

BRIDGING THE GOVERNANCE GAP: CIVIL SOCIETY, DEMOCRATIZATION AND ELECTRICITY SECTOR REFORM

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Abstract: Civil society organizations are resisting a redefined notion of “the public.” While corporatization processes associated with electricity sector reform primarily construct the public as “customers”, civil society organizations are asserting their voice as “citizens” and demanding access to decision making processes at all levels. The paper explores 1) how fundamentally different understandings of public participation amongst stakeholders have stunted meaningful dialog, 2) institutional frameworks where public and private interests intersect and 3) policy recommendations for supporting collaborative stakeholder partnerships during reform.

Institutional reform invariably involves a reckoning of its own, a sorting out of alternative versions of allegedly shared assumptions, and their selective translation into working practice. “Working misunderstandings” can sustain a merry band of reformers well on its way to wayward public prominence. At some point, however, political realities step in to call the question and tally the bill.¹

Keywords: *electricity sector reform; corporate governance; public participation; regulation; democratic governance; corporatization; collaborative partnerships*

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¹ Kim Hopper, acknowledging the 2003 Anthony Leeds prize in urban anthropology in *City and Society*, 16(1):116

Introduction

Almost everybody in the energy sector agrees that public participation is important. Whether talking with the private sector, the government, development agencies or NGOs, it is not difficult to gain consensus on this point. But how much agreement – or even clarity -- is there about the definition of either “public” or “participation”? Usage of these terms, both separately and as a single term is bound up with disparate meanings and motivations, and ultimately is derived from quite discordant political-economic discourses and governance philosophies.

This paper argues that restructuring -- the move from state ownership of integrated utilities to private ownership of unbundled energy enterprises – has been accompanied by a shifting relationship to the public. While state owners of utilities derive their legitimacy by being accountable to citizens, private owners have principally related to the public as customers. The distinction is a critical one, for as Crenson and Ginsberg (2002) have aptly put it, customers may expect to receive good service, but they do not have a say in how the store is run. The commodification of electricity (and water) has altered the way in which the public is construed by sector decision-makers (including donors), and has reduced the potential of citizens to influence the shape of reform. Even where energy systems have remained under public ownership, corporatization has distanced the public from governance structures.

This disempowerment has meant that there has been little political space for debate, even while debate has in practice swirled around attempts at reform. Dissent has made itself felt in the courts and in the streets, and to some extent in the press, but rarely through the political process itself. The utility sector is thus ripe for a discussion of the political economy of participation, a discussion that is necessary in order to maximize the potential of governance reforms. This paper will examine citizen responses to energy sector reform in three countries with quite different political contexts: India, Indonesia and Georgia. It will explore 1) how, in each case, fundamentally different understandings of governance and public participation have stunted meaningful stakeholder dialog, and 2) the potential for establishing frameworks in which the public may be construed both as paying customers and as empowered citizens. While the focus is on the electricity sector, much of what follows is relevant for the water sector as well.

Unpacking Participation

The term “public participation” is embedded in the discourse of “good governance”. Together with “rule of law”, “transparency” and “accountability”, public participation is an

aspect of a broader project to create governance structures that are sustainable. These institutional structures are ostensibly designed to articulate the interests of multiple stakeholders, reconcile diverse preferences, and enable markets to function with appropriate oversight agencies. Yet both "good governance" and "public participation" are multivalent terms, whose meanings shift depending on the relationships between the public and private sectors.

In this section, I take a broad look at civil society perspectives on energy sector reform against the backdrop of changing relations between citizens and the state. I then compare these civil society understandings of governance issues with the principles of energy sector reform promoted by donor organizations and host governments. This comparison sets the stage for looking in more detail at the claims of NGOs in each of the three countries, and an examination of possibilities for a convergence of public and private sector interests and governance frameworks.

During the 1990s, there was a paradigm shift in energy sector reform. Efforts to address the declining performance of electricity systems moved away from programs to improve government-owned utilities and towards a new model of private investment and private ownership. Although there were instances of restructuring in the previous decade, notably in Chile, the trend was accelerated by a key shift in World Bank policy in 1993, in which a role for private capital was made a condition of continued provision of loans necessary for power system expansion and maintenance. This policy shift was also adopted by other development banks and supported by international donor agencies (Dubash 2002, USAID 2005a).

In many countries in the developing world and former Soviet Union, these reforms were occurring in the wake of major political upheavals that had set the course for democratization. As new laws were developed and implemented, citizen groups scrutinized the potential of the new frameworks to enhance or restrict their own participation. In Georgia, the new electricity law which was adopted in 1997 and amended in 1999, coincided with the 1999 Administrative Code, which institutionalized requirements for transparency and accountability in government action in an entirely new way for a former authoritarian state. Yet for many Georgian NGOs, the Code has not sufficiently informed governance of the electricity sector. For the Caucasus Environmental NGO Network (CENN), for example: "while public demand on more transparent, participatory and accountable administration of [the] energy sector was increasing, respective

governmental agencies repeatedly failed to implement provisions of the Administrative Code."² In CENN's analysis, the electricity law put in place the legislative framework to attract private investment, but did not address the need to strengthen governance institutions in the energy sector.

The relevance of the broader legal environment for citizen groups is evident also in Indonesia. In May 1998, civil unrest -- in part driven by energy tariff increases -- forced President Suharto to step down. The post-Suharto era saw an opening of political space, including increased emphasis on transparency and NGO participation in government decision-making. This same period of *reformasi* set the stage for electricity sector restructuring in Indonesia. Yet, as Seymour and Sari (2002) point out, although Indonesia's power sector reform sought to increase financial transparency of the government-owned utility, the focus of the reform was on narrowing rather than broadening decision-making and oversight. In 2002, after a contentious legislative process, an Electricity Law was passed that provided for the unbundling of the state-owned electricity company PLN, in preparation for privatization. But the emphasis on private sector participation ran counter to what many understood to be enshrined in the Constitution: that electricity is a public commodity that must remain under state control. In 2004, after a suit brought by PLN's labor union, with the support of an 8-member NGO coalition WG-PSR³, the Constitutional Court agreed with this interpretation and overturned the Electricity Law. We will look more closely at the underlying reasons for these tensions later in the paper.

In India, with its deeper history of democratic governance, the move toward private sector participation represented a profound shift away from long held beliefs about the role of government. Since Independence in 1947, the state had played a strong role in planning, and the electricity sector had been the very symbol of the state-led approach to economic development. (Dubash 2002). Each state had its own vertically integrated State Electricity Boards (SEB) that were the backbone of the electricity infrastructure, controlling 70 percent of electricity generation and almost all distribution. When amendments to the electricity law began allowing private sector participation in generation in the early 1990s, citizen groups were concerned about the implications of these changes for social and environmental goals. At the same time, there was

² CENN 2005 Final Report: "Development of Local Capacities and Public Awareness for Better Energy Governance." This was a two year project funded by USAID, ending in June 2005. All references to CENN's work are from the author's personal experience with it and from associated project documents.

³ The WG-PSR (Working Group on Power Sector Restructuring) was originally convened by the Asian Development Bank in order to develop constituencies for power sector reform.

recognition that the new Electricity Regulatory Commissions (ERCs) opened up new opportunities for intervention by civil society to shape the electricity sector. NGOs became active in regulatory processes, offering analyses of the new contractual relationships and monitoring SEB operations. Consumer watchdogs such as Prayas-Pune in the state of Maharashtra have argued that increased transparency, accountability and participation (TAP) are necessary in order for NGOs to properly perform this function. Since 2003, with the introduction of a new electricity law governing both generation and distribution, a broader array of NGOs have begun examining the potential and necessity for civil society involvement.

In these examples from Georgia, India and Indonesia, civil society organizations draw their vocabulary from the language of democratic governance. Transparency, accountability and participation, the bedrock of institutional legitimacy in democratic countries, are being applied to the energy sector context in order to open the sector to increased public participation and oversight.⁴ But the vocabulary of energy sector governance, while superficially similar to democratic governance, is rooted in a different grammar. The goal of attracting capital investment meant, in effect, that sector reform was synonymous with steps to enable private sector investment.⁵ The first step in this process was the commercialization or corporatization of the state-owned utility. However, it is important to note that corporate governance is usually taken to imply an internal set of actors, including managers, the Board of Directors, and shareholders (or the Treasury for publicly owned enterprises). Financial transparency, while considered critical to good corporate governance, has not necessarily meant that the public has had access to techno-economic or financial information. Nor has civil society involvement in decision-making been considered desirable by sector decision-makers. On the contrary, corporatization has more often meant the distancing of utility management from public sector

⁴ To this convergence of democratic and energy sector governance discourse, we must add a third discursive vector: environmental governance. Many NGOs working in the sector derive their interest in electricity governance from a concern with environmental sustainability. They bring to the sector a set of governance principles articulated in the "Rio Declaration" adopted by the United Nations Conference on Environment and Development 1992. Principle 10 of the Rio Declaration states the rights of the public to access to information, decision-making processes and justice (roughly corresponding with transparency, participation, and accountability). Since Rio, civil society organizations attempting to implement the framework have expanded their work to include international financial flows, infrastructure, and development more generally. Increasingly, environmental NGOs are focusing on transparency, accountability and democratic governance of the energy sector and are partnering with organizations that have purely sectoral expertise as well as other public interest groups advocating for a democratic legal culture. For these organizations, participation in decision making processes at all levels is of critical importance to both their theoretical and advocacy work. We will explore this work in more detail later in the paper.

⁵ Bacon (1999) outlines a logical sequence of steps that need to be undertaken in the reform process.

oversight. Finally, accountability in a corporate context translates as accountability to shareholders, not to the public. Although state-owned utilities are technically still owned by the public, the corporate model for reform focused primarily on building investor confidence.

In the corporate governance model, then, the public is recast as consumers of a commodity or as customers of a particular company – whether publicly or privately owned. Public participation, in this model, is understood to be payment of bills (including acquiescence to the higher tariffs that have been integral to restructuring) and the right to adequate service. For utilities, the relevant mechanisms that make this type of relationship work are not decision-making processes, but customer service centers and channels for communicating customer dissatisfaction. To a certain extent, this model of the public as customer base has been adopted, even promoted, by the development community. Assistance from donor organizations like USAID have focused their efforts to improve public awareness and participation on social marketing campaigns to educate the public about the necessity of rising prices, doing “outreach” to educate the public about customer rights and legal channels of complaint, and training managers in the principles of customer service.⁶

Limitations of Externally-Driven Reforms

It is necessary to ask whether this corporate framework provides sufficient mechanisms to address the public interest. Are the complaints of “the public” in developing countries actually the complaints of customers? Sector reformers have had to confront serious civil society opposition, including street riots, the burning of utility offices, and even assault of utility managers. Can these protests be addressed by improving customer service? And is this resistance simply a resistance to paying higher tariffs? The examples that follow suggest that the answer to these questions is “no”. They show that acts of resistance are not instances of facile protests of higher tariffs, but rather critiques of governance problems that need to be addressed before rates can be raised.

The following section outlines the attempts of NGOs to participate on three levels: input in to regulatory decision-making processes (India), input into national level reform policy

⁶ These statements are derived from the author’s direct experience working with the USAID Energy Team’s “Public Understanding and Participation (PUP)” Task Order and other donor reform programs around the world, as well as extended discussions with consultants. The PUP task order ended in June 2004 and been succeeded by a new Task Order: People, Energy and Governance, and related projects, with which the author continues to work.

(Indonesia), and input into utility service arrangements at the distribution level (Georgia). These examples are not intended to provide validation of any *substantive* analysis put forward by NGOs, but rather to draw attention to the range of governance issues that concern civil society and the *processes* that may be used in order to hold energy institutions transparent and accountable.

Demands for Accountability from Below: India, Indonesia, and Georgia

▪ **India: Citizen participation in the regulatory process**

The Prayas-Pune Energy Group in the Indian state of Maharashtra is one of the most sophisticated civil society organizations to critique restructuring. Maharashtra is the site of the Enron Dhabol project, whose power purchase agreement flaws have by now been copiously explored by a variety of analysts, Prayas included.⁷ Prayas' analysis digs beneath the Dhabol case to examine the roots of the financial, performance and governance problems of the Maharashtra State Electricity Board (MSEB) that provide the context for the Independent Power Producer (IPP) crisis. Well before the arrival of Enron, Prayas argues, the MSEB (like other Indian SEBs) was in the throes of functional failures that introduced distortions in its operations. These problems included electricity theft, excessive levels of arrears, techno-economic inefficiency, lack of financial discipline, and corruption. Eventually, these systemic problems began affecting capital investments, so that expansion of capacity could not keep pace with increasing demand for electricity. In this context, the electricity boards (in Maharashtra and elsewhere) lost credibility in the eyes of the consumers and citizens. This situation prompted the quest for private investment (from Enron) as well as drastic tariff hikes in successive years.

Prayas argues that the public has a right to know the relationship between these failures and tariff hikes, and indeed, that it is only in the context of a transparent process which includes an action plan to address these deficiencies – rather than a singular action of a stiff tariff hike -- that the public can accept tariff increases. Prayas' concerns, then, have not been simply about the social equity or affordability of tariff increases, but with the underlying governance problems that need to be addressed. Their submissions to the regulatory commission, data requests, and analytic papers insist on the public's access to utility data –through the regulatory process – in order that they may participate in assisting in the development of an action plan that may

⁷ Godbole Committee Report (2001); Abhay (1999), Girish, Dixit, and Wagle, 1995, Prayas Energy Group 2001.

include, but is not limited to, tariff increases.⁸ Prayas has had success working within the regulatory process and gaining the collaboration of the state utility. In particular, they cite an order in which the utility accepted a tariff increase which was less than what they had filed for, with the balance to be found by reducing the percentage of technical losses and electricity theft, as well as controlling employees' expenses.⁹ Significantly, the increase was also accepted by the public, despite the stiff impact on certain consumer segments.

This suggests that when the utility can be held accountable for technical and operational inefficiencies, the public may acquiesce to increases that are necessitated by rising costs of inputs. This prevention of conflict can be compared with the case of Andhra Pradesh, where a non-transparent decision making process combined with allegations of corruption and political interference led to large-scale street violence in protest against a tariff order of the commission.

▪ **Indonesia: National policy formulation and the politics of dissent**

Civil society dissent in Indonesia follows similar contours as India. The NGO Working Group on Power Sector Restructuring (WG-PSR) blames the failure of the Power Purchase Agreement (PPA) with Paiton Energy on the poor governance of the electricity utility PLN as much as on the devaluation of the rupiah against the dollar. For WG-PSR, tariff increases are the means to recoup PLN's massive financial losses that resulted from inflated PPA prices which did not adhere to international contract bidding standards. These prices were 32% higher than comparable tariffs in Indonesia and 60% higher than in the Philippines. While the PPA contract proved disastrous in the context of the Asian financial crisis, the NGO's analysis argues that the PPA was unsound on a stand-alone basis as well (Tumiwa 2002). Like Prayas, WG-PSR criticizes the failure of the reform program to address the long standing lack of transparency and democracy in the economic and financial architecture of the power sector.

Protests against tariff increases in Indonesia in January 2003 were not only about social impact but were accompanied by critiques of technical and operational inefficiencies. The national utility PLN's technical losses were deemed high relative to international standards, and

⁸ See the Prayas website (www.prayaspune.org) for documentation of interactions with MERC.

⁹ Rosenzweig, Voll, and Pabon-Agudelo (2004) make the point that reform often assumes that the governance distortions present in state-owned utilities will be quickly eliminated. Moreover, the failure to anticipate the true nature of the transition means that regulatory regimes are ill-equipped to deal with the ground realities. While the authors are pessimistic about the power of the regulator to discipline such utilities, the Maharashtra case provides an example of public interest groups providing a constructive hybrid of pressure and collaboration through the regulatory process to further reform.

the high cost of maintenance and spare parts seemed to imply cronyism. A University of Indonesia analysis points out that the same groups resisting increases in 2003 – consumer groups, the business community and non-government economists – had acquiesced to the 2002 increases, and in fact there were no significant protests that year. The acceptance at that time was conditional on PLN's improvements in efficiency and performance, as well as transparent compensation schemes. The perception in 2003 that no significant steps had been taken to address these concerns must also be seen in light of broader government failures to engage stakeholder groups around issues such as corruption and budgetary problems (Said 2003).

These Indian and Indonesian analyses of tariff increases run significantly deeper than the reasoning that is usually offered the public, namely that losses are the result of subsidized or below market pricing. Instead, these groups point to faulty governance or other types of inefficiencies. However, unlike in India, where each state has a regulatory commission through which civil society may request data and submit analyses, the Indonesian electricity sector is managed by a government ministry and executive departments. These institutions currently do not have formal mechanisms through which to interact with civil society on policy issues or oversight of the state-owned utility.

It is in this context that the resistance to the Electricity Law of 2002 must be understood. Whatever one's views on the tariff increases, it was widely agreed that PLN's financial and governance woes required sweeping reform. Yet the restructuring program that was developed, with assistance from the IFIs (International Financial Institutions), was opposed by many civil society organizations. The Electricity Law that was finally passed in 2002 was overturned by the Constitutional Court in 2004. An important reason for resistance to restructuring was uncertainty about how a privately owned utility could be held accountable. In a press release, Fabby Tumiwa, coordinator of the WG-PSR, stated that the Court decision highlighted the "importance of having a state-owned electricity company in order to hold the state responsibility on the provision of power service for all Indonesian citizens."¹⁰ This anxiety might possibly have been allayed by giving more attention to the role of the proposed regulator during the legislative process. However, as Seymour and Sari (2002:91) have argued, "the preponderance of attention...has been focused on increasing financial transparency in the sector. Very little

¹⁰ "The Constitutional Court Decision to Annul the Electricity Law No.20/2002: Indonesia Challenges Neo-Liberal Economic Policy." LH, 20-December 2004: 17:24:24.

detailed consideration [was] given to the structure and functioning of an independent regulatory body, which will play a critical role in determining who benefits from Indonesia's electricity sector reforms."

The Indonesian case is complex. The reform process in fact was surprisingly open to public input, and various formal and informal mechanisms were used to elicit it. Yet the formal structure advocated by the World Bank to oversee the sector – and PLN in particular – did not have a significant role for civil society. Although there were attempts to create structures for consumer representation, conflicting approaches dogged efforts to legitimize this function within the nascent regulatory body (USAID 2002). As a new law is developed, this issue will be something to watch for.

▪ **Georgia: When customer service is not (yet) enough**

Even for NGOs working with residential customers at a grassroots level, the issues are less about the price of electricity than about governance gaps. While collections have increased in both Tbilisi (the capital city) and the regions of Georgia, the transition to a commercial system has been a painful and at times violent one, and the legitimacy of sector institutions remains tenuous.

The Caucasus Environmental NGO Network (CENN), working with residents of Tbilisi, Georgia, found that the reasons underlying unpaid debts were lack of transparency about the billing process and other information deficits.¹¹ This had resulted in an antagonistic relationship between the utility – Telasi -- and its customers, with residents being disconnected for non-payment, and destroying meters and equipment in turn.

In a pilot project, CENN established Energy Services Consumer Associations (ESCAs) that functioned as a bridge between the residents and Telasi to create a factual basis for accrued debts. CENN provided training on the billing systems in operation from 1999 and devised a table that documented the flat rate per kilowatt hour that non-metered consumers were charged, along with the tariff changes that had occurred over the years. They trained ESCA leaders to use this table to verify residents' bills and to build trust in the utility. Initial results are promising: In a period of 4 months, with a presence in 6 neighborhoods, the work of the ESCAs resulted in

¹¹ CENN carried out a two year USAID funded project that ended in July 2005. The final report of the project, entitled "Development of Local Capacities and Public Awareness for Better Energy Governance", can be obtained from the author.

approximately \$20,000 of debt paid, restructured or cancelled.¹² The ESCAs also provided consultations on a variety of other issues to approximately 1,000 customers. CENN is also collaborating with the ESCAs to provide input to performance standards currently being developed by the Georgian National Electricity Regulatory Commission (GNERC).

In perhaps the most surprising turn of events, CENN discovered that residents welcomed improved legislation for punishing electricity theft. In roundtables with ESCAs, the utility, and the regulator, discussions became sufficiently nuanced for gaps in the existing law to be identified, and bilateral working groups were formed to make progress on this issue. Theft is clearly a topic for which public input and participation in crafting a solution is critical. In addition, participation in this working group has served as a capacity building opportunity, as consumers have learned about the technical, legal, and regulatory aspects of electrical wiring, metering, and even rate making.

While CENN operates in Tbilisi and works with Telasi customers, The Liberty Institute works in the regions of Georgia that is the terrain of the state-owned United Distribution Company (UDC).¹³ UDC, currently under the management USAID consultants PA Government Services, embarked on an unpopular communal metering program in many of the cities where Liberty is active. In town-hall meetings facilitated by the Liberty Institute, a disconnect between public perception of the program with PA’s understanding of the situation became evident. PA understands public resistance to metering as a fear that accurate metering will end the “glory days” of subsidized, free or stolen electricity. Their approach is to “inform and sell the customers on the needs and benefits of metering improvement” (USAID 2005:84).¹⁴ However, what comes out in the town hall meetings and hotlines is not a resistance to accurate billing but rather a desire for *more accurate* billing. The present inability to accurately meter individual consumption means that payers and non-payers alike are responsible for one communal bill, as are large and small families, rich and poor, the energy efficient and the energy profligate. While PA talks of disconnections as the “stick” required to encourage higher collection rates, the town hall meetings suggest that, from the point of view of paying customers, a household- specific process

¹² An independent evaluation of project is currently being conducted and will contain updated figures and impact through the end of the pilot phase.

¹³ The Liberty Institute carried out a two year USAID funded project that ended in June 2005. The final report of the project, “Towards Accountability in the Energy Sector” can be obtained from the author.

¹⁴ Georgia was used as a case-study in PA’s handbook on “Improving Power Distribution Company Operations to Accelerate Power Sector Reforms”, commissioned by USAID. USAID 2005c.

of disconnection for non-payers may be the “carrot”. A poll conducted by the Liberty Institute in seven cities in Georgia indicated that 95.6% of residents expressed a preference for individual meters.

As the PA handbook points out, a commercial billing and collection system was not an option given the project funding and time frame, and the same may be said for a fully fledged metering system. In this context, there is a heightened need for both improved communication between the utility and the public, and for creative solutions to the impact of imperfect systems.¹⁵ In the face of what we may call “second-best systems,” it seems that civil society can potentially play a special role in bridging both technical and governance gaps. For example, NGOs could be in a position to assist communities in understanding new policies, devising equitable ways of paying for consumed electricity, dealing with non-payment and theft, and providing feedback to the utility.

To do so, however, would require a recognized role for NGOs, including policy guidance and financial support. CENN argues that what is needed is not only customer service centers that address the problems of individual customers, but competent representation that goes beyond the resources of the individual: access to utility data and records, social and economic research, current technical information, sophisticated computer models, and legal representation. The Liberty Institute stresses the importance of institutional strengthening for democratic processes to be productive rather than impeded by populism.

Chains of Accountability

As the preceding discussion suggests, “accountability” and “transparency” are being used in different ways by different stakeholders. The question is where is the nexus of these terms? Do they converge at all? Is there a way for the private sector to be accountable to the public? In a paper prepared for the World Bank’s Energy Markets Thematic Group, Gulati, Bhatia and Wright (2003) point out that both governments and utilities have multiple roles and therefore are accountable to multiple stakeholders. Utilities, even if privately owned, nevertheless provide a

¹⁵ Subsequent to the publication of the handbook, possibly as a result of the town hall meetings, PA became more sensitive to the implications of communal metering and increased their efforts to facilitate the transition on the local level. Recent accounts report working with communities to explain the benefits of the communal metering program and on devising equitable methods of payment collection. PA reports improved community dynamics, increased collections, and a decrease in vandalism. This approach underscores the desirability of “enhanced customer service”, a competence that needs to be developed either by the utility itself or by NGOs or CBOs.

public service even as they protect shareholder value. A similar point is made by Joseph Stiglitz (2002, 2003) who describes the broader impact of energy market failures on the health of state economies. If many firms in the economy have high leverage, then the economy as a whole will be damaged by a financial crisis, the costs of which may be borne by taxpayers and workers, not just the firm and its lenders. The actions of the private sector have a significance that extends far beyond its internal stakeholders to impact the citizenry as whole. Governments need to develop a regulatory environment that protects private investors but also tax-payers who will bear the brunt of market failure if interests are not aligned.

Let us reverse the logic for a moment. Just as corporate utilities should be accountable to both shareholders and citizens, so the citizens share an interest with investors in the performance of the utility. Stiglitz' argument about asymmetric information is by now well-known: for stock markets to function correctly, the same information needs to be available to all players. When information is asymmetric, so that managers, bankers, and accountants have undisclosed information about the value of the company or its ability to operate efficiently, investors cannot make informed investment decisions, and this asymmetry can ultimately lead to collapse of the market. In just the same way, consumers need to have enough information to know that they are paying the right price for the service they are getting. If they do not, and simply agree to increasingly higher prices, eventually the hidden financial and operational problems will emerge as the utilities are unable to fulfill their obligations. Artificially inflated tariffs, like ballooning stock prices, can only conceal underlying problems temporarily. Transparency is not only a matter of ethical duty but an economic imperative as well.

The need for transparency clearly has implications for reform of electricity distribution, and should give us pause when looking to consumers for the capital that was previously sought from the government treasury or the private sector: Resistance to payment or increased tariffs in many cases arises from a mistrust that is the mirror image of investor flight: neither group wants to put money into a failing system that will not give them what they seek: return on investment on the one hand, reliable service on the other. Distribution reform that merely looks to consumers for the cash infusion that was formerly sought from investors, without fixing internal governance problems, will fail in its turn. Ultimately the circle is closed when we think of domestic capital markets as a component of distribution reform, where increased revenues are a form of raising capital its own right and in turn create an attractive investment climate.

The Public-Private Nexus: Following the Decision-Making Trail

There are examples of successful institutions that may accommodate both public interest and shareholder investments. U.S. regulatory commissions offer a deep history of institutions that provide a forum either for direct public participation or through representation of the public interest. Peter Bradford (2004) has outlined a continuum of roles the public should play within a regulatory body. These range from representing individual customers complaints, to advocating for the collective interests of consumers, to citizen participation in making and enforcing decisions. It is this space for public input and oversight that accounts in part for the relative health of the power sector in the U.S.

Nevertheless, support for public involvement is neglected in the type of technical assistance the U.S. offers to other countries.¹⁶ Donor assistance has favored the technical aspects of building an enabling environment for investment, downplaying the role that public input and political legitimacy play in providing such an environment. In fact, early attention to public participation in setting up regulatory bodies is often explicitly resisted. While public hearings are often mandated by the law, there is little assistance offered for the stakeholder preparation that would make for meaningful interaction. In a survey conducted by Prayas, with the exception of Karnataka and Orissa, the State Electricity Regulatory Commissions (SERCS) have not made significant efforts to ensure the quality of public participation – for example, by preparing informative literature or supporting workshops or training courses. (Prayas 2003). In Georgia, lack of adequate preparation resulted in non-constructive public participation (Bradford 2004), as a result of which civil society organizations lost the right to speak in tariff hearings. In Indonesia, conflicting approaches to the structure of consumer representation dogged efforts to legitimize this function. (USAID 2002).

¹⁶ See also Oppenheim, MacGregor and Palast (1993).

We could do more, then, in terms of providing capacity building for public participation in regulatory bodies, and strengthening the mandates for transparency of financial data so that it is accessible to public oversight. For this potential to be fulfilled, however, the legislation defining the mandate of the regulator and the way it will function (including funding) needs to provide for public involvement. This suggests that public input be sought even before the regulator is set up (i.e. during the legislative process, during the design phase). In a sector beset with structural problems, and in which major decisions about restructuring need to take place, the role of civil society could expand beyond consumer advocacy to a more thorough involvement in sector governance. In countries where no independent regulator exists, the accessibility of governmental decision making processes becomes even more crucial.

How then, do we go about developing forums that are robust enough to make progress on this issue? Until now, it has been possible for different stakeholders to talk about public participation without feeling that they are buying into a discourse at odds with their goals. In this sense, ambiguity has been useful. The result is that different approaches to public participation have been elaborated, and to the extent that these approaches have addressed different but real problems, this multiplicity has been welcome. But the use of one term to talk about different concepts has also side-stepped important differences in political philosophy, undermining the constructiveness of multi-stakeholder forums.

Democratic Institutions and Democratic Processes

How do these discursive gaps play out in practice? In this section I give two examples of lacunae that have hampered dialog, and then provide examples of USAID's support for projects that aim to break through the impasse. The first has to do with discordant understandings of democracy itself. For those who understand democracy to be primarily about elections and voting rights, the democratization of energy sector institutions seems absurd. It supposes that each citizen should have the right to vote on each energy decision – an unworkable position. This straw man, however, precludes a discussion of about which types of decisions need public input and at what stage, what sort of data should be publicly disclosed,, the role of civil society in advocating and enforcing laws. From a development perspective, it also precludes discussion of how to build the capacities of decision-making institutions to utilize input and the capacities of the public to develop informed positions. What we need then, is a grounded understanding of

what is meant by democratic governance of the energy sector. Confusing democratic governance with voting should simply be unacceptable.

The Electricity Governance Toolkit: Benchmarking Best Practice and Promoting Accountability in the Electricity Sector

If not voting, then what? New frameworks are emerging which suggest indicators with which to benchmark transparency, accountability and participation from a public interest perspective. USAID support for this line of inquiry includes support for an Electricity Governance Toolkit developed by the The Electricity Governance Initiative -- a joint project of the World Resources Institute, the National Institute of Public Finance and Policy (India), and Prayas-Pune. The Toolkit examines what each of these governance principles means for legislative, executive and regulatory processes in the energy sector.¹⁷ Indicators for transparency assess the extent to which information relevant to key decisions in the energy sector is made available to the public. Indicators for access to participation include the existence of formal space for participation in relevant forums, the inclusiveness and openness of such processes, and the extent to which the gathered input is taken into account. Indicators of accountability include the extent to which there is clarity about the role of various institutions in sector decision-making, whether there is systematic monitoring of sector operations and processes, whether the basis for decisions is clear and justified, and the availability of legal systems for upholding the public interest in the electricity sector. In addition, the toolkit is designed to assess the capacity of government and official institutions to be proactive and responsive. This set of indicators addresses capacity to act autonomously and independently, and the availability of resources (human and financial) to provide public access. Finally, the toolkit also provides indicators to assess civil society capacity (particularly NGOs and the media) to analyse the issues and participate effectively.

The goals of the toolkit are several. First, the initiative aims to develop an operational framework by which to establish benchmarks for measuring the quality of decision-making processes in the electricity sector over the long-term. But the toolkit is also intended as a means to develop a common language about good governance that can facilitate communication among government, regulators, business, and civil society. The combination of an operational

¹⁷ More information and the full toolkit can be found online at <http://electricitygovernance.wri.org>.

framework and common language can then be used by civil society as an advocacy tool that that creates more formal processes for representation of the public interest. Ultimately, the idea is to provide political space for rendering differing perspectives and options when defining a problem. This would both offer an alternative to civic unrest and legal challenge and also improve the operations of the sector.¹⁸

The premise – based on previous analyses carried out by members of EGI – is that elections are insufficient to hold public officials accountable for bad performance. Taking place only once in several years, it is not possible to review and comment on policies and decisions through this single medium. The vision of democracy here is more resonant of Dewey's notion of informed decision making through public dialog and persuasion in a variety of institutional settings, and mechanisms of accountability at the sectoral level that ensure sound governance.¹⁹

Focusing more specifically on regulation – rather than the legislative or executive processes -- it must be noted that a particular form of democracy underlies the concept of the independent regulator. USAID's study, *The Nexus of Energy Sector Reform and Democratic Governance* points out that, in US history, regulation is a compromise solution that displaced the awarding of franchises and setting of tariffs by city councils and state legislatures. The fundamental idea involves insulating these decisions from the pressures of politics that elected bodies face. This form of institution is termed "delegated democracy". Nevertheless, regulatory bodies can only attain legitimacy through effective public interaction, including transparent operations and a constructive, ongoing dialog with the public. Jamison, Berg, Gasmi and Tavara (2004) et al describe the regulatory process as an arrangement that allows citizens to regulate the regulator and policy makers. This is possible if, as noted above, the legislation and policies

¹⁸ The toolkit is currently being pilot tested in 4 Asian countries: India, Indonesia, Thailand, and the Philippines. The implementation methodology is based on WRI's prior experience with The Access Initiative (TAI), a global coalition of NGOs promoting participatory and accountable environmental governance. This approach has two important components. First, assessments are conducted by coalitions of NGOs – or assessment teams -- that bring together diverse experience in fields such as sectoral governance, economics, law, and the environment. Second, the assessment teams organize Advisory Groups consisting of electricity sector government officials and other key actors such as sector experts and academics. The function of the Advisory Group is to provide overall guidance, review results and correct errors, and then to engage audiences beyond the coalition. The coalition itself also develops a strategy and action plan based on the results, again with the help of the Advisory Board.

¹⁹ Other frameworks for democratizing infrastructure institutions exist: for accountability in infrastructure, see Sundakov (2005). For consumer oriented reporting in water and sanitation utilities, see Cook and Stevens (2004). For service delivery more generally, see the framework developed by Gaventa and Goetz (2001). Gaventa and Goetz distinguish between vertical accountability (external mechanisms used by non-state actors to hold power holders to account, usually voting) and horizontal accountability, (institutional oversight, checks and balances internal to the state). They argue for direct engagement of citizens in the workings of horizontal accountability institutions.

enabling the regulator are open to public participation as they are being crafted. Brown and Ericson (2002) go further, arguing that periodic reviews of the regulatory system be conducted by legislators and/or executive policy makers, and that these review proceedings also be open to public participation.

Public Involvement at the Grassroots

The second gap concerns assumptions about how much citizens want to be involved in governance. When really pushed as to why the sector is so slow to involve the public, some energy sector practitioners respond that the public has no interest in participating in energy decisions – they just want the lights to come on. Fair enough. But what if the lights are not coming on? In this paper, we have seen examples of civil society organizations wanting to participate in all components of the electricity governance decision-making chain: policy, regulatory, and distribution. I have argued that at a minimum, a properly functioning sector depends on some form of public interest representation in order to reduce information asymmetries. If the sector is performing effectively, then it is likely that only technically sophisticated consumer advocates and professional associations or academic institutes will be interested in participating, and this function may even be built into governance institutions in the form of a dedicated staff. This is the model we see in the U.S.

However, when the system is chronically unable to provide reliable service – in the industrialized as well as in the developing world -- ordinary citizens and the media are very quick to mobilize. In the developing world, where the power system has not reached or is failing large amounts of people, even citizens with little time or interest in participating in public debates become involved in addressing their power problems. These are people who literally take power by hooking themselves up to the grid, or affiliating themselves with pirate resellers, tampering with their meters or paying off the meter reader to do so. Either way, when policy fails, people get involved in finding a solution, whether through legal channels or those of their own devising.

The underserved are not passive customers waiting to receive service. Increasingly we find that "ordinary people" of all classes are seeking to engage public officials and holding them accountable for failing utilities. While the problem of electricity theft in slums is well known, slum and shackdweller organizations the world over are using civic approaches to pressure

municipalities for infrastructure upgrading projects (Appadurai 2001). Their approach has been one that is committed to retaining control over projects and resources, including providing their own physical installations, taking charge of collections, and slowly negotiating with municipalities to regularize ownership of their dwellings. This is a different vision of governance and governmentality, in which a population has resisted traditional forms of "payment discipline" and is instead working out new strategies of cooperation and pressure tactics.

In a failing sector, we can expect reactions from the middle class as well. In a recent example – the Delhi protests of September 2005, the Indian publication *Civil Society* editorializes:

"When people who are normally content with arguing in their drawing rooms take to the streets, something must be terribly wrong...Any impartial observer would wonder what Bhagidari [public-private partnership] can possibly be at work in Delhi if honest folk have to hold demonstrations and hang around on street corners with placards to get recognition of their rights under the electricity laws. Surely a caring government would not have allowed matters to come to such as pass."²⁰

People who were once content to be defined as "customers" and participate by paying agreed upon tariffs (which Delhi residents had done for the two previous tariff increases), become active in new ways. As the crisis deepens, the public actively redefines itself, sliding along a continuum of customer-consumer-citizen activist, and ultimately holding the government accountable for the failure of basic services. Again, we see that the public does not see electricity in isolation from overarching governance arrangements – even when service is being provided by a private firm. What is lacking, then, is not a desire on the part of the public to be involved, but the capacity of institutions to respond, except in an ad hoc way. There are ample examples of interest in civic alternatives to agitation and theft, yet there exists little guidance for regulators and distribution companies to respond to these initiatives.

Bridging the Governance Gap: the partnership potential of the public

Reform is a process, not an event. This means that there is a time lag between the setting of a new course and its end result. In the interregnum, the public is often asked to change behavior and adopt practices that are appropriate for a system that in fact does not (yet) exist.

²⁰ *Civil Society*, 3:1 (2005).

The reality is that existing institutions are in the process of change, and are still dealing with severe constraints. In the meantime, customers do not really have realizable rights: billing errors are rife and difficult to resolve; communication channels are weak; the special needs of the poor are not well understood.

If we think of institutions as unfinished, as they really are, rather than in some idealized form, we will be able to recognize a broader range of immature competencies that call for innovative responses in the short-to-medium term. What has not been predicted by the corporate model is the capacity and willingness of civil society organizations to step into the governance gap. Public interest organizations such as Prayas and CENN have developed approaches that can be seen as problem solving partnerships. These partnerships get away from the adversarial approaches that are often assumed to exist between the utility and its customers.

Civil society organizations can help both regulatory bodies and distribution companies in a variety of ways. Utility sector experts have observed that regulators – recognizing that corporate governance problems need to be fixed before regulation can be effective – often take on innovative roles, and serve as advocates for reform and good governance.²¹ Transitional involvement in governance and management issues can include functioning in an advisory role to help utilities to: (a) prepare business plans, (b) improve business processes, including metering, billing, and collections, (c) determine asset condition and reduce technical losses, (d) develop information and reporting systems, and (e) obtain financing. But, as Ugaz (2002) points out, regulators generally lack information and expertise regarding the poor and their infrastructure needs. Consumer organizations can help regulatory commissions understand areas for improvement in utility functioning and provide feedback on quality of service. They can provide policy recommendations, conduct data collection and analysis, and help facilitate a fair and just regulatory process. This role is facilitated when there is a legal basis for it written into the electricity law. Such a provision can encourage civil society support for the reform process at its early stages. As we saw in the country examples earlier in the paper, Indian civil society saw opportunities to participate in and shape the process because of provisions in the law, while Indonesians resisted the new law in part because they lacked such formal reassurance.

For utilities, civil society organizations can better communicate with other consumers and help utilities to create awareness about measures such as theft reduction and metering. Similarly,

²¹ Expert panel for USAID study on best practices in water regulation (USAID 2005d).

strong and capable consumer groups could help utilities make field staff accountable. As Ugaz (2002) puts it, "at their best, civil society organizations help private companies operate responsibly, within the cross-section of their own interests, those of their employees, and of consumers and government." As we have seen, this can be done through direct partnerships with the utility, but these interactions can be facilitated and structured by the regulator as well.

USAID has recently documented further examples NGOs of working as intermediaries between communities and the utility, much the way CENN does. In a study entitled *Innovative Approaches to Slum Electrification* (USAID 2005b), the Agency compiled case-studies of collaborations in which people are not merely recipients of services but are an integral part of devising solutions.²²

In a September 2005 conference, many of the participants in the USAID study met to share experiences, with discussion focusing significantly on the utilities' need for community partnerships.²³ Many utilities had concluded that technical solutions were insufficient to combat theft, while NGOs agreed that socio-economic and policy functions could not be placed solely on the utility. Nevertheless, ambivalence about the role of civil society remained. For example, while utilities welcomed initial community involvement in clearing municipal barriers and building community trust, some were uncomfortable with NGOs playing an intermediary role for the indefinite future. While an argument can be made that NGOs are better positioned to understand the needs of the poor and thus take on the roles of meter-reading, billing and collection, some utilities preferred to have more presence in the community, and more control over end-user payments. On the other hand, some NGOs expressed the need for a policy framework to guide their actions, without which they "work in the dark".

The conference made manifest the need for the codification of these achievements in ways that structure workable and agreed upon relationships. Suggestions made by participants

²² The particular form the intermediary interface takes varies from case to case. They range from community agents (local students working with Rio LIGHT, Brazil), women's NGOs working in broader slum-upgrading programs (SEWA working with the Ahmedabad Electric Company, India), community associations (mandated by MERALCO in the Philippines). These intermediaries serve functions similar to CENN and the ESCAs: they help the electricity companies and other stakeholders better understand the starting conditions they encounter, the barriers to traditional service that have soured the environment for their services in the past, and to participate in putting a program together that would work under the extant conditions. They also help residents to understand what the programs involve, to access special lines of credit, to fill out forms and obtain information. In some cases, a major part of community support goes to efforts to obtaining deeds and legalizing dwellings that is part of a broader slum upgrading initiative, but is intrinsic to legal electricity service provision.

²³ The conference, entitled "Meeting the Energy Needs of the Urban Poor" was cosponsored by USAID (Energy Team), The World Bank (ESMAP), EDF and Cities Alliance.

and conference organizers included: policy frameworks to “capture the small successes so that they may grow”²⁴; government – utility – community partnerships to incorporate utility expansion programs within municipal development plans; the linking of policy to poverty reduction programs (PRSPs), and the securing of funding for civil society groups. To this I would add the necessity of benchmarks to guide the rules of engagement. Well defined governance principles would provide structured channels for community groups to obtain information, participate in decision-making processes concerning distribution policies and practices, and delineate clear roles and responsibilities that provide a framework for accountability.²⁵

In other words, the innovative roles developed by and for citizen groups in an ad hoc way could be made explicit in policy, and an exit strategy planned for the medium term, as energy institutions assume their functions as defined by specified benchmarks. In the meantime, there is a need for both greater advocacy for customers and more support for utilities. Donor support needs to tap into this resource by making institutional space for collaboration and designing innovative ways of interfacing with civil society. Narrowly conceived customer service centers (in the case of utilities) and the adversarial model (in the case of regulatory process) are insufficient in the interregnum

Working through the impasse

Both USAID and the World Bank are developing conceptual frameworks that encompass the full range of public involvement – on regulatory, policy and distribution levels – as well as programs that bring together the practices of multiple stakeholders. The effort is far from institutionalized within the organizations, however, and is in need of support from policy makers and sector practitioners alike. As a starting point, we need to pin down the words that keep moving around: “public”, “participation”, “accountability”, and “transparency” and tie them to

²⁴ As articulated by Jas Singh, USAID’s Urban Energy Program Manager.

²⁵ USAID is currently using the EGI framework – which covers only legislative, executive and regulatory processes – and working to extend it to the distribution end of the decision-making chain. Because this end of the sector relies much more directly on customer interface, a greater role for civil society groups is envisioned. Taking seriously the concept of reform as a process, the toolkit may have a temporal dimension as well. While community groups may need to play an enhanced role at first, as energy institutions – including regulatory and government bodies – build their own capacities, the role of NGOs could change from one of direct mediation in say bill collection, to one of representation on Boards or committees that simply provide oversight.

particular institutions and decision-making mechanisms. We need to be clear about which stakeholders we are talking about and what type of participation each can expect. Until we do so, we will continue talking at cross-purposes with each other.

Policy Implications

Given the experiences of citizen engagement thus far and remaining challenges, two basic policy implications emerge. First, energy sector reform needs to be linked explicitly to democratization efforts in a given country. Assistance for “good governance” – including “transparency”, “accountability” and “public participation” -- will need to be rethought from the perspective of representation of the public interest. Second, there is a need to think more closely about reform as a long term process. This means greater attention to the implications of the time lag between the setting of a new course and its end result. In particular, policy making and implementation should address the impact of ongoing inefficiencies and governance distortions, and the lack of technical, financial, and human capacity to correct these over an extended period of time.

These policy implications could be operationalized in diverse ways, such as:

- Mapping key energy sector institutions and issues with which civil society is attempting to engage, and creating policy space for public debate. USAID has already begun to support such work through funding for the Electricity Governance Toolkit, which proposes institutional indicators for public access to information, participation, and accountability, as well capacity building needs. Using this Toolkit – or other structured tools -- to undertake governance assessments would reveal governance gaps in public institutions – including legislative, executive and regulatory functions -- that could be addressed through donor support.
- Providing technical support to civil society organizations to facilitate technically grounded debate. This may take the form of building the capacity of academic institutions and regulatory bodies to serve as a resource for NGOs and to represent the public interest in regulatory processes, as well as direct support to NGOs to provide input on specific issues.

- Clarifying administrative rules governing the relationship between regulators and private firms, so that the boundary between confidential documents (or parts of documents) and those which may be public is clear. In addition, technical assistance and financial support to utilities for improving accounting systems and producing usable information needs to be expanded.
- Providing policy guidance, institutional space and funding mechanisms for collaborative problem solving between the public and the utility. The "customer service" function of the utility needs to be rethought in a way that facilitates partnerships between the community and the utility. This interaction could also be facilitated by regulators serving as advocates for reform and good governance.

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