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## LEVERAGING THE PEER REVIEW PROCESS FOR GREATER OWNERSHIP OF REFORMS TO PROMOTE INVESTMENT FOR DEVELOPMENT: THE CASE OF UGANDA

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**Session 2.3.: The policy challenges  
of involving private investment in key primary sectors:  
the water and energy sectors in focus**

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# Leveraging the Peer Review Process for greater ownership of reforms to promote investment for development: The Case of Uganda

A paper presented at the Global Forum on investment

By Warren Nyamugasira and Silvia Angey Ufoyuru, Paris 27-28 March 2008

## Summary

Uganda, like many African countries, is in need of massive additional investment, both public and private, for it to transform its societies and attain the Millennium Development Goals (MDGs). How to boost the investment, both domestic and international, is a critical question that needs addressing. This is particularly important as the gap between the available resources and those required to reach the MDGs for many sectors is considerable.

In the current discourse regarding mobilisation of private investment in and for Africa, a number of assumptions are made, including one that many African countries have not undertaken enough reforms to attract Foreign Direct Investment (FDI) and what is needed are more reforms; and that many countries have no difficulty identifying where the problems in mobilising investment lie but lack the capacity to pinpoint the areas that require urgent action. A Peer Review Mechanism, one of the New Partnership for Africa's Development (NEPAD)'s priority initiatives for Africa's renewal to make it more competitive and attractive to international investment is viewed as one where African countries can learn from and be inspired by each other on good policy options and practices.

Using the case of water and sanitation in Uganda, this paper argues a number of essential points. Firstly, we argue that it is not the inadequacy of reforms *par se* that has limited investment in Africa in general and Uganda in particular, but failure to correctly identify the real challenges facing the economy, lack of national consensus on the best way to plug the financing gap and inertia from past public control freak mentality. Uganda has liberalised the economy, privatised most of the previously state - owned enterprises and returned all previously confiscated assets to the original owners. It has considerably reduced investor entry requirements and provided considerable incentives to attract DFI. All other things being right, these reforms would have been necessary and sufficient to attract more domestic and foreign investment into the country than has been the case so far.

Secondly, we argue that the Ugandan economy still suffers the hangover of past tendencies of excessive public sector control and involvement in direct service provision and this has limited the country's ownership and effective implementation of the reforms already undertaken or those which are in the offing. In case of water, Government has been *timid* to fully implement critical reforms because of a dominant public sector player and fear of negative public backlash with its attendant political (voter) repercussions. This has blurred the discussion on where public investments are most needed, most effective and most efficient leading to Government over dominating those areas that should be best left to private investors.

Thirdly, we argue that the critical lesson from the African Peer Review Mechanism (APRM) is not necessarily the inspiration by the experience of other countries, important as that may be, but the opportunity for 'opening the collective eyes' of the nation to build consensus on national priorities and the best way to plug the financing gap in the resources needed to meet MDGs and an agreed National Programme of Action. Because APRM is highly consultative at the highest level, consensus that would be generated would facilitate adequate buy-in by a wider range of stakeholders than has been the case so far and generate collective national desire to irreversibly break with the past mentality of excessive public sector control and work collectively towards more modern ways of doing business.

Fourthly, drawing on the experience of the Water Dialogues, a global multi-sector dialogue on the best delivery mechanisms for and the role of private sector participation in water service delivery, we argue that increasing private sector participation, particularly in water, though highly controversial is not necessarily insurmountable and the controversy, needs to be critically addressed for it not to hamper the most effective deployment of scarce *profit-seeking* resources under private sector control. This is because the available but very limited public resources (including donor funding) are already over-stretched with highly competing

priorities. Therefore it is important to devise mechanisms for unlocking and deploying private sector investment resources into profitable aspects in order to up and re-direct public resources for efficient and effective utilisation in less profitable but equity addressing and poverty reducing areas. In other words, we argue that currently public investments (including donor resources) are misdirected and effectively crowd out private resources in the profitable aspects of water leaving the poor un- or under-served or *charitised*. Furthermore, we argue that lack of agreement and continued controversy on Private Sector Participation do not only undermine effective deployment of resources but it threatens to exacerbate the inequitable access to services and constitute an impediment to poverty reduction and social transformation.

### **The New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM)**

With nearly 800 million people in 53 countries, African Union countries continue to present the most formidable development challenge. Africa is home to 34 of the world's 48 poorest countries and of the 32 countries in the world with the lowest levels of human development indices, 24 are in Africa, and few of them are on track to attain the Millennium Development Goals. In terms of investment, of a total of USD\$135 billion of foreign direct investment (FDI) in 2003, only USD\$9 billion went to Sub-Saharan Africa with half of that amount going to three oil-exporting countries<sup>1</sup>. Clearly there is a challenge to raise the capacity of African countries to attract and make good use of private investors, large and small, foreign and domestic.

In many respects, NEPAD is perhaps the greatest collective reform the continent has seen instituted since the Lagos Plan of Action of the early 1980s. It is a vision and strategic framework by Africa's leadership for renewing Africa and making it more competitive and attractive to local and international investment in order to address its escalating poverty, under-development and continued marginalisation. It attempts to present a comprehensive strategy for sustained development built on the duality of correct identification and effective deployment of Africa's own resources and efforts and international partnership. One of NEPAD's priorities is building and improving infrastructure, including energy, ICT, transport, water and sanitation and reviving agriculture.

To attract investment, the APRM was instituted to re-affirm the continent's commitment to the promotion of democracy and good political governance according to assessable standards and indicators. It is voluntary and ensures that the policies and practices of participating countries conform to the agreed political, economic and corporate governance values and principles, codes and standards. Its primary purpose is to consolidate democracy, promote market efficiency, reduce wasteful spending, and encourage private financial flows.

The Peer Review has a number of advantages. Firstly it has three distinct phases that ensure that the process is comprehensive: **Country Self Assessment**; **(external) Country Review Mission** and the actual peer review by the **Peer Review Forum** (where heads of participating Governments that have acceded to the APRM discuss the country report presented the Panel of (African) Eminent Persons and the respective Head of State (in person). So far, 28 of African Union's 53 countries have acceded to the Peer Review Mechanism and by the end of March 2008, six countries will have completed the process and undergone peer review – Ghana, Kenya, Rwanda, Algeria, South Africa and Benin. Uganda and Nigeria have both completed the Country Self Assessment and Country Review Missions and are due to be peer reviewed in June/July 2008.

Uganda has an APRM National Commission of 21 representatives of Central and Local Governments, ruling and political opposition parties, the private sector, labour, Faith-Based Organisations, Non Governmental Organisations, women, youth, farmers, the legal fraternity and Persons With Disabilities. A Country Self assessment Report has been produced based on a comprehensive consultative and research process that involved a desk review of documented evidence, 200 Expert Interviews, 96 Focus Group Discussions, a National Sample Survey of 1588 respondents in 69 of the 80 districts, submission of over 100 memoranda and 32 public hearings in 13 districts. The consultations involved a wide range of stakeholders including Parliamentarians, civil servants, the armed forces, local government officials and the judiciary; civil society and faith based organisations; private sector, the media, youth, women and people living with disabilities and the diplomatic community. The findings were further validated through regional meetings and a

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<sup>1</sup> African Development Indicators, The World Bank 2005

(external) Country Review Mission of African experts and eminent persons from 13 African countries. Among other things, this makes the findings highly credible and can easily be owned by a broader cross-section of Ugandans. Because the country is then peer reviewed at a Presidential Forum of other heads of State undergoing the same process, the findings and recommendations take on a high level of significance.

Secondly, a **National Programme of Action (PoA)** accompanies the Country Review Mission report spelling out clearly what the country commits itself to doing within a five-year timeframe and progress has to be reported on every six months. The Programme of Action clearly spells out the roles and responsibilities of all stakeholders and the resources needed for full implementation.

Utilised effectively, the peer review mechanism, through its various stages, can generate national consensus on what the **priorities** for investment should be, what action is needed and where the primary responsibility lies for implementation, thereby improving the environment for private investment flows. For example, in Uganda it is clear that (and Government has acknowledged that the national budget only contributes 25% of the total resources needed to boost economic growth and development) private investment is key to taking the attainment of MDGs to the next level, besides efficiency gains that could clearly still be made within the current level of resource envelope. The real challenge is the actualisation of this knowledge. For example, in the case of water and sanitation, where the anticipated resources to close the resource gap cannot realistically be generated by government, this would require consensus to allot private sector some of the profitable aspects of water and sanitation provisioning currently the exclusive preserve of the public sector, and generating wider ownership of such policy shifts, including buy-in by NGOs and CBOs.

## **Historical background**

At independence in 1962, Uganda inherited a colonial legacy of dysfunctional and inequitable political system that led to cleavages within society along ethnic and religious lines. From 1966 to 1985 constitutional rule was weakened resulting in unstable governments, militarization of politics and disenfranchisement of a big part of the population<sup>2</sup>. From the mid 1960s, the Government began the policy of setting up state-owned enterprises, national utilities and nationalisation of key private sector run industries. While in some cases, government undertook strategic investment, it failed on the principle of “Build, Operate and Transfer” (BOT), where state-instantiated productive enterprises should have been but never were transferred to the private sector for more efficient management. As the political system deteriorated, political patronage increased, ethical and corporate standards and principle were compromised and market principles/signals for efficiency and accountability became secondary to political considerations.

During the military regime and “economic war” of Idi Amin (1970s) and the political instability of the early 1980s, emphasis was put on further controls and full nationalisation of privately owned assets and rationing of basic goods. The enterprising Asian community was expelled in the so-called economic war and their properties put under the Departed Asians Expropriated Custodian Board.

With the coming to political power of President Yoweri Museveni’s National Resistance Movement in 1986, political stability was established in much of the country and eventually critical reforms undertaken when the government returned expropriated properties of Ugandan Asians<sup>3</sup>; liberalised the economy to introduce economic openness; privatised State-Owned Enterprises to get government out of direct business and the establishment of an Investment Code (1991). As a result, Uganda’s economic performance has been acclaimed as being among the best in Africa for some 15 years, expanding six times in current market price terms since 1986 and registering a robust growth rate of 30% per annum in direct investment between 1993 and 2004. As a consequence of rehabilitation and new investments, economic collapse and decay of the 1970s and early 1980s were reversed and new spaces for both domestic and foreign firms opened. There is also a “bonus of a smart workforce” as the education sector has been liberalised and higher and tertiary education increased student enrolment exponentially.

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<sup>2</sup> Findings from the Country Self-Assessment Report, Uganda National Commission 2007

<sup>3</sup> Between 1991 and 1996, 1,788 properties were repossessed and returned to their original Asian owners (APRM Country Assessment Report 2007).

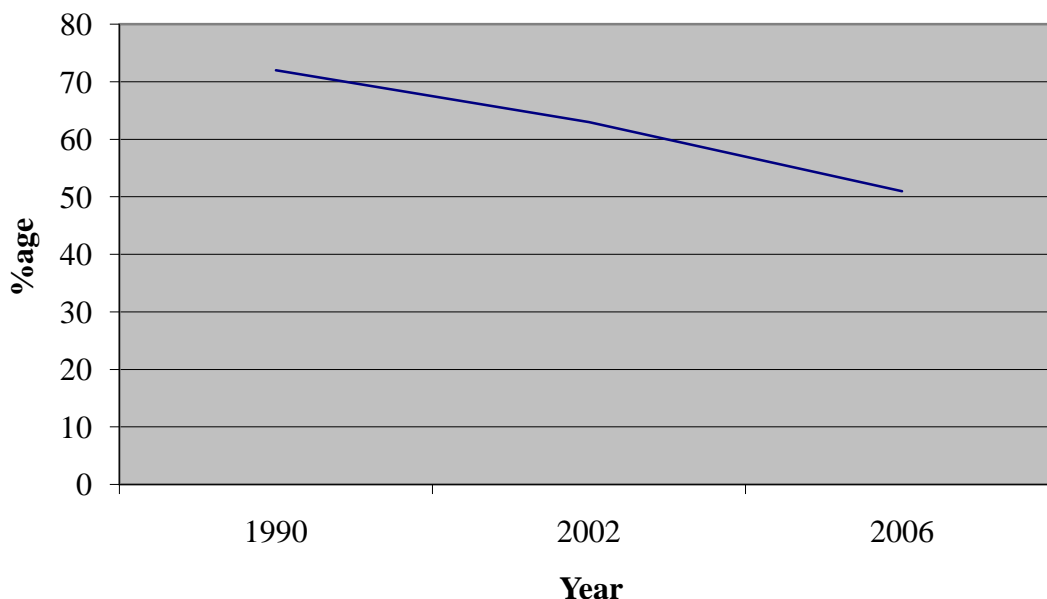
However, though the economy has experienced phenomenal growth and expansion particularly peaking between 1995 and 2002, the Ugandan economy remains small (at around USD\$10 billion) and beset with many challenges, majority of which are structural. The economy faces high production costs and excess (un- and under-utilised) capacity as a result of poor infrastructure such as high energy shortfalls, poor roads, and long distances to the sea. These render Ugandan products largely uncompetitive and limit capacity expansion. More critically, the economy suffers from hangovers arising from the tendencies towards a command economy of the late sixties and the whole of the seventies and never fully recovered from the mentality of public sector control and direct provision which has been reinforced by the “*charitisation*” approach of the Non-Governmental Organisations.

The militarization of politics, though less dominant now and in many ways critical to maintaining political stability, has not completely been removed from among the critical factors of generating and maintaining investor confidence in a stable economy, particularly for long-term, long-gestation investments. This is exemplified by the considerable decline in new investments in the general election periods of 1996, 2001 and 2006, attributed to the attendant uncertainty and increased perception of political risk at such times. Uganda’s ranking on the 2007 Global Competitiveness Index of the World Economic Forum was 116 out of 128 countries assessed (APRM Country Self-Assessment Report 2007).

**The water and sanitation sector in Uganda**

The water and sanitation sector in Uganda illustrates well that reforms alone are not enough for boosting private investment and that effective implementation of good reform policies can be resisted even from inside the establishment. The sector has and is still under-going a number of reforms, including the introduction of sector-wide approach to planning; demand-responsive approach, integrated approach to services delivery, private sector participation through use of contractors in the design, construction and management of water and sanitation facilities, introduction of community based management systems, and the introduction of Internally Delegated Area Management Contracts (IDAMCs). As a result of these reforms, sector performance is supposed to have improved considerably. However, as is indicated in the line graph below, this has not been necessarily been the case. On the contrary, one of the startling discoveries in the desk research by Uganda Water and Sanitation Dialogues is that performance of the water and sanitation sector has been declining over the past 16 years. For example, while access to improved water in the urban sub-sector was reported to have been at 72% in 1990 (World Bank 2005), by 2002 access was estimated at 63% and had dropped to 51% by 2006 (Ministry of Water and Environment 2006). Under this scenario, it is the poor who suffer most.

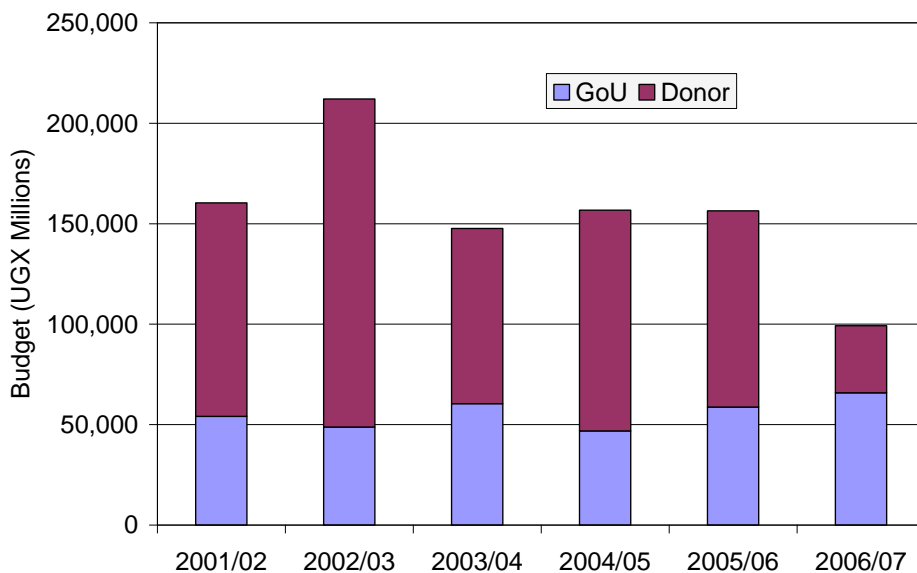
**Water Sector Performance 1990 - 2006**



*Source: Constructed by the author from the World Bank figures*

We argue therefore that, beyond these reforms, the critical issue is how to bridge the financing gap that has already been identified. According to the Water and Sanitation Strategic Investment Plan, urban water and sanitation investment requirements for the 100% coverage by 2015, which is the sector goal, is estimated at USD\$38.1 million per annum (Sector-Wide Investment Plan 2004) and an estimated USD\$242 million per year for the next ten years is needed to attain MDGs for the whole country. Of this \$95 million would be for water and \$147million for sanitation (WSP: Getting Africa to meet the MDGs on Water and Sanitation, 2006).

### Trends in budget and expenditure for Water & Sanitation (2001/2 – 2006/7)



Source: Water and Sanitation Sector Performance Review Report (2006)<sup>4</sup>

While water and sanitation are accorded high priority under the Poverty Eradication Action Plan, the above combined government and donor financing falls well below the sector requirements. Considering the myriad priorities facing the government; the limited fiscal space that restricts further expansion of government direct spending in a particular sector and across sectors; the need to improve what is already being done and to remove binding constraints for example by modernisation and renewal of national and inter-state infrastructure including roads, power and railways; clearly investment by the public sector alone will not meet the huge financing gap identified in the water and sanitation sector.

Furthermore, the water sector also illustrates the hangover from *the era of excessive public sector control and dominance* in the inadequate role it allots to private investment in the sector. From a desk study by the Uganda Water and Sanitation Dialogues (2008), it has emerged that under the Public Enterprises Reform and Divestiture (PERD) Statute (1993), which takes various forms including outright sale, joint ventures, asset leasing, concessions and management contracts, National Water and Sewerage Corporation (NWSC), the national provider, was among the public enterprises listed for divestiture. But *because of the controversy it generated, with many civil society activists terming it outright “sale of National Water and Sewerage Corporation”*, **Government has been timid to implement the reforms in full**. Even the management contracts with international corporations such as JBG Gauff of Germany and ONDEO Services Ltd of France ended up as “failed experiments”, relegating Private Water Operators to run the commercially less lucrative small towns of less than 5,000 people and growth centres of even smaller populations on management and service contracts with Local Water Authorities.

Most of these towns are not commercially viable as they do not raise enough revenue to cover operators’ management, operational and maintenance costs. For example, data from 57 of such towns indicates that only 17 have broken even so far. Those which break even are quickly “graduated” from being small towns

<sup>4</sup> Figures for FY 2006/07 are not complete since data for the full year was not yet available

and are taken over by National Water and Sewerage Corporation, leaving the private sector to operate only in non-commercially viable ones. On the other hand, the public utility is doing brisk business in large towns, having reserved for itself the commercially viable and lucrative part of the water operations.

The water sector also highlights the role played by the Private-Not-for Profit (PNFPs), mainly NGOs. According to the Sector Performance Report 2007, in rural areas of Uganda NGOs and CBOs reportedly finance an estimated 30% of the total water and sanitation outlay. While they offer a most needed service, their size (an estimated 190 NGOs/CBOs) coupled with the dominance of the public sector and donors, critics consider them to be constraining the role of the private sector and introducing and consolidating '*charitarisation*' of water and sanitation service provision. In addition to PNFPs, it should be noted that the water and sanitation sector has considerable informal operators which are neither properly documented, nor regulated and whose services are certainly not cheap.

Furthermore, as is the case in other services, after a certain level of attainment, marginal improvements always become progressively harder. Yet policy reforms to increase Private Sector Participation (PSP) would still be resisted by the civil society and even some politicians and public servants<sup>5</sup>. So while the financing gap is too big to be filled by the public, donor and private-not-for profit resources, there is no consensus regarding new financing modalities that would more effectively close this gap. To appreciate the reasons why there is no re-thinking of the current approach to filling the financing gaps in the Water and Sanitation sector, it is important to understand the controversy surrounding Private Sector Participation in water and sanitation.

### **The Water Dialogues**

The Uganda Water and Sanitation Dialogues is an un-official multi-stakeholder forum that provides an opportunity for sector actors with differing and divergent viewpoints and perspectives to engage in constructive dialogues that enable collective identification, critical analysis and agreement on service delivery modes that are most likely to accelerate the realisation of the Millennium Development Goals and National Poverty Eradication Action Plan Targets for water and sanitation. Difficulties in reaching consensus on such critical issues such as financing, regulating and delivering water and sanitation services to the vast majority of the poor and disadvantaged people (estimated at a global figure of one billion lacking water and two billion and a half lacking sanitation services) has led to the conclusions that dialogues are critical to reach some form of agreements (Global Scoping study Report 2005; Uganda Water and Sanitation Dialogues 2006).

Private Sector Participation in water and sanitation service provision, beyond producing the inputs required to deliver water, such as pipes and taps, excavating equipment and other hardware, has for long been controversial. The controversy and conflicting opinions surrounding private sector participation re-surfaced at the Bonn International Conference on Freshwater, 2001. It was here that a proposal on a multi-stakeholder dialogue to review the issue was agreed. Recommendations from a scoping study that followed the conference emphasised the need for the Private Sector as one of the ways through which efforts towards achieving MDGs on water and sanitation could be realised. The multi-stakeholder workshop held in Berlin in June 2004 reached an agreement on support of a participatory review, setting up an International Working Group to taking forward the resolution. Water Dialogues are taking place in 5 countries including Uganda, South Africa, Brazil, Indonesia and the Philippines.

The Uganda Water and Sanitation Dialogues formally started in 2005 with 17 members representing different stakeholders such as the Water Development Division of the Ministry of Water and Environment, the National Water and Sewerage Corporation, NGOs, the Ministry of Finance, Planning and Economic Development, Academia, Consumers protection agencies, public workers union and private water operators and engineers, among others.

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<sup>5</sup> It should be noted that this resistance is not limited to reforms in the water and sanitation sector alone but also to almost all reforms leading to de-regulation. For example the kind of incentives other countries such as Ethiopia or Rwanda give to investors such as government acquisition of land for investment, excision of gazetted forests for investors, etc. have been violently resisted by a wide range of stakeholders as favouring foreign investors.

From the experience of the Uganda Water and Sanitation Dialogues, it is emerging that increasing private sector participation, though still highly controversial, is highly desirable for the following reasons:

- The financing gap so far identified by the government and confirmed in the Country Self-Assessment Report of the Peer Review Mechanism, is well beyond the resources committed and available for the sector, be they government, donor or NGO funds.
- While in theory the Private Sector is officially “the engine of growth”, the role it is allotted in the water sector is a marginal one, as it is left to provide services in small towns (less than 5,000 people) under management contracts with Local Water Authorities and is non-existent in the commercially lucrative 20% of the water users and consumers that contribute 60% of the revenue from water services. They are not allowed to own assets and to operate in small towns which break even (that is those that reach the threshold of meeting their operational, maintenance and management costs) as they soon graduate from the ambit of Private Water Operators to that of the National Water and Sewerage Corporation, the National Water Provider.
- There is a significant number of informal providers in the sector which are neither documented nor regulated, but which are not cheap, suggesting that the poor, who use these services are willing to pay for their water.
- Even in small towns, if piping and taps can be installed free of charge to them, consumers, including not so well-off ones, are willing to pay for the water they use.
- The reforms, particularly those on regulation of the sector, are not fully implemented, leaving such providers as the National Water and Sewerage Corporation to regulate themselves.
- Where a player such as the national provider has become dominant, research reports, official reviews and official forums tend to reinforce the view and perspective of the dominant player.

From the foregoing, we can deduce that even the “failed experiments” with the management contracts with international corporations, and the “government timidity” to implement the reforms in full are linked to a mechanism that maintains the *status quo* rather than challenging it. The real challenges, such as where in the public sector resources be concentrated, are never discussed openly, despite the existence of numerous official forums to do so; including annual sector reviews in which donors are supposedly quite vocal. There is need for discussion of the critical question of how well public resources have been deployed to engender equity and reduce poverty versus how well public utilities are reported to be performing. There is need to dispel the myth of the official position being that private sector participation in the water and sanitation is the government policy and is fully accepted while in practice this is meaningless. This does not only undermine effective deployment of public and private resources but also threatens to exacerbate the inequitable access to services and constitutes an impediment to poverty reduction and accelerated social transformation.

## Way forward

We conclude that the best way forward is that the real issues facing financing of the sector be discussed in a safe space, which is the essence of the National Water Dialogues. Secondly, addressing the financing gap in the sector, because of its size and the issue of diminishing marginal returns with the current mode of financing, has to involve private sector in more a central role. Our Proposal is that government adopts the Build, Operate, Transfer (BOT) principle to water and sanitation financing by:

- Leaving the commercially viable services (where public funds effectively subsidise the better off water users and consumers to flush toilets, hose grass and wash cars) to private sector providers through competitive bidding<sup>6</sup>.
- Making strategic investment decisions, singularly or through private-public partnerships, into the less commercially viable and poverty reducing areas until they become commercially viable, and then hand them over to the private sector to fully operate and expand (the BOT principle) using private resources.
- Permitting private sector investments in assets and infrastructure in water and sanitation to free up more public resources for un- and under-served areas.

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<sup>6</sup> For example presently, the National Water and Sewerage Corporation has difficulties securing commercial loans for expansion that a private sector operator would easily overcome at that level of operation.

- Maintaining and where possible increasing public sector resource allocation to the sector but focusing it on partnerships with the private sector and areas which are less commercially viable but which are poverty reducing such as rural areas, rural growth centres and some small towns.
- Ensuring effective regulation to maintain the highest quality standards in the sector.

Because the controversy and conflict surrounding private sector participation in water and sanitation remain high, government should utilise the Uganda Peer Review Mechanism and other mechanisms such as the Uganda Water and Sanitation Dialogues to build consensus on the need to boost private sector participation as the best way of addressing this and similar investment gaps in various sectors by unlocking and re-directing additional private resources for effective and efficient utilisation, thereby releasing public sector funds to focus on less commercially lucrative but poverty reducing areas in the sector. This should be conditional on effective regulation and adherence to international codes, standards and principles of good corporate governance (already identified under the APRM process). While there seems to be no investors pushing to put big money into the water and sanitation sector, we are of the view that where the commercially viable areas of the sector are opened up to the private sector, there would be takers of the new investment opportunities. The spin-off would be greater investor confidence and a perception that the country has finally broken with the past associated with excessive control and public sector dominance. Inevitably, this would lead to faster attainment of Millennium Development Goals and social-economic transformation.

### **About the authors**

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