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# A RETROSPECTIVE ANALYSIS OF A WATER SECTOR REFORM IN GHANA: THE INTERPLAY OF UNBALANCED POWER AND BENEFITS

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***Abstract:** This paper argued theoretically that power relations matter in public sector reforms. This is empirically demonstrated with a case of a management contract from Ghana. The study finds strong evidence that the power of different groups to obstruct rules that are against their interest clearly affects enforceability. This conclusion is drawn from the analyses of the contract document, the technical evaluation report on the contract, related empirical studies and face to face interviews. The study has significant implication for both theory and practice as it propels reformers to rethink the role of power relations among institutions in public sector reforms.*

***Keywords:** Political settlement, management contract, Ghana, reform, power*

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## Introduction

The public sector seems to be the hub around which all political systems revolve. It is therefore not surprising that the feasibility of a regime depends on the efficiency of the administrative institution implementing the regime's policy (March & Olsen, 1983 in Ohemeng & Anebo, 2012). Many developing countries have remained under developed as a result of ineffective public sector (Kojo, 2000; Ngowi, 2008; Ohemeng & Anebo, 2012; Sakyi & Azunu, 2013) requiring calls for public sector reforms.

The focus of this study is on NPM reforms and reforms related to organisational restructuring or decoupling. These categories of reforms focus on the nature and division of responsibility within and outside government but more significantly, they have focused on the efficient, effective, and accountable manner of delivery of service by public sector organisations (Ohemeng, Anebo & Adusah-Karikari, 2012). Indeed, one might say there is nothing worthy of research as far as public sector reforms are concerned, because of the sheer volume of existing literature in the field. However,

there appear to be very limited studies on political settlement approach in the study of public sector reforms (Hirvi & Whitfield, 2015).

Besides the point that political settlement approach has been under studied in the area of public sector reform, it is my conviction that the approach provides an alternative and robust exposition to understanding public sector reforms. Generally, the paper seeks to examine the reasons behind the poor performance of the many reforms in SSA by answering three major questions. (1) Why have successive public-sector reforms failed to yield the desired results? (2) What is the nexus between institutional power and institutional benefits in determining the outcomes of reforms? (3) What reasons accounted for the non-renewal of the contract between Ghana Water Company Limited (GWCL) and Aqua Vittens Rand Limited (AVRL)? These questions are explored using political settlement literature.

The qualitative approach to research is employed for this study. A critical review of secondary literature was conducted. In addition, interviews were conducted to support the secondary literature. The institutions that participated in study were GWCL, AVRL, PURC and the Ministry of Water Resources Works and Housing. These institutions were directly involved in the implementation of the management contract – they can be referred to as insiders. Furthermore, the researcher saw the need to seek some outsider perspectives on the management contract. These outsiders were civil society organisations that were considered stakeholders in the management contract. These organisations were actively involved in the management contract from its formulation through to its expiration. ISODEC, CONIWAS and NCAP were the civil society groups actively engaged in the contract. The Public Utility Workers Union of TUC was also included in the study. A total of nineteen (19) subjects were interviewed for the study.

## **The Political Settlement Literature**

Political Settlement (PS) views powerful stakeholders as rational actors who deploy their power to influence institutions to serve their interest and at the same time produce some acceptable level of development and political stability (Parks & Cole, 2010). According to Khan (2010), power is an important facet in institutional analysis. He argues that the power of different groups to contest, obstruct and oppose rules that are against their interests potentially affects the implementation of institution or reforms. Thus, for institutional rule to be well enforced, it should have the capacity to affect efficiency and growth by changing the types of decisions that can be made and the costs of making these decisions. However, institutional rules are not just limited to decisions and the costs incurred in arriving at such decisions, they also involve the distribution of net benefits in making these decisions.

The combination of costs and benefits associated with institutions helps to explain why they may face high or low enforcement costs in different contexts (Ibid). At any point in time, in an institutional set up, there is a structure of norms and formal implementation capabilities; the likelihood for the difficulty in enforcement to be greater will depend on the distribution of benefits and consistency with the distribution

of power between the groups affected by the institution (Ibid). Powerful groups are expected to resist the implementation of a reform that is against their interest.

Therefore, a political settlement implies an institutional structure that creates benefits for different classes and groups in line with their relative power. An institutional structure that attempts to achieve economic viability with a distribution of benefits that is unacceptable to powerful groups will collapse. Khan (2010) also referred to '*holding power*' (Ibid, 20), that is how long an institution can hold out against other institutions in actual or potential conflict. Holding power is a function of several different characteristics of an organization, including its economic capability to sustain itself during conflicts, its capability of inflicting costs on competing organizations its capability to mobilize supporters to be able to absorb costs and its ability to mobilize prevalent ideologies and symbols of legitimacy to keep its members committed (Ibid). In summary, similar institutions may exhibit significantly dissimilar results in different contexts mainly due to differences in the distribution of power and benefits among implementing institutions.

## The Management Contract

This section of the paper briefly presents the context of urban water service delivery in Ghana, prior to the involvement of the private managers, as well as some details of major aspects of the management contract. Generally, the performance of urban water service delivery in Ghana before the reform was characterised as unsatisfactory. The operational efficiency of the public provider was said to be on decline, one-third of the system was inoperable, Non-Revenue Water – NRW stood at 50% while tariff collection was at 77%. These difficulties were largely blamed on managerial and technical challenges, rising demand for potable water and economic decline during the late 1970's and early 1980's. Furthermore, deprivation of investment in the sector and the loss of skilled manpower were identified as part of the causes for the poor performance of the sector (Whitefield, 2006; European Union, 2010; Shang-Quartey, 2013; Hirvi & Whitefield, 2015).

On details of the reform, it was basically, a Public Private Partnership – PPP and typically a management contract between the government of Ghana, represented by the Ghana Water Company Limited (GWCL) and Aqua Vitens Rand Ltd (AVRL) from 2005 to 2011 (GWCL, 2005). For the avoidance of ambiguities, AVRL was the private partner and was also referred to as the Operator – these terms shall be used interchangeably in this paper. GWCL was the public partner and was also referred to as the Grantor – again, these shall be used interchangeably. The contract document is large and it would not be possible to give an account of the entire document in this section. Therefore, only some important details are highlighted. The management contract was part of a larger urban water project by the government of Ghana which had the following objectives:

1. To expand the reliable supply of safe water in the urban areas;
2. To ensure that low income consumers have access to potable water at affordable prices;
3. To ensure sustainability of the sector through cost recovery;

4. To ensure an adequate and steady flow of investment funds, with an emphasis on low cost and concession financing;
5. To support the introduction of the private sector into management and operation of the sector under this Management Contract

Objective '5' of the urban water project subsequently translated into the partnership or the management contract between GWCL and AVRL. The management contract had seven service standards that the Operator or the private partner had to achieve.

1. Abstraction of Raw Water
2. Improvement of Treated Water Quality and Pressure:
3. The Reduction of Non-Revenue Water
4. Enhancement of the Efficiency of Treatment Plant Operations
5. Design Customer Response Plan
6. Maintain Customer Accounts Receivable
7. Design a Plan Interruptions and Emergency Actions – this was to be done in collaboration with the Grantor.

## **The Allocation of Lopsided Benefits to the Private Partner-AVRL**

An analysis of the contract document demonstrates that the Operator was granted many benefits with virtually no liability, whereas the Grantor had too many liabilities with virtually no benefit. Some of the benefits are listed below:

1. Under the contract, the Grantor was expected to grant the Operator access to all lands within the Service Area, the Operator needed to facilitate its operation and this was to be done *free of charge*. This right was also extended to all agents of the Operator.
2. In addition to the above benefit, the remuneration of the Operator included a base fee, which was the equivalent of the bid price, \$15 million according to the field data. The base fee was to be paid monthly according to the payment schedule, which should not be less than 85% of the average base fee. However, the base fee was subject to either a reduction in case of non-performance or an increment in case the Operator exceeded its target, but this penalty reduction should not be construed as a liability since the conditions surrounding the reduction was heavily skewed in favour of the Operator. For example, the contract ensured that the maximum cumulative liability of the Operator to the Grantor did not exceed 20% of the aggregate Base Fee payable by the Grantor to the Operator in a year.
3. The contract further granted the creation of a Revenue Collection Account (RCA) into which all amounts received by the Operator from customers were lodged. Other revenues of the Operator were lodged in the RCA, except the base fee. To put icing on the cake, the Revenue Collection Account was left under the exclusive care and control of the Operator. This, in my opinion, completely crippled the Grantor in terms of compelling the Operator to meet performance targets through financial controls. Penalty reduction of the base fee could have been an effective

tool to induce performance from the Operator, but again, its potency was weakened by the very act of granting control of the revenue account to the Operator. With this provision, even if the Grantor did not pay the entire base fee of the Operator, the Operator could conveniently rely on the revenue collection account without being hurt by the withholding of its base fee.

4. As if the benefits granted to the Operator was not enough, the contract made it obligatory for GWCL to retain and discharge the credits and all other debts, liabilities and obligations in connection with Existing Facilities and Services prior to the Debt Rationalization Date. Afterwards, such amounts were to be paid from the Revenue Collection Accounts and also remained the responsibility of GWCL. To add salt to injury, the Grantor or GWCL fully indemnified the Operator against all lawful costs, claims, demands and liabilities made by any third party to the Operator, unless such credits or the debts, liabilities and obligations were caused by gross negligence of the Operator.
5. The only visible benefit that accrued to the Grantor under the contract was the right to reasonable access during normal working hours to premises, works and sites of the Operator for the purposes of inspection and certification. This right was however restricted with a caveat that such access should be honoured to the extent it does not disturb the Operator's performance of its obligations under the Management Contract.

This was the extent to which the contract left GWCL with virtually no benefit. The Operator, on the other hand, walked into the contract empty handed except for the three-million-dollar performance security provided, which was again surrounded with caveats favourable to the Operator. The only benefit the Grantor could have ever hoped to derive from the contract was improved performance from the Operator. Sadly, this was snatched the very instant the contract made the payment of the base fee mandatory and also, the moment GWCL relinquished control over the Revenue Collection Account to the Operator.

## **The Overwhelming Powers of the Grantor- GWCL**

Contrary to PS theory, the Operator was given many benefits, but very little power over control of affairs, whilst the Grantor was granted overwhelming power with little benefit. The grand powers of the grantor are listed below:

1. One of the major flaws of the contract had to do with the management of seconded staff. Under the partnership, the seconded staff continued to work on the terms and conditions of their employment with the Grantor. They remained employees of the Grantor per the contract and the Operator in consultation with the Grantor determined their salaries. More fascinating was section 7.2.2. of the contract which required the Operator to assign duties, work location, manage and discipline the Seconded Staff in order to accomplish the objectives of the Management Contract. Yet, the Operator was not granted the sole mandate to decide on issues of sanctions and rewards pertaining to the seconded staff. Such requirement only served to grant a disgruntled Grantor the power of reprisal attack.

2. Furthermore, many aspects of the contract tied the output of the Grantor to the input of the Operator which worked to strengthen the hold of the Grantor on the Operator. For example, programmes such as the procurement and installation of bulk meters were important requirements for the reduction of NRW. Surprisingly, these were made the responsibility of the Grantor.
3. Moreover, it was the responsibility of the Grantor to secure finance for the capital investment programmes by the Operator. Furthermore, the Grantor had to assist the operator in its relationship with the Republic of Ghana authorities including but not limited to obtaining any authorizations as may be required and tax exemptions.
4. Last, but not least, the definition of Customer Response Time was also to be determined jointly by both the Operator and the Grantor.

By the forgoing provisions, the hands of the Operator were tied in terms of making any meaningful progress in the enforcement of the contract considering the questioning of the competence of the Grantor in managing urban water service in Ghana. It should be logically expected that the Grantor would attempt to stall the performance of the Operator. According to Shang-Quartey, *“Forcing a group of people to declare themselves as incompetent could be a bitter pill to swallow but when a step is taken further to put key decisions for the success of the ‘competents’ in the hands of the strategically placed incompetents, then the ‘competents’ are likely to suffer reprisals”* (Shang-Quartey 2013, p. 51).

## **The Interplay of Unbalanced Power and Benefits**

Why did the quality and quantity of services remain unchanged under the new manager?

The answer to this can be found in the unbalanced distribution of benefits and power between the two main organisations placed in charge of enforcement of the management contract. This assertion finds support in the work of Therkildsen (2000) that there is likely to be substantial resistance in many line ministries to changes in power relations that will result from reform and that ministries and political-administrative elites may support reform initiatives that create new opportunities for them.

The presence of grey areas and contractual provisions that required some decisions to be made jointly by the two parties created room for the Grantor to stifle implementation of the reform. For instance, the two parties were supposed to jointly define Customer Response Time (CRT), but they could not come to a consensus on that. The absence of clarity in the definition of some of these concepts created loopholes for GWCL to stifle the enforcement of the contract.

Respondents considered that the presence of these grey areas translated into delays in implementation. As confirmed by the audit report, at the end of the fourth year, the Grantor had not agreed to the Operator’s definition of customer response time (Technical Audit Report, 2010). Had the contract made the determination of CRT a sole responsibility of Operator or probably a responsibility of the Operator and an independent partner such as the Public Utility Regulatory Commission-PURC, there might have been a better chance of swift resolution of disagreements. One respondent captured the confusion over CRT as follows.

*“... for instance, Customer Response Time, the Operator understands the interpretation as, if a customer reports any problem he has, then I respond to the customer, whether it solves the problem or not, I have responded, but the Grantor also says no, our interpretation of CRT means by response you are solving the problem, yet some of the complaints were beyond the powers of AVRIL”* (Personal interview, 2012).

By the foregoing quote, it seems there was confusion on the form customer response should take, that is, does responding to customers include resolving a customer’s problem? GWCL might ask the question why to monitor a problem, if you cannot fix it? The difference between a competent and an incompetent organisation would lie in the ability of the competent to fix problems of the customers. Since the competence GWCL was in disrepute, they were not going to allow the Operator to take the easy path. This could be achieved by ensuring that the Operator fixed problems of the customers and did not merely monitor problems.

Another important service standard the Operator was tasked to meet was the reduction of Non-Revenue Water-NRW, by 5% annually, which should sum up to 25%, by the end of the fifth year. However, there was a major imbalance regarding the arrangement of power and benefit under this service standard. The contract granted Grantor the responsibility to embark on projects such as the procurement and installation of bulk or zonal meters, which were directly linked to the reduction of NRW. The Grantor was also supposed to embark on capital investment up to the tune of \$80 million, during the contract period, to facilitate the reduction of NRW. In other words, the output of the Grantor had been a direct and important input of the Operator, if NRW was to be reduced. The procurement and installation of meters were supposed to be done prior to the commencement of the contract. Surprisingly, an examination of the Technical Audit Report (2010) revealed that at October 2010, that is one year to the expiration of the contract, bulk meter installation was not completed and no bulk meters had been commissioned. This was detrimental for the successful implementation of the contract. An informant expressed the difficulty with the reduction of NRW in the excerpt below.

*“... you realise that to achieve some of the goals, certain things were needed to be done, which were not done. We talk of baselines, if for example you want to reduce NRW; it always needs to be reduced from a certain starting point to somewhere . . . now this starting point who knows it? It was not known and it can only be known by doing certain things properly, like measuring, before you can measure you need to put in place meters”* (Personal interview, 2012).

The late procurement and installation of bulk meters may be cited as one of the reasons why the Operator was unable to reduce NRW. At the end of the fifth year, NRW still remained at 50%, the same as the Operator met it. This was viewed as some form of resistance on the part of the Grantor to hinder successful enforcement by AVRIL (Abubakari, Buabeng & Ahenkan, 2013; Hirvi & Whitfield 2015). Meanwhile, the Grantor’s implementation of the capital investment programme to expand water networks also lagged behind, investing only \$30 million out of the \$80 million that was supposed to be invested during the management-contract period (World Bank, 2011, in Hirvi & Whitfield, 2015). The Operator attributed the failure of the Grantor to implement the capital investment programme to lack of willingness to facilitate the implementation of the programme (Shang-Quartey 2013; Hirvi & Whitfield, 2015).

Furthermore, the secondment of 2,887 staff of the asset holder (GWCL) to the Operator (AVRL) also provided grounds for the Grantor to delay enforcement. This arrangement granted GWCL enormous power regarding the punishment or rewarding of seconded staff. Contrary to the view by sixteen of the nineteen respondents, which the human resource designated for the enforcement of the management contract, was adequate, the Operator complained of inadequate manpower (Technical Audit Report, 2010), which could be attributed to the lack of control over seconded staff by the Operator. One respondent is quoted on the issue of the seconded staff below.

*“... AVRL was supposed to work with seconded staff to the extent that they became an albatross ... The operator’s hands were tied, because there were certain clauses in the contract that made it difficult for the operator to discipline those staff because they did not recruit them. They did not have the authority to discipline them and that affected performance because precious time was spent on litigating labour issues. If certain things were done right and if freedom was given to the operator, I think we should have achieved better results”* (Personal interview, 2012).

An analysis of the quote shows that the secondment of staff to AVRL affected performance, as predicted and the Operator mainly blamed this on the lack of control over seconded staff. Thus, if the Operator was granted enough power and control over the seconded staff and probably over many other issues, the enforcement of the management contract could have been smoother and maybe better results could have been achieved.

## **Non-Renewal of the Management Contract**

Finally, it is the goal of this paper to explain why the management contract was not renewed after the fifth year. Shang-Quartey (2013) in his study attributes the non-renewal of the contract to the effect of civil society mobilization and pressure against the PSP. Also, Hirvi and Whitfield (2015) stated that it was not renewed officially because AVRL could not achieve many of its targets and the same as Shang-Quartey, they also cited increased anti-privatisation campaigns against the renewal of the contract. These reasons cited by the two authors are valid but they do not establish the causal links between such pressures and the poor performance of the management contract leading to non-renewal of the contract.

The exposure of Khan (2010) on the concept of holding power is useful in this regard. An institution with holding power has many tools it can deploy to frustrate the efforts of other organisations. The Grantor had holding power that it used against AVRL. For example, it was able to mobilize supporters to absorb costs and more importantly, it was able to mobilize prevalent ideologies and symbols of legitimacy to consolidate it. Most of the civil society organisations and groups such as NCAP, ISODEC and the Utility Workers Union of TUC supported the Grantor in its campaign against a management contract. These groups used their resources on many platforms, to push against the management contract. It was even much easier to mobilize ideologies and symbols of legitimacy, since the process was already politicised (Hirvi & Whitfield, 2010). The NDC, which was a social democratic party at the time, in opposition, had been vociferous against the management contract, it therefore did not come as a surprise that once the NDC regained power, it hid to calls by staffs of both AVRL and



GWCL and to calls of civil society organisations not to renew the management contract.

Elsewhere in this paper, mention is made of litigations brought by staff against the Operator, this wasted precious time of the Operator in performing its obligations. Thus, the Grantor was not only successful in stalling the operations of the Operator, it was also successful in mobilizing support against the management contract which affected performance of the Operator, thereby, leading to non-renewal by the NDC government.

## Conclusions

The objective of this article was to explain why successive public-sector reforms have failed to yield the desired results and to establish the nexus between institutional powers; institutional benefits and outcomes of reforms, with focus on NPM reform, specifically, reforms that focus on restructuring or the nature and division of responsibility within and outside government. An example of a PPP in the form of a management contract was used to support the arguments in this article. Also, the political settlement theory with focus on the distribution of power and benefits among enforcement institution was deployed to this effect.

Many studies on the management contract in Ghana used different theoretical perspectives. While no doubt the findings of these researchers and the various theories they deployed in the respective studies are very relevant, they do not give an all-encompassing explanation to the outcome of the management contract in Ghana. The political settlement approach drew our attention to the relative power and benefits that the management contract allocated to the two main implementing institutions, namely, GWCL/Grantor and AVRL/Operator. This is happening to the extent that a reform grants undue benefits without corresponding power to one institution that might result in resistance to the enforcement of the reform by powerful institutions with little or no benefit at all.

By applying the PS theory to the management contract in Ghana, it is observed that, policy makers disregarded the relative power and benefits in the institutional analysis leading up to the reform. As a result, the contract granted numerous benefits but little or no power to AVRL, while it granted enormous power with little or no benefit to the GWCL, at the same time. This led to resentment on the part of GWCL, which had more power, but little benefit. Consequently, GWCL used the power granted it to stall enforcement of the contract in many respects. These machinations by GWCL made it difficult for AVRL to make any meaningful progress towards the attainment of the service standards.

It is therefore believed that, if the power and benefit of implementing organisations were incorporated in the institutional analysis prior to the adoption of the contract, enhanced performance of the private partner would have been observed. With the political settlement approach, attention is given to the context of the reform, the benefits that accrue from the reform and the distribution of power to the institutions.

The interest of stakeholders, especially powerful and influential actors capable of thwarting the realisation of reform goals are taken care of ex-ante.

Ghana's experience presents several lessons for reforms that involve the restructuring or division of institutions. First of all, in any reform situation, there are gaining and losing institutions with interests. The interests and concerns of the losing institutions should always be taken into account and appropriately addressed in designing reforms. Secondly, it should be noted that reforms distribute benefits along with power to the institutions involved in the reform process. The political settlement theory expects reformers to take cognisance of this dimension of reforms; caution should be taken so as not to disproportionately allocate power and benefits. The two should be well balanced. Thirdly, whenever reforms distribute benefit that is against the interests of powerful groups or institutions in the reform process, the powerful groups are likely to resist enforcement of the reform, especially if they possess what Khan referred to as holding power as witnessed in the Ghanaian case.

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