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IMPROVING LEGISLATION THROUGH SOCIAL ANALYSIS: A CASE STUDY IN METHODOLOGY FROM THE WATER SECTOR IN UZBEKISTAN

by Jonathan Brown, Ayse Kudat, and Kristen McGeeney*

INTRODUCTION

Over the last few decades, lawyers and politicians have paid increased attention to the role that social analysis in general, and Social Assessment in particular, can play in drafting and evaluating legislation and regulations. Social analysis provides an alternative to external forces imposing successful laws from one country on another country without analyzing whether these laws will fit within the legal, social, or political frameworks of the country.¹ When external forces, such as international institutions, assume institutional, cultural, or political realities that are not present in the target country, these transplanted laws often are rejected and fail because they are not appropriate for the country, lack legitimacy, and do not benefit the country.² Social assessment replaces these assumptions with research-based knowledge, resulting in more situation-specific legislation, regulation, and projects.

Luzius Mader³ distinguishes eight different analytical steps in legislative methodology. He has termed the seventh step as the “sociology” of legislation.⁴ While not every law is “an attempt to solve a problem by changing the behavior of those to whom it is addressed,” most laws (1) assume a certain understanding of the attitudes and behavior of various stakeholder groups directly or indirectly affected; and (2) attempt in their enactment to satisfy generally accepted criteria about what makes good legislation which, according to Mader are:

- Effectiveness – Has a law both during its preparation and implementation correctly taken into account the attitudes and behaviors of affected stakeholders;
- Efficacy – To what extent have the objectives of a law been achieved; and
- Efficiency – What are the material and non-material costs and benefits of the legislation.

The social sciences, with their broad range of qualitative and quantitative methods and techniques, on occasion may contribute to the development of legislation and, once enacted, to an evaluation of its impact. For example, Anne and Robert Seidman suggest that, to evaluate a proposed project, bill, or legislative action, the legislator should ask the following four questions: (1) whether the legislation will alter or eliminate the problematic behavior; (2) whether it will provide a complete legislative system to resolve the problem; (3) whether the evidence show that the legislation will be cost-effective; and (4)

whether it will positively affect the majority of people’s quality of life, and will it help the poorest and most vulnerable individuals.⁵ Social sciences can play a crucial role in developing answers to these questions.

However, those involved in developing legislation do not systematically use social analysis, nor do they assess the impact of legislation through a process of social impact monitoring. This may be unsurprising since there are few guides as to what areas of the social sciences may or may not be appropriate to use.⁶

This article investigates one methodology in the social sciences, and in social analysis in particular, that may be useful in the preparation and evaluation of legislation: Social Assessment. This framework has been useful in the past because development practitioners in institutions such as the World Bank have used Social Assessment to bring together social analysis, institutional and social organizational analysis, participation of affected stakeholders, and monitoring of stakeholders. This article defines social assessment and its main elements, and then analyzes its utility by investigating the use of social assessment in relation to a water project in the Republic of Uzbekistan.

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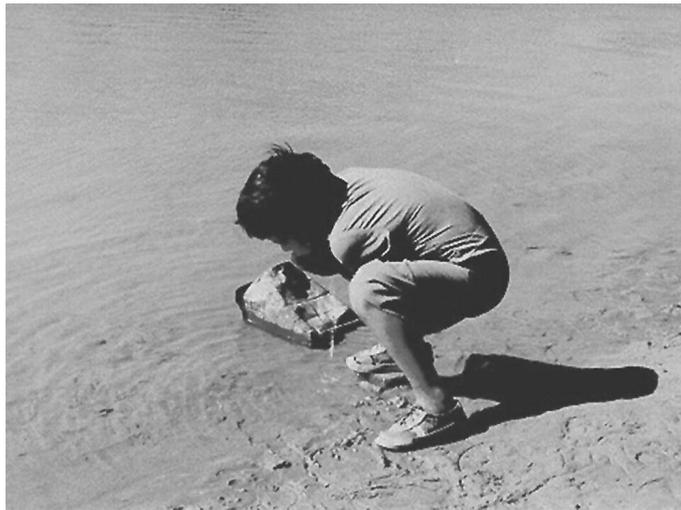
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SOCIAL ASSESSMENT DEFINED

Social Assessment is:

- A tool to uncover social causes and impacts associated with development projects, regulation, and legislation;
- A process through which project implementation agencies understand how a country's or a community's social, cultural, political, and institutional context influences social outcomes;
- A means to enhance equity in the distribution of benefits to affected communities and to strengthen social inclusion; and
- A mechanism through which social cohesion can be built, accountability and transparency can be promoted, and the poor and other vulnerable groups can be empowered.

The details in a law's substantive provisions, form, and structure determine how effective a law will be.⁷ To make a law effective, it must be grounded in "an analysis of the place – and time – and the specific causes of the behaviors that create the social environment which the law or regulation hopes to modify."⁸ "The usefulness of the Social Assessment process derives mostly from its concrete and situation-specific nature."⁹



A young boy drinking water from an open water source in Uzbekistan.

The Social Assessment process incorporates four principal analytical elements or pillars, each of which is constantly revisited during the life of a development project.¹⁰ The pillars are:

- **Identification of key social development issues.** This pillar addresses social issues relevant to the project or program. Issues are identified within a narrowing context, generally going from a national and sectoral perspective to specific project sites. Depending on the situation, the issues may include poverty, equity, social diversity, gender, social capital, social exclusion, etc.

- **Stakeholder identification and the formulation of the participation framework.** This pillar identifies major stakeholders¹¹ in the project and their particular interests. Stakeholders may range from individuals to specific social groups, authorities, and local, national, and international organizations. A major product of the analysis is the development of a participation framework designed to ensure active participation of key stakeholders in product design, implementation and evaluation;
- **Institutional and social organization analysis.** This pillar concerns the structure of social relationships and behavior. The analysis identifies institutions, both formal and informal, which establish the "rules of the game" in the project context, and the incentive structures, which affect the extent to which the rules are either followed, undermined, or ignored. The product of the analysis is a series of recommendations on the institutional development or reorientation that is needed to achieve project objectives;
- **Establishment of a monitoring and evaluation framework** This pillar develops a monitoring and evaluation framework for project implementation, focusing on aspects relevant to the social development objectives of the project. The purpose of this analysis is to establish mechanisms to measure social changes and social impacts during implementation to inform stakeholders about mid-term corrections needed to ensure that social development objectives are achieved.¹²

The tools used for Social Assessment are many and depend on the specific context, but consist of a mixture of quantitative and qualitative methods, such as surveys, focus groups, individual interviews, and traditional research. These tools are usually iterative processes where findings from one method are explored further or checked using other methods.

But how beneficial is the Social Assessment process, particularly in very different fields of endeavor and in answering a variety of complex questions? These questions may range from the very broad – what kinds of institutions do people prefer to regulate their lives – to the more narrow – what kinds of standards and norms do people prefer in everyday life. The Social Assessment process also raises questions relating to the robustness of the findings and the utility of the process in the sociology of legislation.

The world of development finance specializes in funding projects in many sectors and affecting a multiplicity of stakeholders in a broad range of developing countries around the world. The World Bank and its regional partners, committed to increasing the involvement of stakeholders in decisions affecting their lives, use Social Assessment as part of their *modus operandi*. Their use of Social Assessment presents an opportunity to assess the instrument's effectiveness, efficacy, and efficiency, and its potential for use in creating and reviewing legis-

lation. The use of Social Assessment by the World Bank in assisting the Government of Uzbekistan to prepare a project in the water sector was chosen as a case study because it dealt with (1) many different aspects of Social Assessment by actors in development finance who had very different view points; and (2) a sector that is essential to human survival and the subject of great debate on many levels.

The water sector, in general, provides a particularly good example of how the Social Assessment process can lead to a more sustainable project, and by analogy, to better legislation. There are many differences in ideologies and practices surrounding the water sector beyond the universal agreement that the sector affects all parts of society and that access to clean and healthy water is a priority throughout the world. For example, there must be actions taken to conserve water and to recognize and appreciate the importance of implementing measures to reduce the consumption and waste of water. One of the main ways to do this in a market-oriented economy is by charging fees for water. However, many individuals, especially those from countries like Uzbekistan that heavily subsidize certain economic and social activities, particularly those dealing with education and health, also feel that water should be free, or nearly so. The organization of the water sector, whether it should be publicly or privately owned and whether communities should control water resources or this should be more centrally done, is also very controversial. By looking at the water sector, one can see why close attention must be paid to individual community structures and issues, including working environments, living arrangements, use and waste patterns, and general attitudes about water.

A CASE STUDY ON THE WATER SECTOR IN UZBEKISTAN

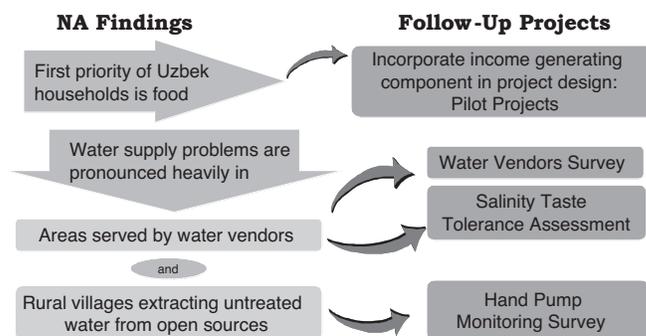
Discussions between the Government of Uzbekistan and the World Bank in the early 1990s, shortly after the Soviet Union dissolved and Uzbekistan became an independent country, began with two clear conditions: (1) that Uzbekistan knew very little about the World Bank or about the principles of a market economy and was wary about “policy” discussions with external agencies like the Bank that might be perceived as infringing on “sovereignty”; and (2) that the World Bank knew very little about Uzbekistan, but generally advocated a more “private” sector approach in “command” economies. Moreover, while all of the newly independent countries of the former Soviet Union talked about “transitioning to a market economy,” some were moving faster than others. Uzbekistan was among the more cautious of the new republics.

Both Uzbekistan government officers and World Bank officials have strongly-held, and often divergent, opinions and interpretations what each thought were the “facts.” The first funding from the World Bank to Uzbekistan, as for most of the other newly independent former Soviet countries, was a balance of payments and budget support loans with very few policy conditions, and as a consequence, with very little opportunity for disagreement.

The Bank then looked for other areas where it could provide assistance, in particular in traditional “project” lending, which provided ample opportunity for disagreement over the many aspects of common project analysis. The first sectors assessed were agriculture, an historically important economic area for Uzbekistan, and water supply and sanitation, which was a problem for many Uzbeks and which has been an important sector of World Bank lending around the world because of its important role in reducing poverty and upgrading living conditions.¹³ Water was a special challenge in Uzbekistan, which was also suffering from the Aral Sea environmental crisis, which affected the water and soil quality in much of the country. Over the previous two decades, two large rivers were diverted to expand the area of cotton production. Eventually, the rivers dried up and the lake shrank by 66 percent.¹⁴ As a result, salinity in the water increased, soils became waterlogged, and the area’s fish spawning grounds and fisheries dried up.¹⁵ The land was also severely affected. The winds picked up salts and pesticides from the dry lakebed, and caused salt and pesticide storms. These storms damaged the productivity of the land.¹⁶ The regional climate also changed, harming the area’s cotton. In short, there was little water for drinking in many areas, and what water there was, often was of poor quality.

Uzbekistan Water Supply, Sanitation and Health Project Needs Assessment (NA)

Initial Study: Needs Assessment (NA)



Project files for the Uzbekistan: Water Supply, Sanitation and Health Project, World Bank (on file with Ayse Kudat).

As the Government and the World Bank began discussions about the water sector, it was clear to both parties that appropriate legislation, an institutional framework, and a water supply infrastructure project that operated in the interests of consumers were essential for improving the water sector. The project had to: (1) be accepted by the people who consumed the water, an important stakeholder group and the primary beneficiaries; (2) operate within a good legal and regulatory system; and (3) be assured that legislation and regulation could be enforced. Finally, the project, legislation, and enforcement had to fit within the “social” environment. All of this had to be based on adequate background knowledge about the people that the laws would govern and the current social situation.

The Uzbekistan Water Project provides a good example for understanding how Social Assessment can help fill in knowledge gaps, including having the right legislation at the broadest level over the water sector. A stark example of this is that the government of Uzbekistan had legislation that was ready to be passed that would have legislated free water to the entire country. However, through the Social Assessment process associated with the Project, the government learned that precious water would not be conserved, the project would not be financially viable and as a result, the poorest members of society might not receive adequate water and would have to continue to purchase it from water vendors for up to four times the amount that the middle-class paid for piped water. As a result, the legislation was changed. In addition, the Social Assessment process looked at many other areas to determine people's willingness to pay, technical standards for the salinity of the water, the amount of required water, and whether a rural piped-water project should exist.

It is only through a good understanding of the linkages between legal reform, the regulatory framework and enforcement, as well as a good understanding of people's behaviors, value systems, customs, physical structure, and social structures that an appropriate and comprehensive program could be developed.

BACKGROUND INFORMATION ON THE WATER PROJECT IN UZBEKISTAN

Uzbekistan requested World Bank assistance in improving its water supply, sanitation, and health in the two regions of Uzbekistan¹⁷ – the Republic of Karakalpakstan and the Khorezm Oblast – that were affected the most adversely by the Aral Sea crisis. As a result of this crisis, the availability of water suitable for drinking was limited.¹⁸ People in the region knew that the water quality was bad due to the existence of particles, the color and smell of the water, and learned of the water quality by word of mouth and through the media.

The initial process of Social Assessment on the role of water in general and the subsequent focus group meetings with stakeholders potentially affected by the proposed project revealed that the inadequacy of the water supply stemmed from a variety of factors, only one of which was the lack of external financing, the major contribution of the World Bank assistance. The Social Assessment process concluded that further investigations were needed to reach an adequate understanding of the “real” problems. Both rural and urban areas experienced bad water quality, including suspended solids and high salinity levels. Urban areas also experienced poor levels of service, poor quality of piped water supplied by the water utilities, including problems with hot water and unavailability of cold water. These areas suffered from excessive leaks in the piped water supply, broken taps, flooding in the basements of apartment buildings, and pressure problems resulting in piped water failing to reach many upper-floor apartments.¹⁹

The Uzbekistan water project began as an effort to deal with water availability in rural areas by providing piped water. However, the Social Assessment found that a project supplying piped water could not be successfully implemented in these

rural areas as envisaged for technical and economic reasons. After finding that the urban areas' water supplies were also in poor condition, the project then focused on urban areas. As the technical, economic, financial, and institutional aspects of project preparation proceeded, it became evident that there were substantial differences of opinion among stakeholders on a diversity of issues, not just cost recovery and the level of user charges. There were also divergent opinions on technical standards, such as the quality of water, and on the institutional framework for management of the water.

Through Social Assessments the main partners, the World Bank and Uzbekistan, gained enough information to create a workable project and benefited from it in three ways. First, because of numerous differences of opinion and conflicting theories and ideologies between the partners, more verifiable factors were needed on which to base project decisions. These facts allowed the partners to focus on providing for the needs of the people rather than debating ideology. Second, the partners needed more factual information so that they could design a project capable of providing water sustainably. Third, the partners needed to consult with individuals to understand the needs of the people so as to ensure that the partners met these needs, and met them in the most efficient way possible.

As a result of the overall Social Assessment process, a better-defined project was created that resulted in substantial investment, saving in excess of twenty million dollars, and resulting in lower user fees for beneficiaries: better service at lower prices.

THE SOCIAL ASSESSMENT PROCESS IN THE WORLD BANK'S WATER PROJECT IN UZBEKISTAN

The Social Assessment process included a variety of research, simulations and pilot projects, surveys, focus groups, and interviews on the behavior and attitudes of stakeholders and beneficiaries, ranging from very broad needs assessments to very specific issues such as the taste of water and how close the water utility organization should be to consumers. The entire Social Assessment process for Uzbekistan's water sector has been summarized²⁰ and this article only will cover certain issues arising out of the following aspects of the Social Assessment process:

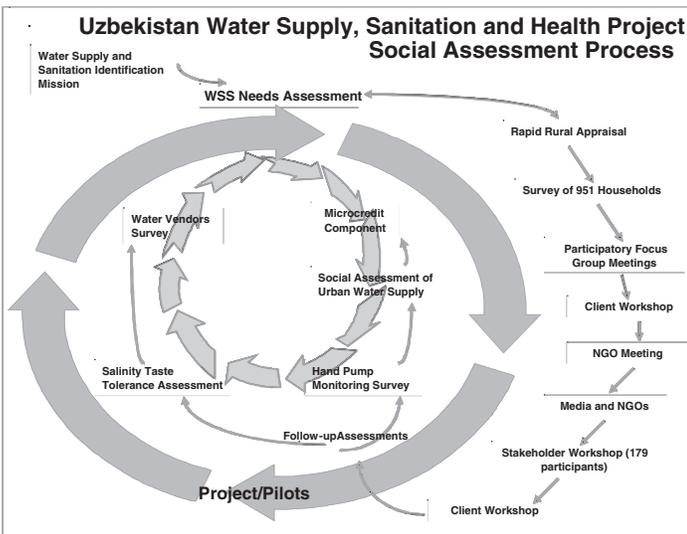
- 1) A Social Needs Assessment of households in the rural areas of Karakalpakstan and Khorezm Oblast;
- 2) The Urban Areas Social Assessment that confirmed that water waste is high in urban areas, thus justifying a project component addressing water demand management and loss reduction;
- 3) The Water Vendors / Willingness to Pay Survey, which revealed that people are willing to pay for improved water service in return for reliable service;
- 4) The Salinity Taste Tolerance Assessment, which helped establish water quality standards, in particular the acceptable salinity levels in drinking water;
- 5) The Needs Assessment and Hand Pumps Assessment, which revealed that hand-pumps are a

major water source, especially in rural areas, and people are generally satisfied with hand pumps when the water is clean.

The World Bank initiated the social assessment process in May 1995 and the fieldwork portion of the assessment lasted from June to August 1995. Scientists from the Academy of Sciences of the Republic of Uzbekistan, the Karakalpakstan and Khorezm branches of the Academy of Sciences of the Republic of Uzbekistan, the Union for the Defense of the Aral Sea and the Amuderya River (a nongovernmental organization), and scientific staff of the EXPERT Sociological Center directed and carried out the field work for this assessment.²¹

AVAILABILITY OF WATER AND PROJECT DESIGN

The rural and urban Social Assessments helped to establish where people get their water and showed the areas with the greatest deficit and the highest cost. These areas included households that used “coping” mechanisms such as water vendors because there was inadequate public water supply. These surveys also showed that there was a wide disparity between the levels of service in urban and rural areas. For example, in rural areas in Karakalpakstan, piped water was available for only three hours each day and for 4.8 hours each day in Khorezm Oblast.²² In major urban areas, however, 70 percent of households had running piped water 24 hours a day in summer and 85 percent of the time in winter.²³



Project files for the Uzbekistan: Water Supply, Sanitation and Health Project, World Bank (on file with Ayse Kudat).

These Social Assessments also showed that there was a high level of satisfaction with the hand pumps and hand-dug wells, as well as very low levels of household incomes in rural areas. These findings led to a major change in project design, because they showed that it would be more appropriate to increase the access to hand pumps and hand-dug wells in the rural areas instead of supplying piped water at a significantly greater investment and operating cost, as had been proposed originally.²⁴ Developing an extensive piped-water system in these rural areas would not have been economically sustainable.

TECHNICAL PARAMETERS – WATER SALINITY LEVELS

A Social Assessment was used to determine an important technical standard for the project: salinity levels. A stakeholders’ workshop in September 1995 found that consumers in the region were concerned about the quality of drinking water.²⁵ The technical dispute concerned the salinity standard for the water, one factor that affects drinking water quality. The water supplies in the project area had high salinity levels, with the salinity of the Aral Sea itself reaching 30 grams per liter (g/l) at the time of the report.²⁶ The salinity of the piped water supply was at an intermediate level of 0.6 – 1.5 g/l, and the salinity of hand pump and hand-dug well water was at a higher level of 1.5 g/l – 2g/l.

The Government of Uzbekistan originally set the acceptable salinity level for drinking water at one g/l, a level adopted for “taste” concerns rather than for health reasons. This salinity level was more stringent than the World Health Organization’s healthy salinity level standard of 1.5 g/l. The scientific research found no evidence that health would be negatively impacted by salinity levels that are tolerated by people’s taste.²⁷ Making the investment in reducing salinity to one g/l would have significantly increased the cost of the project, and therefore, would have increased the burden on consumers through water tariffs or on the Government through subsidies.

Instead of engaging in debates about appropriate salinity levels, the project performed a survey of the population to determine what salinity level would be tolerated.²⁸ The objectives of the survey were to “(1) identify an upper level or range of salinity in drinking water acceptable to people living in the region; (2) survey the quality of water currently being used by households from different sources; and (3) identify the water quality parameters that were of most concern to these households.”²⁹

The survey found that the salinity levels tolerated by the communities were more relaxed than the levels proposed by government. People tolerated a salinity level up to 2.0 g/l. Furthermore, the salinity of the hand pumps and hand-dug wells was more constant throughout the year, so consumers could tolerate a higher level of salinity coming from these sources. Because of these results from potential consumers, the Government agreed that the project should adopt a less rigorous salinity requirement of 1.5 g/l for piped water and 2.0g/l for hand-pumped water. The change was estimated to have saved about USD \$20 million in investment costs and therefore reduced the need for higher user fees.

INSTITUTIONAL PARAMETERS – ORGANIZATIONAL STRUCTURE

The Social Assessment also addressed the organizational structure of the project. The affected communities initially expressed a preference for a self-managed, de-centralized water supply management scheme.³⁰ The community believed that if the “centralized” water utility installed and managed the water system, it would result in insufficient attention to consumers and a poor level of service.³¹ However, when the community was informed of the costs and benefits of various schemes, and that

the decentralized structure would result in higher costs and user fees, focus groups showed that the communities would agree to a more centralized structure as long as the water authority established a consumer relations department so that community voices could be heard. As a result, there was a significant reduction in costs.³² By involving the community in this decision, instead of making the decision without its involvement, the project was able to convince the community of the merits of a centralized system and helped create a partnership between the community and the water utility.³³ The essence of the partnership approach in the second pillar of Social Assessment is for agents of change (governments, donors, and civil society organizations) to work with users and communities to develop practical proposals, working from existing rights systems and management practices, based on peoples' attitudes, behavior, and expressed views.

TECHNICAL PARAMETERS – AMOUNT OF WATER REQUIRED

The Social Assessment also encouraged community participation in the design of the pilot water projects implemented as part of project preparation. By doing this, the community had the opportunity to see the trade-offs of different technical and operating standards, including options on water consumption and the resulting investment and operating costs based on per capita water consumption. Because the communities were asked to bear some of the cost of providing water supply services, members of the community began pressuring local authorities to give greater attention to the scale and costs of the project and started questioning design criteria.³⁴

For example, in one of the towns, the community agreed to lower the 350 liters per capita per day requirement for water supply to only 150 liters per capita per day,³⁵ thereby scaling down the investment cost of the project and lowering user fees. By allowing people to participate in sharing the decision-making as well as the costs, people were able to influence how much they were charged for water rather than having this determined by external forces. The Social Assessment bridged the gap between the provider and the consumer and created the opportunity for people themselves to alter social attitudes and reduce water consumption.

FINANCIAL PARAMETERS – HOW MUCH ARE PEOPLE WILLING TO PAY

The debate is ongoing around the world about the appropriate level of payments for water, especially for the poor. These debates exist among experts as well as among governments and financial institutions. In 1993, the World Commission on Water highlighted the stress that the world's water resources will undergo in the future. As a result, it suggested that decisions about water should include a holistic approach, participatory mechanisms, full-cost pricing with targeted subsidies for the poor, institutional, technological, and financial innovations, and various degrees of privatization. It also emphasized the need for major attitudinal and behavioral changes by all actors.

The 1990 Montreal International Forum, "NGOs Working Together," outlined several potential improvements to supplying

drinking water and sanitation. Included in this list of improvements were wider access to potable water and sanitation, user participation and consultation, reliance on local community resources, improvement and repair of existing systems, and a policy of comprehensive water resource management integrating environmental and economic considerations.³⁶ At least one World Bank policy paper suggested that there should be a new water project approach that recognizes water as a scarce resource that is subject to many interdependencies in conveyance and use.³⁷

There has been great debate about the pricing of water.³⁸ Critics have argued that socially sustainable solutions must be locally relevant, grounded in social reality, and formulated by the local communities themselves. However, there has been great concern about supporting "low" user fees. Low fees eventually could lead to large reconstruction costs if there is insufficient money for maintenance and repair, causing systems to fail. Also, with low fees, consumers use water inefficiently and high water usage drives up investment needs. A vicious circle is established in which insufficient fees lead to poor maintenance and high water wastage, requiring more investment that only can be supplied through public subsidy, often ending up in poor water service when the subsidies do not materialize. As a result, customers are less willing to pay and the utility will depend even more on state subsidies. Managers lose their autonomy and incentives to perform and efficiency drops. The water utility service may lack the resources even to pay wages and other operating costs. Motivation and service will continue to deteriorate and the system will fall apart. Eventually, this downward spiral will result in huge reconstruction costs.³⁹

Local authorities in Uzbekistan were originally apprehensive about increasing user fees, assuming that the local population believed that the provision of clean water was the government's responsibility and should be provided at lower prices through government subsidies even if these subsidies did not always materialize. The various surveys, especially those dealing with water vendors, allowed a clearer understanding about where people obtained water, at what cost, and at what quality. In short, the surveys demonstrated "real" behavior and attitudes about water.

The broad Social Assessment conducted from April through December 1995 showed that, in some areas surveyed, many people relied on water vendors to obtain water due to the inadequacy of piped water, at a higher price and of lower quality than would be the case under the project.⁴⁰ This was factual evidence that appropriate user fees could be charged under the project that would actually, in many cases, be lower than "fees" currently paid to vendors. "Willingness to pay" studies help clarify people's ability and willingness to pay for delivered water supplies and provided one set of facts for prioritizing the project's investments.⁴¹

However, there was a difference in willingness to pay, depending on whether people were currently connected to the water supply. For connected households, 81.4% of households

were willing to pay an average amount of 3.6 percent of monthly household income for water system improvements. The payments for water at the time of the survey were two percent of monthly household income. However, significantly fewer unconnected households were willing to make monthly payments for improvements in water supply, as only 56.6 percent were willing to pay for improvements. On average, those willing to pay would pay 3.85 percent of their monthly household income for water supply improvements.⁴²

An interesting finding was that, in many cases, the poor were paying a higher percentage of their income for water than the wealthy, often because many of the poor depended on expensive private water vendors while the wealthy were more often served by subsidized public water. In some places, a poor individual paid more than ten times what a middle-class person paid for a liter of water.⁴³ According to the Water Vendor Survey, water purchases from water vendors accounted for 9.4 percent of the household's average monthly income during the summer and 6.7 percent during the winter.⁴⁴

Generally, the poor were found to be willing to pay for water services when the services were reliable.⁴⁵ When services were not reliable, then the poor usually would "pay more for less;"⁴⁶ and usually this money went to street vendors.⁴⁷ Moreover, street vendors' water was generally of lower quality since the government did not regulate the activities or water quality of the street vendors.⁴⁸

The Water Vendors Survey found that 75 percent of people were dissatisfied with the quality of their water and would be willing to pay up to five sums, or \$0.17 per 100 liters of good-quality drinking water.⁴⁹ Generally, households suffering from lower quality water were willing to pay more for improvements in the quality of the water.⁵⁰

The Hand Pump Monitoring Survey concluded that the water from hand pumps was the best quality drinking water. In some areas, 85% of people used hand pump water for drinking purposes, of whom 82% were satisfied with the quality of the drinking water, 99% found the hand pumps easy to use, and 81% considered hand pump water the cheapest water source.⁵¹ Unfortunately, water from the hand pumps with which people said the quality satisfied them had an average salinity level of 1.9, near the maximum level of salinity that is "considered" fit for drinking. However, most respondents stated that only at levels of 2.2 did the water have a salty taste, and at 3.0 that it had a bad taste.⁵² The survey concluded that there was no correlation between the overall level of satisfaction and the actual quality of the water from the hand pumps. The report associated people's preferences for hand-pump water with its convenience and low cost and reliability, even though it had a poor quality.⁵³

Overall, the consulted households demanded more reliable levels of services and higher quality of water, and expressed their willingness to pay a much higher price for these improvements than what the local authorities expected.⁵⁴ As a result, the local authorities were less apprehensive about user fees and were supportive of this demand-driven approach because it demonstrated the need and willingness of people to pay for the

service.⁵⁵ Because of the community consultations, the local authorities found it much easier to increase water user fees as they could explain the reason for the increase more accurately.⁵⁶

A PROCESS OF PERMANENT SOCIAL IMPACT MONITORING

The aforementioned examples of the impact of Social Assessment in Uzbekistan all dealt with the period during project preparation. However, the impact of a project on people, and the impact of legislation, really only begins with its implementation. For this reason, the fourth pillar of the Social Assessment process deals with a permanent process for social impact monitoring, so that the real impact of a project on people's lives can be monitored to provide regular information on whether project objectives are being realized, and at what cost, so that redesign can become a standard feature of implementation and a useful management information tool.

THE IMPACT OF SOCIAL ASSESSMENT ON WORLD BANK-FUNDED PROJECTS

World Bank-funded projects provide an example of the trend towards including the Social Assessment process and the resulting impacts of this trend. In 1993, the World Bank water sector policy started to systematically incorporate its focus on social sustainability. After 1993, 67 percent of Bank-funded water projects involved community participation, 75 percent involved gender concerns, and 66 percent used Social Assessment.⁵⁷ As a result, many of the conclusions and information that these processes revealed have been incorporated into project design, while the regulations and laws have been implemented by the country in support of the project. Overall, there has been an increase in social development issues in water sector projects after water sector policies began to be concerned with social sustainability and comprehensive, holistic approaches. There have also been more institutional mechanisms established to target the poor⁵⁸ and an increased number of beneficiary assessments carried out. Gender issues were addressed, community participation considered, mechanisms established to monitor poverty, budgets set aside for monitoring overall poverty and for project specific social impact monitoring, and social impact monitoring indicators identified.

The involvement of social scientists in preparing water projects has increased. The World Bank's quality assurance reviews found that if social analysis is used in a project, the supervision quality of social development issues increases from 51 percent to 74 percent satisfactory. This percentage rises to 91 percent in relation to projects with social analysis and operational support from social development specialists.

The Uzbekistan Water and Sanitation Project provides an example of how Social Assessment can lead to better project design and to the broader universe of law making. In Uzbekistan, the issues that the Social Assessment addressed were at various levels: fundamental project design, the overall institutional structure, government standards that would impact the project, and operational procedures. The results of the Social Assessment process inform all of the various bodies involved in

designing and implementing the project and should be used by the water company, World Bank, and the borrowing country.

However, the Social Assessment process is only slowly being incorporated into project design and implementation and, more generally, into lawmaking. One of the main obstacles to selling the Social Assessment process as a benefit to development projects and law-making and policy-making processes is not having a clear and simple guide for performing a full Social Assessment. Currently, there is no legal requirement for Social Assessments to be performed by all countries or for them to be required by financial institutions. However, Social Assessments remain a critical part of the project system, allowing for:

- The project to be better aligned with the real needs of the people;
- The project to fully weigh the options according to costs, benefits, and the likelihood of various plans to work;
- Project decisions to be based more heavily on facts, rather than theories; and
- Priority can be given to specific target groups such as the poor, the vulnerable, women, and the elderly in ways that are tailored to their attitudes and behavior.

Another reason for the slow pace of its inclusion into legislative methodology and project formulation, is that there is an assumption that it is simpler, and therefore cheaper, to do without the Social Assessment process.⁵⁹ As the case study shows, the social assessment process can help save significant amounts of money. In essence, the process is a market and feasibility study forcing development projects to undergo the same scrutiny that a new business venture would go through.

Without Social Assessments, there will always be large gaps between what we “think” is occurring and what is actually occurring in people’s beliefs, attitudes, and actions. Social Assessments help align public needs with the project goals and align national regulations with implementation and project success. The process significantly reduces the risk of failure for projects and legislation. By understanding the basic principles of the Social Assessment process, countries can begin to understand the importance of a thorough understanding of the social background and can begin to implement Social Assessment in their planning, legislation, and enforcement measures.

CONCLUSION

The Social Assessment process, as it has been practiced in the World Bank, has proven to be a successful tool that will help financial institutions and clients of financial institutions realize successful and sustainable projects. The process also has been successful in gathering facts on which governments can make more sound decisions, destroying myths and replacing them with reality, and allowing different stakeholders to have a basis of qualitative and quantitative instruments on which to make decisions. Social Assessment accomplishes these goals by providing knowledge about the social environment, including current conditions, current attitudes, and the problems facing the

communities in the project area. Once the Social Assessment is performed, the clients and financial institutions can develop projects and corresponding measures that will fit with the reality of social conditions and attitudes.

From a legal perspective, the greatest challenge in the sociology of legislation is to remain focused on the people who are either the beneficiaries or victims of legislation, or both. Remaining focused on specific situations and groups of people obligates legislators to fully understand people’s needs, understand how to fulfill these needs, and pay particular attention to those individuals who are most at risk. Only then will legislators be able to make use of the appropriate mechanisms to ensure that the legislation is fulfilling its goals.

As seen through this Uzbekistan case study, even the noblest of ideologies, such as providing water for free, must undergo strict analysis to ensure that the results of the project will be met, and that the objectives can be met within the current social situation. Furthermore, where ideological differences exist pertaining to the nature of the project, such as in the water sector, Social Assessment can help opponents move past strict ideologies and focus on larger objectives and successful resolutions of disputes. In all of these ways, the elements of Social Assessment that can improve project performance should be able to play the same role in establishing and evaluating legislation.

The four-pillar approach of Social Assessment, and its use in Uzbekistan’s water sector, shows the extent of this possibility for the establishment and evaluation of legislation and regulation anywhere in the world. The Uzbekistan Water Project provides an extreme example of a situation where the World Bank had very little knowledge of or experience with the country, and the government of that country was weary of the changes proposed by the World Bank. The Social Assessment process helped lay the foundation for negotiating the final details of the project. It also has a role in projects where there is a long working relationship between the World Bank and the host country, where there is a prior basis of knowledge, and also where there is general agreement between the government and the World Bank about broad policies and ideologies. Furthermore, Social Assessment has the potential to expand into legislation and regulation outside of the context of project development.

A time, location, and specific basis of knowledge for every project and every law will ensure that that the project or law remains focused on the wants and needs of the people. Social Assessment will help countries accomplish these goals by properly including stakeholders, exploring the assumptions inherent in the project design, and exploring available alternatives. The Social Assessment process makes business sense and will help lead to the achievement of more efficient and effective project designs and legislation.



ENDNOTES: Improving Legislation Through Social Analysis

- ¹ Jeremy J. Kingsley, *Legal Transplantation: Is This What the Doctor Ordered and are the Blood Types Compatible? The Application of Interdisciplinary Research to Law Reform in the Developing World – A Case Study of Corporate Governance in Indonesia*. 21 ARIZ. J. INT'L & COMP. LAW 493, 511 (Summer 2004).
- ² *Id.*
- ³ Mader, Luzius, *Evaluating the Effects: A Contribution to the Quality of Legislation*, 22 STATUTE LAW REVIEW 119, (July 2001).
- ⁴ *Id.*
- ⁵ See Ann Seidman and Robert Seidman, *Assessing a Bill in Terms of the Public Interest: the Legislator's Role in the Law-Making Process*, 1 WORLD BANK LEGAL REV. 207, 237 (2004) (suggesting that the effects of legislation on the poorest and most vulnerable individuals should always be a consideration).
- ⁶ See John Monahan and Laurens Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. PENN. L. REV. 477 (1986) (providing several criteria for evaluating the appropriateness of the social sciences in making law in the judicial realm. Included in this list are the authority of the judge and level of the court. The authors compare this authority with the authority of common law. There is not a similar precedential value of legislative drafting and regulatory decisions in the legislative or executive branch).
- ⁷ *Supra* note 5, at 216.
- ⁸ *Id.* at 218.
- ⁹ Ayse Kudat, *Social Assessment: A Comprehensive Framework for Development Initiatives*, in SOCIAL ASSESSMENT AND AGRICULTURAL REFORM IN CENTRAL ASIA AND TURKEY, 41, 47 (Ayse Kudat, Stan Peabody and Caglar Keydar, eds., 2000).
- ¹⁰ *Id.*
- ¹¹ Stakeholders differ from beneficiaries. Stakeholders are groups that have influence over or interest in a project and may or may not benefit from the project.
- ¹² *Supra* note 9 at 45.
- ¹³ There were also other areas that were identified by the World Bank, such as the oil and gas sector and the financial sector, however the government refused Bank involvement in these areas.
- ¹⁴ K. William Easter, Gershon Feder, Guy Le Moigne, and Alfred M. Duda, et. al *Water Resources Management: A World Bank Policy Paper*, p. 95, (World Bank 1993).
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ Ayse Kudat, Arustan Zholdasov, Alisher Ilkhamov and Janis Bernstein, *Responding to Needs in Uzbekistan's Aral Sea Region*, SOCIAL ASSESSMENTS FOR BETTER DEVELOPMENT: CASE STUDIES IN RUSSIA AND CENTRAL ASIA (Michael M. Cernea and Ayse Kudat, eds, 1997).
- ¹⁸ Ayse Kudat, Bulent Ozbiligin, Arustan Zholdasov, and Alisher Ilkhamov, SALINITY TASTE TEST TOLERANCE ASSESSMENT, UZBEKISTAN: WATER SUPPLY, SANITATION AND HEALTH PROJECT, para. 3 (prepared by the Uzbek Social Science Network, August 15, 1996).
- ¹⁹ Ayse Kudat, Bulent Ozbiligin, Arustan Zholdasov, Alisher Ilkhamov, SOCIAL ASSESSMENT OF URBAN WATER SUPPLY, UZBEKISTAN: WATER SUPPLY, SANITATION AND HEALTHY PROJECT URBAN COMPONENT, p. 1 (prepared by the Uzbek Social Science Network, August 15, 1996).
- ²⁰ *Supra* note 17.
- ²¹ The Social Assessment process is also a mechanism for involving stakeholder groups, especially from civil society.
- ²² WORLD BANK STAFF APPRAISAL REPORT, p. 22, available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1997/04/17/000009265_3971104184218/Rendered/PDF/multi_page.pdf.
- ²³ *Id.*
- ²⁴ *Id.* at 24.
- ²⁵ *Supra* note 18, at ¶ 7.
- ²⁶ *Supra* note 18 at ¶ 4.
- ²⁷ *Supra* note 18 at ¶ 4.
- ²⁸ *Supra* note 18 at ¶ 3.
- ²⁹ *Supra* note 18 at ¶ 7.
- ³⁰ *Supra* note 22, at 26.
- ³¹ *Supra* note 22, at 26.
- ³² *Supra* note 22, at 26.
- ³³ *Supra* note 22, at 26.
- ³⁴ *Supra* note 22, at 26.
- ³⁵ See *id.* (adding that another community decided to lower the diameter of the tertiary distribution network from 150-175 mm to 100 mm).
- ³⁶ *Supra* note 14, at 24.
- ³⁷ *Supra* note 14, at 21.
- ³⁸ Ayse Kudat and Bulent Ozbilgin, *Social Sustainability: Socially Responsible Water Resource Policies Create Better Water Sector Investments, A Review of the World Bank Investment Experience in the Water Sector*; (database) 4 (November 2000) (on file with the authors).
- ³⁹ Ayse Kudat PowerPoint presentation (*citing* Vincent Gouarne's Presentation *Water and Wastewater Utilities: covering costs, financing investments, Improving Water and Wastewater Services Seminar*, Golitsyno, April 1997).
- ⁴⁰ See Ayse Kudat, Bulent Ozbilgin, Rita Cestti, Arustan Zholdasov, Alisher Ilkhamov, WATER VENDORS SURVEY, UZBEKISTAN: WATER SUPPLY, SANITATION AND HEALTH PROJECT, 4-5 (prepared by the Uzbek Social Science Network, August 26, 1996) (showing that 65% of the respondents were paying for both water and its delivery and 28% were paying only for the delivery of the water. Interestingly, the survey also revealed that, even though most vendor-delivered water (84%) was supplied from an open source, 59 % of the drinking water and 55% of the water used for bathing was supplied by vendors. This survey showed that, for cooking and drinking, households preferred to use untreated water provided by vendors over the treated piped water. The survey report attributed this preference to the reliability of the vendor water versus piped water).
- ⁴¹ *Id.* at ¶ 2.
- ⁴² Ayse Kudat, *Household Survey in Gagarin*, WATER SUPPLY, SANITATION AND HEALTH PROJECT (March 1997).
- ⁴³ *Supra* note 14, at 31.
- ⁴⁴ *Supra* note 40, at 10.
- ⁴⁵ One option that has been suggested is to allow the poor to choose from a wide range of water service options for which they are willing to pay. As a result, water suppliers might have a financial stake in meeting the needs of the poor. One suggested option is that the individual would receive a limited amount of water at a cheaper price, perhaps subsidized by the public sector, and then purchase additional water at an increased

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price. This way, basic needs could be met at a very low cost to the consumer, but water conservation also would be promoted.

⁴⁶ *Supra* note 14, at 49.

⁴⁷ *Supra* note 14, at 49.

⁴⁸ See WATER VENDORS SURVEY, *supra* note 42, at 11 (noting that the government sampled only four percent of street vendors' water).

⁴⁹ *Supra* note 42, at 11.

⁵⁰ *Supra* note 42, at 11.

⁵¹ Ayse Kudat, Nezahat Ozmen, and Rita Cestti, *Hand Pump Monitoring Survey*, UZBEKISTAN: WATER SUPPLY, SANITATION AND HEALTH PROJECT, Figure 14 (August 22, 1996).

⁵² *Id.* at table 3, p. 7.

⁵³ *Id.* at 9.

⁵⁴ WORLD BANK STAFF APPRAISAL REPORT, *supra* note 24, at ¶ 2.37.

⁵⁵ *Supra* note 24, at ¶ 2.37.

⁵⁶ *Supra* note 24, at ¶ 2.37.

⁵⁷ Ayse Kudat, transparencies from a presentation given to the World Bank, on file with Ayse Kudat.

⁵⁸ See Ayse Kudat, Borisov and Oabilgin, *Restructuring Russia's Coal Sector*, in SOCIAL ASSESSMENT FOR BETTER DEVELOPMENT, (World Bank, 1977) (showing that Social Assessment also has led to better targeting of subsidies. By more clearly and more accurately identifying groups truly needing assistance, legislation and regulation can be adopted that makes subsidies more effective and efficient. For example, the Social Assessment process was effective in the World Bank's assistance to Russia in restructuring its coal sector).

⁵⁹ See Kingsley, *supra* note 1, at 516 (describing similar debates surrounding legal transplants. The advocates in favor of legal transplants argue that "it is simpler and more effective to borrow legal structures from others, rather than having to reinvent the wheel." Kingsley admits that legal transplants may play some role, but only with great care and after detailed research).