization.

Malawi: In Malawi, the Bank states that it exerted "significant pressure" on the government to liberalize its procurement. A 2005 evaluation by the World Bank states that the project did not adequately assess the government's readiness for the procurement reform program, which was to be financed by 80% of a loan. There was not a strong reform champion…a steering group that could move the process. There was limited government buy-in of the Bank's proposed reform. The Bank did not pay attention to government concerns about the capacity of procuring entities and the proposed new authority. It was only after a great deal of pressure from the Bank that the Cabinet finally accepted the proposal in September 2002. Then, it was not until September 2003 that the new Public Procurement Act was passed by Parliament, two years later than anticipated.

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[72] See binding trigger of PRSC, July 2003.

IV. Conclusion

Public control of water. A UN report, "Economic, Social and Cultural Rights: Liberalization of Trade in Services and Human Rights,"[73] presented extensive evidence that, although increased foreign private investment can upgrade national infrastructure, introduce new technology, and provide employment; it can also lead to:

*The establishment of a ***two-tiered service supply*** with a corporate segment focused on the wealthy and an under-financed public (or NGO) sector focusing on the poor;

*An overemphasis on ***commercial objectives at the expense of social objectives***, which might be more focused on the provision of quality health, water and education services for those that cannot afford them at commercial rates;

*An increasingly large and powerful private sector that can threaten the role of the government as the primary duty bearer for human rights by ***subverting regulatory systems*** through political pressure or the co-opting of regulators.

Each of these impacts drives the process of "apartheid" in services.

Public control of water ends when there is a significant level of "regulatory capture" by transnational corporations perhaps aided by, "expert" or "external" regulation and control of water supply. Under such circumstances, governments lose the power to ensure the right to water. Although weakened, the U.S. system of regulating water is still a model for information disclosure and public participation and control of water systems.

Democratic governance. Harvard Professor Dani Rodrik recommends one way to preserve democratic space:

The broader the sway of market discipline, the narrower will be the space for democratic governance… International economic rules must

[73] Report of the High Commissioner, 15 June 2002.

incorporate "opt-out" or exit clauses [that] allow democracies to reassert their priorities when these priorities clash with obligations to international economic institutions. These must be viewed not as 'derogations' or violations of the rules, but as a generic part of sustainable international economic arrangements."[74]

Such "opt out" clauses are insufficient to democratize the governance of water. The members of the IFIs and WTO (and bilateral and regional trade agreements) should cease designing financing and trade arrangements that, like "pincers," force water privatization at national and subnational levels.

Donors and creditors should cease attaching conditions requiring private provision of water to their operations. This will not happen until the "conflicts of interest" implicit in IFI policies are rooted out through profound changes in the governance of these institutions.

Members of the WTO insist that the organization does not force privatization of anything. However, the GATS is basically a catalogue of actions that governments are constrained from taking. Hence, as the "hands" of governments are tied, corporate investors are empowered to penetrate the water sector.

The modalities for supplying water should be subject to all of the controls of democratic processes, where they exist. One modality -- the "public-public partnership" between two public water systems has shown promise.

Stop trade agreements that erode sovereignty. Basic services should be excluded from the jurisdiction of the GATS. As it is, when a government's human rights norms and trade rules come into conflict, the conflict is in a secret international trade tribunal, beyond the public "eye," instead of in domestic courts. Such a practice, usurps public control of water.

Governments can liberalize and privatize water systems without making commitments under the GATS. If governments do make commitments to liberalize the water sector under the GATS, they should be encouraged to limit their commitments in ways that permit government subsidies for water services and give preference to domestic providers and workers over foreign transnational corporations.

Any GATS-related test of "trade restrictiveness," as it applies to the domestic regulations of governments, should take into account states' obligations under human rights law. Trade law should safeguard the need to use mechanisms such as cross-subsidization and regulation of corporate governance to ensure that the poor, vulnerable and marginalized do not suffer discrimination in accessing services in liberalized markets.

The rigorous struggle taking place between the U.S. Trade Representative (USTR) and U.S. state and local governments is possible due the country's federal system of government.[75] [The communications between U.S. state and local governments and the central government are being collected on the CNES website.[76]] Subnational governments in other countries with federal systems of government (e.g., such as Argentina, Brazil, India, Mexico, and Switzerland) should be aware that, like the U.S. states and localities, they can play a major role in the shaping of trade agreements.

The USTR is bound to consult with the states and local governments before making commitments in international negotiations. Ultimately, some lawyers say that, unlike the unitary system (e.g., France, the U.K., Italy,

[74] "Four Simple Principles for Democratic Governance of Globalization, Harvard University, May 2001.

[75] Federal and unitary systems differ in the way legal power is distributed. In unitary systems, it stems from the central government, whereas in a federal system, certain powers are exclusively reserved for state, regional or local governments. Consequently, the subnational governments of federal states are more powerful than those of unitary states.

[76] See: CNES's webpage "How Trade Agreements Erode Sovereignty:" http://www.servicesforall.org/html/trade_agreement_menu.shtml

China, North Korea), the federal system of government is a barrier to trade.

In addition, transnational corporations (TNCs) should be subject to enforceable codes of conduct in their operations. Importantly, citizens in countries where TNCs are operating should have the right to sue them. Some of the most prominent water companies have track records of corrupt practices.

The market should be a servant, not a master, of development. If this were the case, trade rules would be forged within the context of human rights law, not the other way around. As it is, trade law currently trumps human rights law, since the former is enforceable and the latter is not.

Ultimately, all trade law should be subject to binding international human rights law.

The major shareholders of the IFIs are the same countries that sit across the table from developing countries at trade negotiations. As it is, developing country trade ministers negotiate for trade advantages that finance ministers sacrifice in their negotiations with donors and creditors. This "merry-go-round" can stop when developing countries and their citizens take a stand.

Attachment

TECHNICAL ASSISTANCE PROVIDED BY THE IFIs

IMF. The IMF delivered about $80 million (10% of the total administrative budget) in technical assistance (TA) in fiscal year 2004 (excluding training) for the purposes of strengthening government capacity to formulate policies and to assist governments in the design of appropriate macroeconomic and structural policy reforms. (Privatization is a structural reform.) Two-thirds of TA is delivered to countries with a per capita national income of less than $1000.[77]

The effectiveness of IMF TA has been hampered by the fact that, at times, IMF staff did not speak the native language of the countries in which they worked. Moreover, the IMF frequently releases its technical assistance recommendations without discussing them with the national authorities.

Technical assistance is evolving in ways that support its surveillance or oversight of government policies, including through the "Policy Support Initiative" (PSI). In a recent move that enlarged the IMF mandate, the institution launched the PSI, which will give the IMF the power to provide "signals" to the financial community about the appropriateness of a government's policies, *even when the government does not have an active IMF operation*. Hence, the IMF can more systematically promote its privatization agenda.

World Bank Trust Funds for Technical Assistance[78]

In 2004, the World Bank was responsible for the disbursement of over $3 billion through the 903 trust funds that it manages. This sum represents over ten per cent of total World Bank Group activity. The Bank has about ten water-related Trust Funds. One fund -- the Public-Private Infrastructure Advisory Facility (PPIAF) -- was launched in 1999, an initiative of the UK, the World Bank and Japan to "improve infrastructure through private sector involvement." The PPIAF is focused significantly on advancing water privatization. Activities include "policy reform, infrastructure development strategies, capacity building, pioneering transactions, consensus building and emerging best practice." By June 2005, the PPIAF "had funded the drafting of 43 sets of laws and regulations related to reform strategies and regulation for the infrastructure sector as a whole or for a particular sub-sector."

By March 2005, it had disbursed $89 million for 389 activities in 91 countries. The PPIAF is governed by a "program council made up of contributing donors," open to organizations that contribute a minimum $250,000 per year. The structure is designed to ensure "its accountability to participating donors," and is chaired by the Bank vice-president for infrastructure.

77 "Evaluation of the Technical Assistance Provided by the IMF," Independent Evaluation Office, IMF, January 31, 2005.

78 This section is excerpted from J. Powell, "Bretton Woods Update #47," Bretton Woods Project, September 16, 2005.

Funds are fairly evenly split between initiatives in the water, energy, transport and telecommunications sectors; sub-Saharan Africa has been the largest recipient (25 per cent of funds disbursed in 2005).

Promoting Trade in Water-Related Services through the Integrated Framework

The WTO chairs the Integrated Framework for Trade-Related Technical Assistance (IF), which brings together multilateral agencies (i.e., the IMF, the World Bank, the International Trade Commission, UNCTAD, UNDP, and WTO) and bilateral and multilateral donors and creditors to assist least-developed countries (LDCs). The IF is supposed to build the capacity of each government as it: 1) integrates trade (including trade in services) into national development plans such as the PRSPs; 2) prepares a Diagnostic Trade Integration Study (DTIS) identifying its needs; and 3) receives trade-related technical assistance to help expand exports and foster development. Agencies are seeking to expand IF clients to the 68 countries that receive financing from the World Bank's soft loan arm, IDA. The IF is being expanded despite the fact that evaluations by the Netherlands and by the Bank's Operations Evaluation Department note significant problems with the IF, not the least of which is the IF's top-down mode of operating that undermines involvement and ownership by governments and citizens.