

**Contractualism as a Reform and Governance Tool:
A Critical Analysis of Urban Water Management Reforms in
Ghana**

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Abstract:

The paper examines critical governance and value for money (VFM) concerns and complexities in the State Owned Enterprises (SOE) reform program in Ghana. It particularly examines the potential trade-offs inherent in the theory regarding democratic governance and the New Public Management (NPM) professed belief in VFM empirical indicators. This analysis is informed by the concern that in the SOE reform process, democratic concerns and processes like accountability, rule of law, transparency are often circumvented or marginalized in favour of VFM indicators like efficiency, efficacy and economy (3Es). The paper uses the Ghana Water Company Ltd (GWCL, the ‘Grantor’), which has been the subject of massive reforms since 1983 as a case study. Once touted as a strategic SOE that should remain under public ownership and control, the GWCL signed a five years management contract with a private water company, Aqua Vitens Rand Ltd (AVRL, the ‘Operator’) for the management of urban water in 2005. The analysis is based on data gathered from multiple sources including semi-structured interviews, discussions with managers of GWCL/AVRL and analysis of internal and external documents. Such a comprehensive analysis will contribute to the limited research and knowledge on the potential value conflicts in SOE reforms in Ghana in particular and developing countries in general.

Keywords: State Owned Enterprises, Contractualism, Developing Countries, Value for Money, Performance Evaluation, Democratic Governance, Management Contract, Ghana

1. Introduction:

The drive to increase productivity, enhance performance, do more with less and instill a results oriented mentality in public administrators and agencies has become the *raison d’être* for public management reform. This drive represents a positivist thinking and approach to public agency reform that is based on a rational, objective and even scientific process (Dobuzinskis 2006) of formulating and implementing reform policies and programs to achieve set targets. While there is probably a consensus on positivism however, it raises various *ex-ante* theoretical/normative and *ex-post* empirical and practical challenges especially with SOE reform. This challenge usually centers on how to deal with not only what is, but what ought to be the best way to achieve democratic governance imperatives such as equity, fairness, accessibility and social justice in the SOEs reform process while at the same time achieving their VFM or commercial objectives. This contradiction, we argue, stems from the nature and conflicting commercial and socio/political objectives of SOEs.

Due to their complexity and uniqueness in different countries, there is no single or universally accepted definition of SOEs; as such they have been called Parastatals, Public Agencies, Public Enterprises in Ghana (Adjei 2006), Crown Corporations in Canada (Bozec 2010 and 2004) and public agencies or quangos in most developed countries (Verhoest et al 2004; Verhoest et al 2010, Pollitt and Talbot 2004). For the purposes of this analysis however, SOEs would be defined as “arm’s length corporate entities established to pursue public policy and commercial objectives” (Bozec et al 2004, p. 79). SOEs are primarily engaged in the provision of public goods and services to the citizen/client, are owned by the public and established by public law. Also, they operate under a government Ministry/Minister and employ private sector style managerial and operational features like a Board of Directors and a Chief Executive (Bozec et al 2004; Bozec et al 2010; Bozec and Dia 2007; Adjei 2006 and Appiah-Kubi 1999). We contend that it is precisely this public policy and commercial aspect, along with the demand to address the citizen/client conundrum by SOEs that make their reform particularly challenging. This is because in both intents and purposes, these commercial and governance

objectives are potentially contradictory and antithetical. This contradiction, we argue, creates “a paradoxical situation” (Radin 2006, p.93) in their quest for reform and subsequently, performance. The objective in this paper however is not to decide which model or approach is superior; but rather to examine the consequences of this paradoxical situation on performance evaluation of reformed and restructured SOEs.

In the water sector for instance, the neo-liberal and pro-market conceptualization of water as a commodity or a need that should be subjected to the principles of demand and supply like any other good has been seriously contested by the ‘water is a right’ counterargument. This therefore presents an inherent value contradiction in the reform and management of water especially in developing countries as reformers strive to reconcile the commodity versus rights values of water. At the same time, the VFM objective in water sector reforms is mostly based on full cost recovery. This involves charging commercial rates for water, billing all users (rich, poor, rural, urban) market rates and treating water just like any other good, subject to the market forces of demand and supply. These VFM objectives however have serious impacts on accessibility, equity, fairness, affordability and the right to water for all citizens irrespective of economic, social or political background.

We argue that balancing and achieving conflicting goals and values in government programs, policies and institutions is not new, but is further complicated through the use of performance contracts, management contracts or what we refer to as contractualism with private operators. This is because the concept of contracts with its attendant precise identification and measurement of inputs and outcomes has roots in positivism which argues that “social realities can be known objectively, [and that] separating facts from values is both possible and desirable” (Dobuzinskis 2006, p.558) in the social sciences. The need for precision, identifiable and measurable targets, inputs and outputs which are usually guaranteed by strict legal mandates that are inherent in contractualism is premised on this intellectual foundation. Our concern is not with the high transactional costs associated with the ex ante theoretical arguments for contractualism and competing claims about cost saving with contracting in government (Boardman and Hewitt 2004). On the contrary, we are concerned with the normativity of some, if not all, of the objectives of SOE values and objectives which make it hard if not impossible for them to be precisely identified, measured and quantified, which is a core demand of contractualism. Furthermore, in view of the VFM empirical claims of contractualism, we are concerned with its ability to achieve the normative democratic governance values of reformed and restructured SOEs. Finally, we have reservations about the output concerns of contractualism which focuses on outcome and outputs while negating issues surrounding the process itself. With regards to water in particular, it has intangible spiritual, cultural and even religious values that are impossible to precisely identify, quantify and put a price tag on it. Through the use of urban sector water reforms in Ghana as a case study, the main objective in this paper is to examine whether contractualism as a reform and a governance tool can achieve both the VFM and democratic governance values of SOEs with ambiguous, conflicting and potentially contradictory objectives.

In the first section, we propose a theoretical framework for studying both the VFM and democratic governance values and objectives of public agencies based on Norton and Kaplan’s (1992) balanced scorecard and the UNDP’s (1994) governance framework. Next, a brief reform and restructuring history of GWCL is provided to establish past efforts and attempts at reform and their impact on organizational performance. The third section offers a critical analysis of the contractual relations between the GWCL and AVRL. The next two sections will each examine

the VFM and good governance performance of the pre/post reform of GWCL respectively. Finally, a summary of the reform and performance of the organization is presented that emphasizes the significance of addressing good governance concerns in the reform process as integral instead of peripheral issue.

2. *Value for Money and Democratic Governance: Towards A Theoretical Conceptualization*

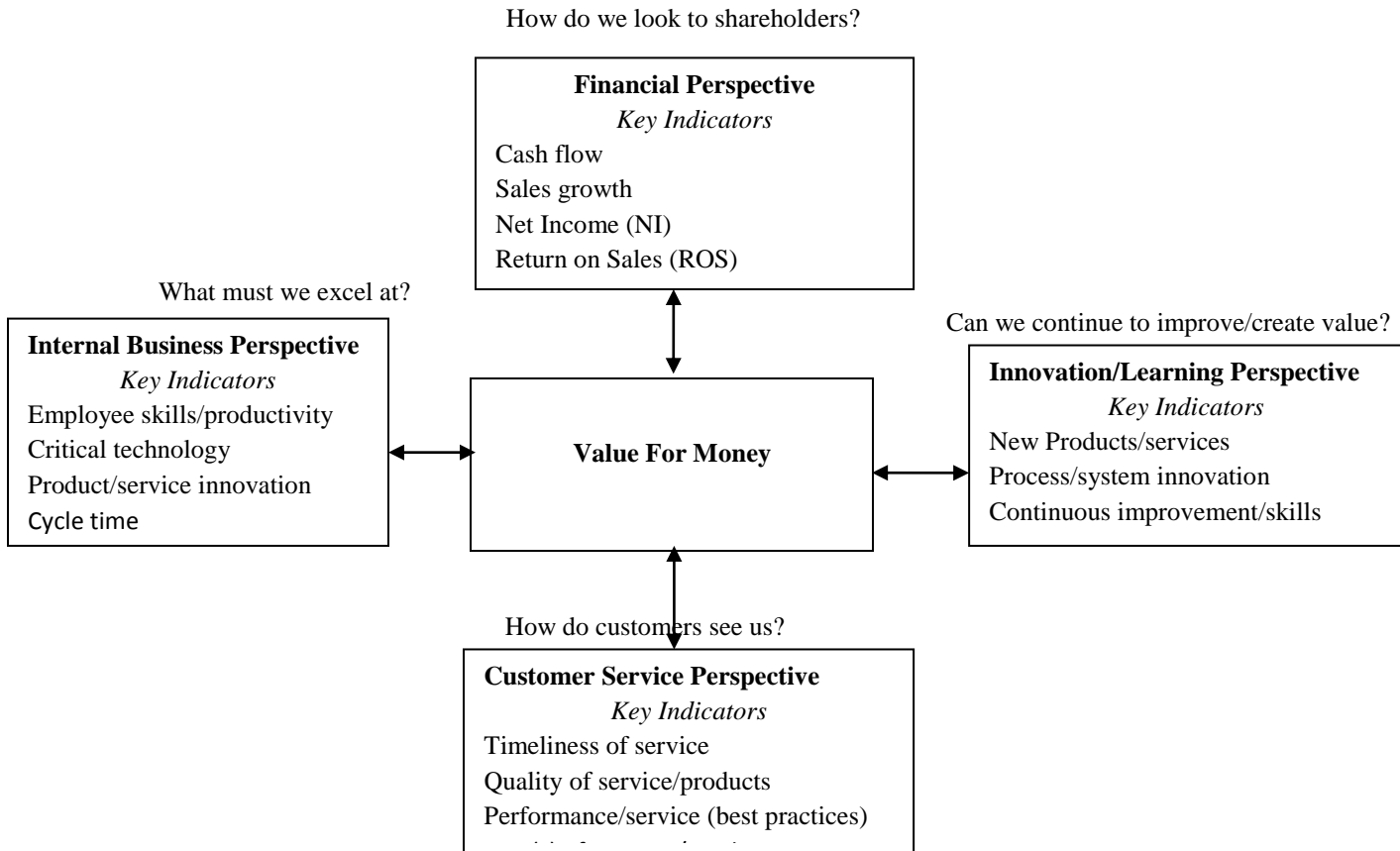
Efficiency, economy and efficacy (the 3Es) in public management usually refer to timeliness, quality, impact, level of service, and the process of delivering those services. This makes them key components of the NPM debate and a central focus of performance management and measurement. As a result, efficiency, effectiveness, doing more with less are at the core of recent public service reforms and performance measurements efforts and reinventing government orthodoxy (Osborne and Gaebler 1993; Radin 2006). The aim is to ensure that citizens get value for services provided, curb waste, and hold public servants and organizations responsible for how they implement public policies by simply allowing governments to be entrepreneurial and allowing managers to manage (Radin 2006). With regards to SOE reform in particular, there is the need to develop a framework for measuring the performance in view of the numerous resources expended in their reform efforts. Such an effort addresses the dual challenges of performance and the commercial/social objectives of SOEs. Such an approach is possible because the principle of cost recovery, user fees, and the need to wean SOE from government annual subvention are core components of their reform.

Based on this knowledge, we proceed to construct an empirical framework for measuring VFM in SOE reforms using Kaplan and Norton's (1992) balanced scorecard framework illustrated below. The balanced scorecard specifically measures the current and future status of governments with regards to their financial and operational/managerial activities (Kaplan and Norton 1992). This framework has the analytical advantage of capturing and examining the pre and post reform performance of SOEs from four dependent variables namely customer perspective, internal business perspective, innovation and learning approach, and financial perspective. Customer perspective examines measures such as timeliness and quality of services, the ability to meet customer needs and expectations and the sensitivity to unit costs of products (Kaplan and Norton 1992). Internal business perspective on the other hand is focused on how the firm should operate in order to meet and possibly exceed customer expectation. The organizational innovation and learning perspective is exclusively focused on creating an innovative and learning culture and work environment where employees are empowered and well motivated to contribute to general organizational goals. The final variable is the financial perspective which determines profitability. The balanced scorecard therefore measures what is referred to in public administration as value for money or the 3Es of efficiency, effectiveness and economy. This framework is apt for measuring the administrative and managerial performance (VFM) of SOEs because it is comprehensive.

Despite the utility of the balanced scorecard framework however, it has its limitations precisely because it is silent on or ignores democratic governance indicators and considerations. In fact, Kaplan and Norton (1996b) acknowledged that the balanced scorecard is not decisive and that other variables and perspectives can be added to it. Precisely because of the need to address these inadequacies of the model and make it appropriate and applicable to public organizations, a good governance/normative perspective which seeks to examine SOEs as public policy instruments that must adhere to the principles of good governance will be added. Thus good governance principles such as "transparency and accountability, fairness and equity, efficiency and effectiveness, respect for the rule of law and high standards of ethical behavior" (OECD

2005, p.1) will be added to the four perspectives of the balanced scorecard. Therefore, the UNDPs (1994) nine principles of good governance or what the OECD (2005) refers to as open government concepts is an appropriate framework that can be used to analyze and examine the pre/post reform process and performance in any jurisdiction.

Fig 1. An Empirical Framework for Analyzing Value for Money Performance of Reformed SOEs



Source: Adapted from Kaplan and Norton (1992)

Numerous scholars interested in public management reform have stressed the need for highlighting the relevance of democratic governance concerns in the reform process (Farazmand 2004; Peters and John 1998; Pierre 2000; Pierre and Peters 2000; Olowu 2002). For the purposes of this study however, the UNDPs (1997) definition of good governance “as the exercise of economic, political and administrative authority to manage a country's affairs at all levels [and] comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences” (p3) will be used. This definition is appropriate for the analysis in this paper because it describes Wise’s (2002) three drivers of public management reform namely demand for greater social equity, democratization and empowerment and the humanization of the public service. These three concepts are important because while reform might be a governance issue in most developed countries, it has been realised as a developmental challenge in developing countries like Ghana (World Bank 1989; 1992). The quest for greater social equity, democratization and the humanization of public management reform are particularly relevant because of entrenched

poverty, inequality, illiteracy and the historical antecedents that are produced in developing countries. They are also important because of the need to deepen democracy and human rights in a region that is at risk of not meeting the Millennium Development Goals (MDG¹s).

Table 1. Core Democratic Governance Indicators of SOEs

Good Governance principles	Impact
Participation	All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests.
Rule of law	Legal frameworks should be fair and enforced impartially
Transparency	Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.
Responsiveness	Institutions and processes try to serve all stakeholders
Consensus orientation	Ability to mediate differing interests to reach a broad consensus
Equity	All men and women have opportunities to improve or maintain their well-being
Effectiveness and efficiency	Processes and institutions produce results that meet needs while making the best use of resources
Accountability	Decision-makers are accountable to the public, as well as to institutional stakeholders.
Strategic vision	Leaders and the public have a broad and long-term perspective on good governance.

Source: UNDP (1994)

Based on the above empirical and normative criteria and in light of our description of the VFM and socio/political objectives of SOEs, we derive the table below. This framework has the analytical advantage of capturing the ambiguous nature of SOEs as public policy instruments and the multifaceted reality of SOEs as commercial and profit oriented tools. Furthermore, it has the added advantage of capturing the multifaceted reality of contractualism as a reform tool for public agencies in general and SOEs in particular. Using this framework, we now turn to the analysis of urban sector water reforms in Ghana. Specifically, we examine the management contract between the Ghana Water Company Ltd (GWCL), an SOE and Aqua Vitens Rand Ltd (AVRL), a private sector firm aimed at reforming and restructuring urban sector potable water in Ghana. Below however, we examine a brief history of water sector reforms in Ghana.

¹ The eight Millennium Development Goals (MDGs), which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education by the target date of 2015, form a blueprint agreed to by all the world's countries.

Table 2. A Conceptual Framework for Evaluating Contractualism in SOE reform

Reform Model	Major Managerial Concerns	Main Good Governance/ Democratic Concerns
Management Contracts	Economy Efficiency Profitability	Rule of Law; Accountability (hierarchical and professional); Transparency (openness or publicness).
Public Policy Instrument	Effectiveness/Impact Equity/fairness Due Process/ rule of law	Public Consultation/Participation; Accountability (legal and political); Transparency (accessibility and responsiveness). Strategic vision, Consensus Orientation

3. *Nor Any Drop to Drink? A Brief History of Water Sector Reforms in Ghana*

As part of the SAP/ERP² embarked upon by the government of Ghana in 1983 based exclusively on the advice of the World Bank/IMF (Baker 2004), the government of Ghana decided to reform the water sector to respond to a number of pressing financial, technological, and operational constraints. The main objective of the restructuring exercise was to bring in a private partner with the needed financial, technological, managerial and operational expertise to reform and improve the performance of the sector through a process known as Private Sector Participation³ (PSP). Within the public sector reform discourse especially in developing countries, PSP is a form of contract or partnership between the public and private sector in the delivery, provision of, or production of public services. From the stables of neo-liberalism and NPM, a PSP could therefore take the form of privatization, contracting-out of performance/management contract with the private sectors. Prior to the need for the PSP, the government was solely responsible for the provision of water in Ghana, the development of which began in Cape Coast in 1928. Both urban and rural water management was the exclusive responsibility of the Public Works Department (PWD) of Ghana within this period. This arrangement stayed until 1965 when the Ghana Water and Sewerage Corporation (GWSC) was created by Act 310 for the “provision, distribution and conservation of water (urban and rural) for public, domestic and industrial uses” (DAG, p.18). The GWSC was further responsible for the “establishment, operation and control of sewerage systems” (ibid) throughout the country. Right from its creation, the GWSC was expected to be financially self sustaining. This particular policy requirement of the GWSC proved to be its undoing as it could not be financially self sustaining. It was this, coupled with the lack of improved technology in infrastructure that made the GWSC a prime target for major structural reforms in the 1980s.

Subsequently, in the late 1980s to the early 1990s, government made numerous attempts aimed at restructuring and improving the GWSC. These include attempts to rehabilitate the water

² The Structural Adjustment Program and the Economic Recovery Programs were monetary, financial and broader economic policies recommended for the country by the World Bank aimed at rescuing the state from virtual economic and financial collapse. It focused mainly on the privatization of state owned enterprises (SOEs)

³There is no universal agreement on what constitutes the PSP partly because the concept is contentious. But generally, there is a consensus that it involves the engagement of the private sector by governments as partners to fully or partially finance and or manage projects in areas of vital economic importance such as water, transport and power supply.

supply system to improve reliability, expand the water systems and strengthen the managerial and operational capacity of the GWSC. There was however a realization among policy makers, multilateral and bilateral institutions and donors⁴ that the intended outcomes were increasingly elusive. The verdict, mainly influenced by advice from the World Bank/IMF, was that the policy objectives of efficiency and efficacy in the production and distribution of water through a comprehensive system of improved operational and maintenance costs reduction and pricing strategy was not met. Government therefore stopped throwing money at the problem and began examining institutional capacities, structures and poor managerial practices that needed improvements. Consequently in 1994, the government commissioned a study to evaluate and examine various options for the implementation of the PSP which was seen as the best policy option for achieving efficiency and effectiveness in the water sector while expanding the system and ensuring quality, affordability and accessibility. Later in 2002, a draft water policy by the Water Resources Commission⁵ was developed for the water sector. A wider consultative process was later initiated in 2004 by the Water Directorate⁶ to compliment and update the 2002 policy which lacked other stakeholder input. The 2004 policy set targets for urban and rural sectors. It also recommended an institutional realignment in the water sector to be able to implement the PSP in the water sector.

In furtherance of the PSP, the management of urban water was decoupled from rural water. The Community Water and Sanitation Division (CWSD) was subsequently established in 1994 to cater solely to rural water. Next, the government created the Ghana Water Company Limited (GWCL), a limited liability company in 1998 out of the Ghana Water and Sewerage Corporation and charged it solely with the responsibility for urban water. The restructured GWCL was particularly created because “the rate of urbanization outstrips current levels of urban water supply [because the] GWCL currently operates 82 urban water systems with an average daily output of 572,012m³/day as against a daily demand of 1,049,306m³/day” (Accra 2007, p.26). Addressing this deficit was thus the *raison d’être* for the reforms in the urban water sector. From the governments perspective, this deficit was created due to three main reasons; technological, financial and operational challenges. The financial challenges include low water tariffs, high dependence on government for subvention and subsidies, poor billing and collection system, and the high wage bill on an over populated organization (Nkrumah 2004).

The operational problems on the other hand include dilapidated water infrastructure due to poor maintenance, the breakdown of several systems and the fact that demand for water far surpassed its supply (Nkrumah 2004). The PSP was specifically targeted at the urban sector and was expected to address both the financial and operational deficiencies in the urban water sector. The restructuring was also aimed at addressing pressing financial, managerial, infrastructural and technological weaknesses facing the sector, which were common with all other public utility companies. The plan was to bring on board a private partner with the needed financial, technological and managerial expertise to improve management, operations and performance in the sector. The plan was, in keeping with the NPM orthodoxy, to tap into the private sector and

⁴ Multilateral donors are international institutions like the WB/IMF and the various UN agencies while Bilateral donors and institutions are two way country to country relationships between Ghana and most developed countries whose international development agencies like the DfID of the UK, CIDA of Canada and USAID of the US give financial aid and other financial and budgetary support to the government of Ghana. This aid usually has conditionalities including the enactment of specific reforms in specific sectors of the recipient country.

⁵ Under the reforms, the WRC was given responsibility to protect and manage the country natural fresh water resources such as lakes and rivers.

⁶ The water Directorate was mainly charged with ensuring the smooth implementation of PSP.

private expertise for a more efficient, and effective water delivery system in order to improve and increase performance (Ferlie et al 1996; Barzelay 1992). Below we examine the implementation of the PSP option in detail. The table below captures the main operational, financial and technological problems associated with the pre reform GWCL that the PSP (post reform contractualism) was expected to address with its improved private sector expertise.

Table 3: Critical Pre/reform Performance Areas in the Urban Water Sector

Operational	Financial	Technological
Dilapidated water infrastructure/ poor maintenance,	Financial subvention and subsidies from government	Reduce Un-accountered for water
Demand for water far outstripped its supply	Poor billing and collection system	Reduce Non-Revenue water
Labour productivity	High wage bill	Improve Number of connections
Staff strength	Low water production and sales	Number of connection per meter reader

4. An Un-Holy Partnership? The Tale of ‘the Grantor’ and ‘the Operator’

The implementation stage of the PSP was the 1995 plan by the government of Ghana to settle on a 10 year lease option for selected urban water sectors in the country at an initial cost of \$900 million (Nkrumah 2004). After many demonstrations, agitations and protests against the perceived selling of Ghana’s water to foreign private firms by civil society groups and NGOs in Ghana, the government cancelled the 10 year lease option and instead signed a five year management contract between the GWCL and Aqua Vitens Rand (AVRL) in 2005. “The Management Contract will cover ... 80 urban water systems” and is “initially expected to be for five years” (World Bank, 2004, p.71) and will be financed from a World Bank grant (to the government) of \$103 million US. Under the proposal, “the Operator will be responsible for operating existing and future assets of the Ghana Water Company Ltd (an SOE), in the specified areas, on a day-to-day basis to deliver potable water” (p.75). Upon satisfactory performance, the government will have the option to enter into a longer term partnership with the private operator. The final contract sum was made up of the US\$103 million from the World Bank, a counter funding of US\$12 million from the Government of Ghana, and US\$5 million from the Nordic Development Fund which went directly to the winning bid for what is referred to as minor repairs, rehabilitation and replacements works for the five year period (GWCL 2010). The process to award the contract included AVRL based on classical economic theory of open competitive bidding which states that “the most efficient manner of choosing a contractor is through a competitive bidding process” (Prager 1994, p.178). At the end of the bidding process in 2001, five multinational water companies including SAUR of Paris, BIWATER of the UK, and Halliburton of the US among others submitted their bids (Isodec 2001). From the list of bids provided, it is obvious that no single Ghanaian or local firm in Ghana sent in a bid. This development, justified though it might be on purely economic grounds, plays directly to the opposition to these reforms for fear that it might result in the selling of Ghanaian water to private foreign companies.

Apart from that, we have a problem with the way and manner in which the open competitive bidding process for the contract is both presented and implemented. In classical economic theory, all bidding companies for a contract should not only have an *ex ante* equal opportunity of winning the bid (Hodge 1999; Domberger and Jensen 1997), they must also have experience and expertise to do the job, and knowledge of the particular sector or job market. In a major study, Domberger and Jensen (1997) examined the theory and empirical evidence of contracting in the public sector and noted that bidding is supposed to be an equal opportunity process to all parties that ensures that the best bid, usually the one with the lowest cost and the most experience gets the job. As such, the competitive bidding process is presented as a technical and objective process that is capable of selecting a good partner for the public sector. Our main problem with this conceptualization is that it seeks to circumvent the traditional policy making process by giving bureaucrats, rather than politicians, enormous power to recommend a good bid. Once a bid is chosen and presented to a politician, they have little or no choice but to endorse the decision of the so-called technocrats. In this specific case however, apart from the political circumvention of the process, the competency of the winning bid can be seriously questioned.

The eventual winner at the close of the bidding process was Vitens Rand Water Services BV of Netherlands, a consortium of Vitens International BV of the Royal Netherlands and Rand Water Services Pty of South Africa, which came together to form Aqua Vitens Rand Ltd (AVRL). The problem is that AVRL has little or no *ex ante* experience in the water sector in Ghana. As such, the winning consortium for the over US\$120 million management contract was an inexperienced private sector partner. Therefore, we challenge the open competitive bidding process as picking the right or best bid. As will be explained later, this lack of *ex ante* knowledge and experience of the water sector in Ghana, especially the informal black market of the water sector, presents a real challenge to AVRL with regards to achieving some of its key contractual performance targets.

As well, the 2004 PSP Contract Framework Paper developed by the Government of Ghana and the World Bank to guide the management contract recommended that there was to be a Revenue Collection Account⁷ to be exclusively operated by the operator lodged in a commercial bank in Ghana (Government of Ghana 2004). The PSP Framework Contract specifically stated that “the Operator will be the sole signatory on Revenue Collection Account” (Ghana 2004, p.8). The Revenue Collection Account refers to all incomes and revenue from water sales to both domestic and commercial customers. In other words, the Operator has complete monopoly and control of any revenue realized in the operations of urban water in Ghana and will decide how to spend it by adopting the appropriate financial and accounting practices it deems fit without any oversight from the benefactor. At the end of the day “the surplus remaining in the Revenue Collection Account, after the payment of operational expenses, is paid quarterly into an account determined by GWCL” (Ghana 2004, p.8). For their services, the Operator is to be remunerated from two main sources, both of which are outside the control and authority of the grantor; this is the base fee which the Operator bid on and negotiated for and the incentive compensation which is to compensate the Operator based on the extent to which it exceeds the targets set. While the base fee is paid monthly by the GWCL, the incentive compensation is paid from an increase in cash flow through the Revenue Account and Project

⁷ All amounts received by the operator from customers and any other revenue of the operator from any source are to be lodged into this account

Funds (grant from the World Bank) for specified items. As will be explained later, this arrangement represents a major accountability loophole and weakness.

This management contract can be described as a principal agent relation between the GWCL and AVRIL. As such, one of the avenues opened to the principal to check shirking or moral hazard (Wallis et al 2007) by the agent is remuneration or compensation. In this particular management contract, the operator (agent) has more power over its remuneration than the grantor. As another respondent put it, *under the terms of the contract, the Revenue Account is controlled by the operator not the guarantor*. Added to this is the fact that the ‘Grantor’ gets to pay its own remunerations from the revenue account as well, while the World Bank pays the Operator directly for specified items. Thus, there is no financial mechanism to hold the operator responsible and accountable and no means of enforcing and ensuring performance compliance. Armed with this information, we proceed to make an informed analysis of the value for money assessment and performance of GWCL/AVRIL, paying specific attention to the theoretical implications of this contract.

5. Examining the Post Reform VFM Performance of GWCL/AVRIL

For the purposes of this analysis, the main determinant of value for money performance is profitability. Profitability is critical because the GWCL has as a condition for reform, a duty to recover cost and make positive returns so that government will stop their annual subventions. Also, contractualism in the public sector is expected to reduce costs, increase efficiency and effectiveness and in the process, maximize profits (Domberger and Jensen 1997). Thus, based on the four indicators under the balanced scorecard, we are in a position to assess the post reform performance of the sector and also use profitability to sum up the value for money performance. Data is only available from 2005, so the 2005 profitability indicator would be used as the starting point in the financial analysis.

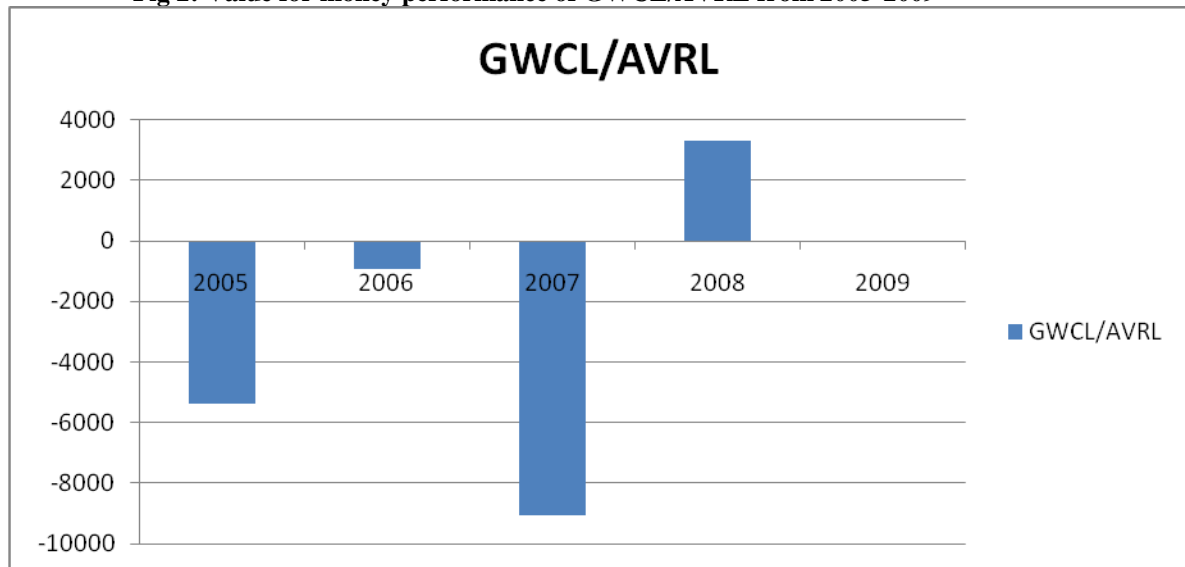
In 2005, the annual audited accounts of the GWCL, presented by an independent external auditor shows that GWCL recorded negatives in financial and economic indicators including total revenue, billing, collection, operating income (gross profit) and net operating income (deficit) from a low of 20% to 181% percent (GWCL 2006). It ended the year with a negative variance of GH¢ 5,373.00 from a projected estimate of GH¢6,600.00. The statistics were the same for 2006 (GWCL 2007). An annual performance monitoring and evaluation report by the State Enterprises Commission (SEC) also concluded that the company experienced a negative variance in net profit of GH¢ 950 from a projection of GH¢ 1,160 (SEC 2006). However in 2008, the company recorded two positives in net operating surplus and operating surplus (GWCL 2009). This was enough to catapult the company to a net operating profit of GH¢ 3,292.00. Finally, by the end of year 2009, the company had recorded a Net Operating Deficit (NOD) of GH¢ 12.4 million (GWCL 2010). This was as a result of negative variances recorded due to shortfall in both water sales and other incomes. Thus, even though the company recorded a surplus of GH¢ 4.5 million at the end of 2009, it recorded a Net Operating Deficit (GWCL 2009).

Table 4: VFM Performance Assessment of GWCL/AVRL

VfM Indicator	Main Concern	Actual Performance	Assessment
Financial Perspective	How do we look to shareholders?	Based on its 2005-2005 financial statements, attained Net Operating Deficits.	Negative
Internal Business Perspective	What must we excel at?	Missed the set targets of reducing Non Revenue and Un-accounted water by 50% annually	Negative
Innovative/Learning Perspective	Can we continue to improve/create value?	Consistently missed the targets set for No. of connections and No. of connections per meter reader in the 5 years period	Negative
Customer Service Perspective	How do customers see us?	Fewer new connections due to inability to achieve the non-revenue water targets	Negative

The positive variance in the 2008 figure is partly because there was an upward adjustment of water tariffs in that year. As such, it has nothing to do with improved management. Having achieved a negative variance in its financial and economic performance, it is fair to state that performance under the financial perspective has been negative.

Fig 2: Value for money performance of GWCL/AVRL from 2005-2009



Source: (GWCL 2005-2009)

Apart from the financial perspective and the internal business perspective, innovation and learning and customer perspective did not see major improvements either. For instance, internal business perspective evaluates what the company is expected to excel at. In this case, is drawing raw water, treating it, metering and selling it to customers for a price high enough to make a profit. Thus, the company was expected to excel in water production, sales, billing and revenue collection. These were the areas that GWCL was deemed not to have expertise, hence the need for AVRL. Nevertheless, from 2005-2009, the company recorded a negative for water sales,

production, billing and collection against set targets (GWCL 2005; 2007; 2008; 2009; SEC, 2007). The only results lacking were the 2006 figures⁸. In the area of innovation and learning perspective, the company was relatively better. In the final indicator of customer perspective, the company has performed abysmally. This looks at how customers perceive the GWCL/AVRL and the main indicator for this would be access to quality and affordable water or the number of connections to a safe, secure, reliable and affordable source of potable water. Since 2005, GWCL/AVRL always sets a specific target of new connections to be achieved. Not surprisingly, the company has consistently achieved a negative variance in this target. In the case of the GWCL however, that is not what happened. This is because, as an SOE, the GWCL cannot cease to exist precisely because of the sensitivity and strategic importance of the goods it produces, water and its ownership arrangement as an SOE.

One of the main challenges of performance measurement in general, and contractualism in particular, is the problem of precise identification and measurement of performance inputs, as well as outputs and outcomes in the public sector. Furthermore, there is an inherent difficulty in measuring public goods and services, determining the ambiguity of inputs and outcomes, the indivisibility of public goods and the inherently political nature of public organizations (Halachmi 2002; Carroll 2000; Carroll and Dewar 2002). In the specific case of the management contract between GWCL and AVRL, extra effort and resources were expended with the aim of clearly identifying performance targets that can later be quantified as part of the contract review process. As such, two main performance targets were identified. The first was a demand on the Operator to achieve a 50% annual reduction of Non-Revenue and Un-Accounted Water⁹. Non-Revenue and unaccounted water reduction was critical because it was considered as one of the core areas where the GWCL did not have expertise, and therefore needed private sector intervention.

Table 5: Key Contractual Performance Indicators

Indicators	2005	2006	2007	2008	2009
Non-Revenue Water	Negative	Negative	Negative	Positive	Negative
No. of Connection	Negative	Negative	Negative	Negative	Negative

Source: Adapted from SEC 2005-2009 Performance Evaluation Figures

Before the management contract, about 50% of treated water did not make it to its final domestic or industrial destination. That means that there was less water to distribute, price, sell and make profits off of. Non-revenue water refers to treated and potable water that is lost in transition from the water treatment station to its final destination, commercial or domestic. The loss could be the result of leakages in the pipes or the actions of illegal water contractors in what is often known as illegal connections. The problem with non-revenue water is that, even though water is expensive to treat, the company makes no money at all from it because it is lost. Plus, the lost water does not represent only lost revenue to the company, it also represents less

⁸ The 2006 reports were not available at the GWCL and numerous follow ups produced no results.

⁹ This is water that has been treated, but has been lost from its transportation to the final consumer. That means that it has not been metered and the appropriate income made on it. This usually occurs due to leakages and illegal connections.

available water for distribution to consumers, creating an access problem. The contract specifically mandated the AVRL to reduce non-revenue water by 50% annually. Achieving this target will have a tri-factor effect. It will increase the volume of water for onward distribution (increases in number of connections/accessibility), generate more funds for the company (from the additional metered water) and improve the quality of potable water consumption in urban Ghana, especially among the urban poor and presently unconnected. The diagram below illustrates the performance of AVRL in these critical performance areas from 2005 to 2009.

Based on objective measures of performance, the diagram above clearly shows that little or no difference has been made since the inception of the contract. A lot of reasons could be advanced for this, but whatever the reason might be, we can question the competence of the private Operator in dealing with these issues. But on a broader scale, it questions the private sector is better argument and preference in public sector reforms. Below however, we perform a contract assessment based on governance concerns.

6. Assessment of the Management Contract According to Governance Concerns

Cognizant of the fact that the VFM indicators are poor, we take another look at the democratic governance performance to determine if the principles of good governance were upheld. Unlike the VFM indicators that can be quantified, democratic governance values are intangible and therefore qualitative in nature. Nevertheless, we are in a position to assess the company's performance based on these indicators mainly because of an analysis of its operations and management processes and practices from a democratic governance theoretical perspective. Thus, just like the VFM indicators, a negative or positive value would be assigned to each indicator as an indication of performance. Because these values and principles are normative and qualitative, the assessment would be based on the literature and theory regarding them. For instance, if the law states that a SOE must submit quarterly reports to the state regulator and the SOE fails to do that, it is assigned a negative performance on rule of law. Similarly, if an SOE does not publish its reports regularly, gets bad regulatory reports from state regulators, and does not account for its practices, it would attract a negative in the key governance areas of accountability and transparency. Cognizant of these caveats, we proceed to examine the governance performance of GWCL/AVRL.

Public participation and consultation in the public policymaking process is a key component of governance in any democracy (Krane 2007). Also referred to as citizen engagement, the objective for governments is to “become more responsive to citizens preferences, choices and expectations” (Abele et al 1998, p6) in the reform process. The ability to engage, involve and consult has therefore been identified as key components of the democratic and open government process in the public sector (OECD 2005). This is especially important in SOE reform because they involve and affect a wide range of people differently in society due to issues of class, social stratifications, and political, social and cultural situations that turn to privilege or disadvantage segments of society. In the reform and restructuring of the GWCL however, there has been little or no public consultation and participation. It was this democratic deficit and monopoly of the water sector reform process that compelled the CAP of Water¹⁰ to embark upon massive demonstrations and protests to oppose reforms in the sector. Apart from this massive demonstration, they issued what has come to be known as the *Accra Declaration on the Right to Water*. In this declaration, they argued that:

¹⁰ The Cap of Water is a group of NGOs, local and international, civil society organizations, the media and other recognised organizations with an interest in water and sanitation policies in Ghana. It was mainly formed to oppose water privatization in Ghana.

- Civil society is generally ill-informed about the material issues pertaining to water sector reforms,
- Information necessary for an informed debate on the direction of the reforms by civil society and that;
- Local business community has not been forthcoming, and that the process so far appears to have been orchestrated to favour foreign multi-national companies (*Cap of Water* 2001).

Furthermore, the Cap of Water argued that “citizens have the right to effectively participate (as distinguished from being informed) in the shaping of public policies, which fundamentally affect their lives such as the control of water and that government has the right to inform it” (ibid). It can therefore be argued that in the areas of public consultation, participation, and consensus orientation, the water reform process gained a negative as it has failed abysmally in this regard. As Baker (2004) in a critical analysis of World Bank water reform policies reports, when the government of Ghana decided to enter into a contract with a private operator for the management and operations of GWCL, “even the World Bank project and evaluation reports and the Transaction Advisors Report were not publicly available” (p.45).

Table 6: Assessment of GWCL According to Democratic Governance Concerns

Governance Indicator	Governance Concerns	Actual Performance	Assessment
Participation/ Consultation	The public should have a voice in decision-making process.	Limited or no stakeholder involvement in the reform process	Negative
Rule of law	Legal frameworks should be fair and enforced impartially	Perennial inability or refusal to submit quarterly reports to state regulators as demanded by law	Negative
Transparency/ Accountability	Transparency is built on the free flow of information.	Monopoly over Revenue Account by AVRL means no accountability	Negative
Responsiveness/Equity	Institutions and processes try to serve all stakeholders	Consistently failed to achieve connections targets set out in the contract	Negative
Effectiveness/Efficiency	Processes and institutions produce results that meet needs while making the best use of resources	Consistent failure to achieve the 50% non-revenue water target set in the contract	Negative
Strategic Vision	Leaders and the public have a broad and long-term perspective on good governance.	Lack of effective monitoring by the GWCL Board and Senior management.	Negative

Above all, the use of private sector models and contracts to reform SOEs raises a bigger question as to whether “the burdens of human social life [should] be considered public or private responsibilities” (Baker 2004, p51). In the reform of the water sector therefore, the bigger question is the extent to which full cost recovery should be at the expense of affordability, accessibility and quality water for all, irrespective of economic and class status. In the important aspect of effectiveness which determines the impact of the reforms, the company has over the years failed to achieve its target of connections and expansion of water to the un-connected. On

the contrary, more and more people in urban Ghana do not have access to a safe, secured source of water that is affordable. The company's own efficiency criteria which measures indices such as administrative expenses over total revenue, staff cost over revenue, operating ratio, number of connections, number of connections per meter reader, metering ratio, non-revenue water, labour productivity and staff strength has shown a consistent negative score since 2005 (GWCL 2005; 2007; 2007; 2008; 2009; 2010). It is therefore difficult to see how responsiveness and equity can be improved when more and more people do not have access to water. But as Denhardt and Denhardt (2002) argue, "one of the most important implications of viewing government as the vehicle for achieving values such as fairness and equity is that the purpose of government is fundamentally different from that of business" (p81). In other words, values and principles such as equity, fairness and responsiveness are not only good governance values that all public agencies should strive for; they are the fundamental principles that differentiate an SOE from a private business.

To ensure accountability and transparency in the financial, administrative and operational performances of AVRL, the Revenue Account should have been an escrow/joint account jointly controlled by both the operator and the guarantor. In that case, there would have been enough oversight, accountability and transparency in how that account is managed. The lack of control and authority over the revenue account means that financial authority is firmly in the grips of the Operator. On the other hand, the public expects the Grantor to improve their water services, expand the system and guarantee access and affordability. Thus, as one respondent put it, *while the operator manages the revenue and makes all the financial decisions, the guarantor is at the receiving end of all the blame, criticism, public anger and frustrations*. The main reason why the Revenue Account which is actually the entirety of all the revenue accruing from water supply and delivery was handed over to the operator was because of the perception that the private operator was managerially, technologically, and financially more efficient than the guarantor. Granted that accountability by itself is potentially contradictory and confusing with numerous layers, the fact remains that accountability measures in administrative reforms are also meant not only to improve good governance, but to also increase productivity, efficiency, improve service delivery and guard against misuse of public resources and power. In this instance however, the porous nature of the accountability arrangements do not ensure any of these.

Rule of law can be equated to the commitment to justice and an effective tool in preventing corruption, corrupt practices and the degradation of democratic values within a society by a few through graft and greed. In the 2007 performance evaluation report of GWCL/AVRL, the SEC lamented bitterly that the areas of major concern "were in the dynamic effects and management improvement/project group of indicators where performance were generally poor as most targets could not be met" (SEC p7). This was squarely put down to the "submission of quarterly reports which were done on the average twenty six (26) weeks after the end of the quarters" (ibid). The report concluded that this practice of late or non-delivery of quarterly reports was "not encouraging for good performance monitoring, evaluation and management decision making" (ibid). It is therefore not surprising the GWCL/AVRL has an overall negative performance variance because as Hamilton (2007) argues, "public administrators who understand the constitution (rule of law) and are firmly grounded in democratic values and principles (like the rule of law) also have to be able to manage administrative organizations effectively and efficiently" (p11).

The last indicator on this score card is effective and strategic leadership. Effective and strategic leadership is defined as the ability to provide "higher-quality and more efficient goods

and services, provide a sense of cohesiveness, personal development and higher levels of satisfaction” (Wart 2003, p. 215). Among other things, Wart (2003) in a highly acclaimed assessment of public sector leadership theory, argued that leadership is supposed to provide a sense of direction and vision, an alignment with the environment, a healthy mechanism for innovation and creativity, and resources for invigorating organizational culture. In this paper, leadership will refer to the Board of Directors and senior management of SOEs; especially the CEOs who have been granted enough autonomy to allow the managers (leadership) manage. It is evident that the role of leadership in administrative reforms is critical (Wallis et al 2007) because of its ability to understand the sometimes ambiguous intentions of policymakers in the implementation process. Donaldson (1995) for instance recognizes the crucial role of leadership in structural contingency theory in allowing organizations to adapt, as well as removing them from misfit environments and placing them into fit environments associated with enhanced performance. Schein (2004) on the other hand emphasized the unique functions of leadership to create an enabling environment and culture in organizations for higher performances. In other words, a leadership that is creative and skilled in translating government broad policies and intentions into programs that can be implemented to achieve intended targets. Due to the fact that both the Board and the CEO of GWCL are appointed by the government and owe their jobs to their political connection, there is no extra incentive to perform. This explains the poor performance of the SOE over the years.

7. Summary, Discussion and Conclusion:

In this section, we draw empirical and normative lessons from the analysis of the case study and discuss the potential theoretical implications of our findings. Questionable competence of the ‘Operator’ and limited knowledge of the water sector in Ghana in are some of the issues confronting this management contract. These are only compounded by poor, weak or non-existent monitoring, regulatory and enforcement mechanisms and poor contract negotiation skills by the GWCL. As Domberger and Rimmer (1994) in a global survey of competitive tendering and contractualism in the public sector have stated, private sector suppliers are mostly preferred and chosen “on the basis of price and non-price criteria” (p.439). This means that in public sector reform, price or lower price is not enough justification for the choice of a partner and a reform model and process. In the specific case of the GWCL/AVRL management contract, it is difficult to determine the factors that worked in favour of AVRL due to non-disclosure provisions. However, we can question that choice based on the non-price criteria. This is because as indicated earlier, the winning consortium had little or no knowledge and experience of the water sector in Ghana. This scenario, coupled with the poor performance discussed above leads us to question if the right private partner was chosen for the job. This is especially so in view of the fact that there has been little or no improvement in the critical areas of financial, technological and operational sectors.

Furthermore, Bond (2004) in a critique of IMF/WB water sector reform programs, has argued that the IMF/WB usually invoke reform as a means to “address classical problems associated with state control: inefficiencies, excessive administrative centralization, lack of competition, unaccounted-for-consumption, weak billing and political interference” (p.193). We believe that the fixation on these bureaucratic pathologies to the neglect of critical governance concerns is a narrow conceptualization of reform. This is because it negates affordability and access issues caused by historical, cultural and social causes of poverty and access to clean water. We believe that such an approach is not only a developmental challenge, but a threat to the fundamental human rights of citizens whose right to water is threatened by these policies.

In light of the above, we cannot but agree with Flinders (2005) who argues that contractualism, like partnerships, “represent a Faustian bargain in that [it] may deliver efficiency gains and service improvements in some policy areas but these benefits may involve substantial political and democratic costs” (p. 216). Even for the professed efficiency gains to exist, we are of the view that;

- the search for a private firm to partner the public sector, which is usually premised on a call for tenders, must have a condition and a requirement that mandates the winning bid to have *ex-ante* experience of the local contextual environmental contingency factors;
- the reform process must be respectful of the normal policy-making process, which requires the involvement of actors including civil society and NGOs in the planning, decision-making and implementation of any given project, and be sensitive to issues of equity, fairness and social justice.

Finally, we lament the fact that efficiency gains are too often seen as a trade-off and antithetical to democratic governance principles in the SOE and public management reform process when in fact they should be seen as complimentary. It is therefore not prudent in public administration reform to ignore or deemphasize the means of democratic governance values for narrow value for money ends.

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