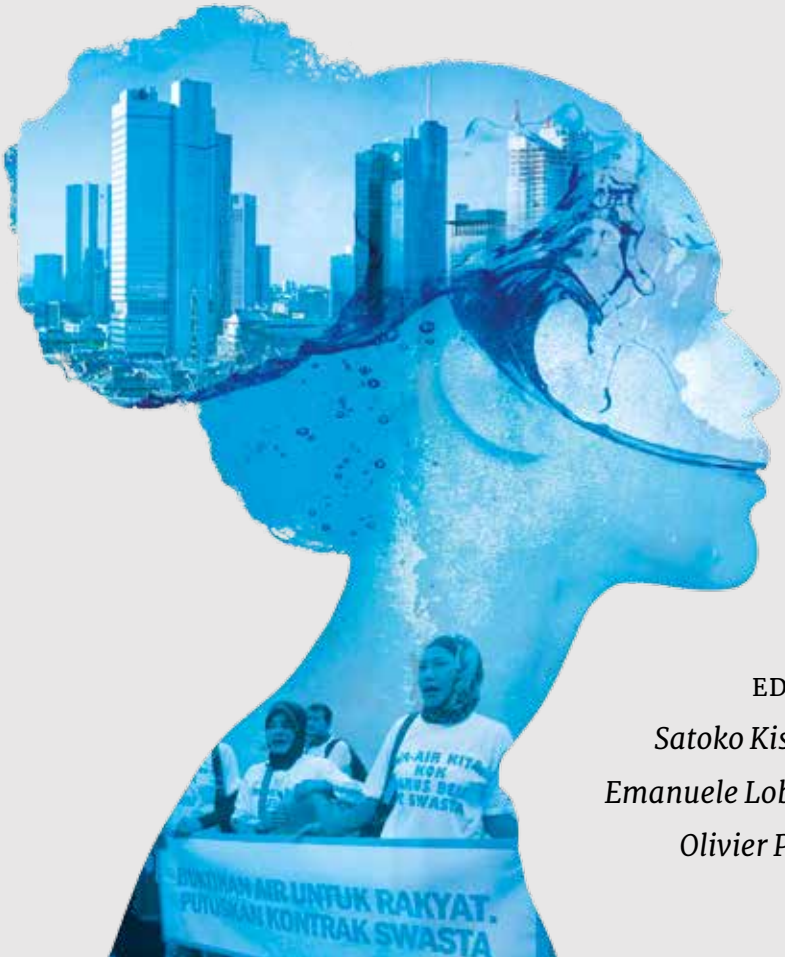
Our public water future

The global experience with remunicipalisation



EDITED BY

Satoko Kishimoto, Emanuele Lobina and Olivier Petitjean

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The global experience with **remunicipalisation**

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Translation from French: Susanna Gendall (two original chapters)

Design: Ricardo Santos
Cover design: Evan Clayburg
Cover photo credits: KRuHA People's Coalition for The Right To Water

APRIL 2015

Published by Transnational Institute (TNI), Public Services International Research Unit (PSIRU), Multinationals Observatory, Municipal Services Project (MSP) and the European Federation of Public Service Unions (EPSU)

Amsterdam, London, Paris, Cape Town and Brussels

ISBN 978-90-70563-50-9

Acknowledgements

This book would never have taken shape without generous contributions from the authors who took the time to share their experiences. We are also very grateful for the essential contributions, research assistance and advice in building the global list of remunicipalisation from: Régis Taisne, France Eau Publique and his colleagues at the Fédération Nationale des Collectivités Concédantes et Régies (National Federation of Contracting Councils and Régies); Mary Grant, Food & Water Watch; Jeff Powell and Yuliya Yurchenko, PSIRU, University of Greenwich; Christa Hecht, Alliance of Public Water Associations (AöW); Moisès Subirana, Ingeniería Sin Fronteras (ISF); Ann-Christin Sjölander; Akgun Ilhan, Right to Water Campaign Istanbul; Qun Cui, Chinese Academy of Social Sciences; Simona Savini, Italian Forum of Water Movements; Cesare Schieppati, Forum Provinciale per l'Acqua, Reggio Emilia; Gaurav Dwivedi, Manthan Adhyayan Kendra India; Milo Fiasconaro, Aqua Publica Europea. Thanks to our copy editor, Madeleine Bélanger Dumontier, who has woven these diverse contributions into a coherent and easily readable story.

Table of contents

Introduction

Calling for progressive water policies

By Emanuele Lobina

Cities, regions and countries worldwide are increasingly choosing to close the book on water privatisation and to remunicipalise services by taking back public control over water and sanitation management. In many cases, this is a response to the false promises of private operators and their failure to put the needs of communities before profit. This book looks at the growing remunicipalisation of water supply and sanitation services as an emerging global trend, and presents the most complete overview of remunicipalisation cases so far. The remunicipalisation trend is a striking fact that could not be predicted as recently as 15 years ago, and that is redesigning the landscape of the global water sector. This trend contradicts neoliberal theorists, international financial institutions, and their expectations of superior private sector performance. Also, evidence increasingly points to remunicipalisation as a credible promise of a better future for public water services and their beneficiary communities. In brief, water remunicipalisation is a story crying out to be told.

This book aims to draw lessons and stimulate debates on water remunicipalisation as an under-researched topic of high relevance for citizens, policymakers and scholars alike. Based on empirical data, the book documents the rise of water remunicipalisation across developed, transition, and developing countries in the last 15 years. Drawing on contributions by activists, practitioners, and academics with direct experience and knowledge of remunicipalisation, the book argues that remunicipalisation is a socially and economically viable policy option for local authorities and the communities they represent. As such, the book is intended to serve as a resource for building alliances among diverse social actors – including public water

managers and decision-makers, workers and their trade unions, civic organisations and social movements, experts and academics – to encourage social learning and promote this new form of public service provision.

Defining remunicipalisation

Remunicipalisation refers to the return of previously privatised water supply and sanitation services to public service delivery. More precisely, remunicipalisation is the passage of water services from privatisation in any of its various forms – including private ownership of assets, outsourcing of services, and public-private partnerships (PPPs)[1] – to full public ownership, management and democratic control. Indeed, concessions, lease contracts, other PPPs, and water privatisation are one and the same thing: all these terms refer to the transfer of management control to the private sector, at various degrees.[2] Water privatisation and PPPs are equally problematic, and their problems are deep-seated.[3] This explains why remunicipalisation typically occurs after local governments terminate unsatisfactory private contracts or do not renew them after expiry. However, the remunicipalisation process is not necessarily confined to the municipal scale. In some cases regional and national authorities act directly as water operators, so the process unfolds within this broader context as well.

Water remunicipalisation is more than a mere change in ownership of service provision; it also represents a new possibility for the realisation of collective ideas of development, such as the human right to water and sustainable water development. In other words, remunicipalisation offers opportunities for building socially desirable, environmentally sustainable, quality public water services benefiting present and future generations. As shown by several contributions to this book, the aspirations of local communities for public and accountable water services are often part of their struggle to obtain progressive social and political change. Without taking into account these aspirations for social justice, it is not possible to fully understand water remunicipalisation and its global spread. Mere ownership change is not the end goal of water remunicipalisation movements.

Understanding remunicipalisation

Remunicipalisation is often a collective reaction against the unsustainability of water privatisation and PPPs. Direct experience with common problems of private water management – from lack of infrastructure investments, to tariff hikes and environmental hazards – has persuaded communities and policy-makers that the public sector is better placed to provide quality services to citizens and to promote the human right to water and sustainable water development. As illustrated by the cases discussed in this book and its companion briefing *Here to stay: Water remunicipalisation as a global trend*,[4] the factors leading to water remunicipalisation are similar worldwide. The false promises of water privatisation in developed and developing countries include: poor performance, under-investment, disputes over operational costs and price increases, soaring water bills, monitoring difficulties, lack of financial transparency, workforce cuts and poor service quality.[5] Therefore, another factor explaining the emergence of remunicipalisation as a global trend is represented by the limitations of the private sector to promote community development. These limitations are due to the fact that the private sector is subject to its profit maximisation imperative, so that precious resources that could be used for collective development are subtracted for private gain.[6]

Despite more than three decades of relentless promotion of privatisation and PPPs by international financial institutions and like-minded organisations,[7] it now appears that "water remunicipalisation is a policy option that is here to stay."[8] Not only have many flagships of water privatisation – from Buenos Aires to Jakarta, from La Paz to Dar es Salaam – sunk inexorably. But citizens in developed and developing countries have also obtained the replacement of profit-oriented private water operations with people-oriented public water services, and they are increasingly doing so. While the World Bank and other organisations continue to enthusiastically promote PPPs, the emergence of remunicipalisation as a global trend is upsetting their plans and undermining the neoliberal project of water privatisation. And yet, the remunicipalisation trend should come as no surprise. Historically, the private sector already showed its inadequacy to develop public water services between the end of the 19th and the beginning of the 20th century.[9]

The private sector limitations that led local governments in the US and across Europe to turn to the public sector for an answer to developmental needs 100 years ago are the same that find a response in the growth of remunicipalisation today.[10] The first wave of municipalisations resulted in the present dominance of public operators in the global water sector.[11] This historical surge in public ownership, public finance, and collective civil rights allowed for the universalisation of service coverage in North America and Europe. This public predominance is now being further reinforced by the widespread and increasingly rapid diffusion of water remunicipalisation that is documented in this book. These precedents point to the developmental potential of water remunicipalisation in the 21st century. Still, while public ownership can be a powerful vehicle for community development, it is not a guarantee of success.[12] In fact, under the influence of neoliberal forces, many public water operators are being commercialised and behave much like private companies.[13] This suggests that progressive collective action cannot be satisfied with water remunicipalisation as mere ownership change but should aim at promoting practices that, through public ownership, enhance community development and social justice.

Charting the emergence of the remunicipalisation trend: An overview

This introduction is followed by empirical data on the identified cases of water remunicipalisation that have occurred in the 15 years between March 2000 and March 2015. This data has been obtained through the refinement and extension of data published in the companion to this book,[14] and represents the most comprehensive catalogue of water remunicipalisation cases produced so far. Data collection has been a joint effort in which a number of contributors to this book have participated, together with many other water activists, practitioners and academics who have generously offered their time, dedication and knowledge.

The water remunicipalisation cases are listed in two tables, one for high-income countries and the other for middle- and low-income countries.[15]

Each case indicates the population affected by remunicipalisation so as to give a measure of the magnitude of this trend and to enable distinguishing between urban centres of varying dimensions. In that sense, the listed cases range from megacities to small villages. This varied picture suggests that remunicipalisation is not only happening in urban areas. Indeed, despite their limited size and resources, and faced with the unsustainability of privatisation, many small towns and villages have challenged powerful private interests and remunicipalised their water services.

The data show that the global remunicipalisation trend is strong, particularly in developed countries. Globally, the cases of remunicipalisation have increased from two cases in two countries in 2000, when less than one million people in total were affected by remunicipalisation, to 235 cases in 37 countries by March 2015. By then, the total number of people served by remunicipalised water services had grown to exceed 100 million. Cases are more concentrated in high-income countries, where 184 remunicipalisations took place in the last 15 years, compared to 51 cases in middle- and low-income countries. Two countries, France with 94 cases and the US with 58 cases, account for the great majority of cases in high-income countries. Cases in high-income countries show a marked acceleration: 104 remunicipalisations took place in the five years between 2010 and early 2015, while 55 occurred between 2005 and 2009. The number of remunicipalisation cases has nearly doubled after 2009. This is due to the example of Paris which signalled an even stronger acceleration in France, where the number of remunicipalisation cases trebled in the same period: 63 remunicipalisations have been completed in the five years between 2010 (when Paris remunicipalised) and early 2015, whereas 19 remunicipalisations occurred in the 10 years between 2000 and 2009. In middle- and low-income countries, the extent and acceleration of remunicipalisation are less pronounced. However, the list of high profile cases in upper-middle, lower-middle and low-income countries is impressive and includes: Accra (Ghana); Almaty (Kazakhstan); Antalya (Turkey); Bamako (Mali); Bogota (Colombia); Budapest (Hungary); Buenos Aires (Argentina); Conakry (Guinea); Dar es Salaam (Tanzania); Jakarta (Indonesia); Johannesburg (South Africa); Kampala (Uganda); Kuala Lumpur (Malaysia); La Paz (Bolivia);

Maputo (Mozambique); and Rabat (Morocco). Also, the population affected by remunicipalisation in middle- and low-income countries is far greater than in high-income countries: over 81 million people, compared to nearly 25 million people. The surge in water remunicipalisation is global.

The main lesson that can be drawn from this analysis is that in the last 15 years water remunicipalisation has emerged as a global trend that is here to stay. Despite the lack of encouragement from international financial institutions, national governments and other powerful players,[16] remunicipalisation has spread across developed, transition and developing countries, primarily as a result of the demands of local communities and the responsiveness of local governments. The water remunicipalisation trend that only 15 years ago was inexistent has since accelerated dramatically and keeps gaining strength. It is now impossible for observers to ignore this new form of water service delivery, while stakeholders and activists have the opportunity to take inspiration from so many remunicipalisation cases for their practice and advocacy. Finally, it would be unwise for the World Bank and other promoters of water privatisation to continue neglecting the calls for water as a common good that fuel social resistance against privatisation and drive the global remunicipalisation trend.

A glance at this book

The global list of remunicipalisation cases and this introduction serve as background to the book contributions. The following chapters focus on: the experiences with water remunicipalisation in key countries, such as France, the US, and Germany; in major cities such as Paris and Jakarta; and on cross-cutting themes such as the challenge posed to public water services by investor protection clauses, the position of the trade union movement vis-à-vis remunicipalisation as a social project, and performance evaluation as a way of measuring the success of remunicipalisation. These chapters aim to draw important lessons on the nature, process and outcomes of water remunicipalisation by combining in-depth analysis of developments at country and thematic levels, and the unique insights of privileged observers. These lessons are brought together in the concluding chapter.

In Chapter 1 Mary Grant of Food & Water Watch discusses the extent of water remunicipalisation in the US, its relative significance compared to privatisation, and identifies the main determinants of local government decisions to remunicipalise. The importance of this contribution is partly due to the fact that the US are often regarded as a reference point in relation to public policy, and partly due to the contrast between the progressive policies of local governments that have decided to remunicipalise their water services and the neoliberal policies promoted and often imposed by Washington-based multilateral agencies.

In Chapter 2 Irfan Zamzami and Nila Ardhianie of Amrta Institute for Water Literacy write about the failure of the flagship water privatisation in Jakarta that led to its recent termination before expiry. They explain the role played in the local campaign against water privatisation by a civil lawsuit based on the human right to water, and consider the urgency of activating a solidarity-based public-public partnership to develop the capacity of the new public water operator to guide remunicipalisation in Jakarta. This contribution is a helpful reminder of the inability of the private sector to deliver on its own promises of efficiency, and points to the potential of collective civil rights as a tool for progressive change.

In Chapter 3 Christa Hecht, General Manager of the Alliance of Public Water Associations (AöW), sketches the institutional framework of the German water sector, provides an overview of noteworthy cases of remunicipalisation in the country, and identifies the key lessons from this national experience. These lessons are important as German public water services are considered a model of efficiency and effectiveness, and German citizens and local governments are rediscovering these virtues in light of the failed experiments with water privatisation.

In Chapter 4 Christophe Lime, President of the association of public water operators France Eau Publique, describes the institutional framework of the French water sector, identifies the determinants of and challenges to water remunicipalisation, and considers the opportunities for the development of quality public water services in France. This country is highly emblematic

given that it is now witnessing the surge of remunicipalisation after having privatised water services more than most countries; therefore it has precious lessons to offer, both positive and negative.

In Chapter 5 Anne Le Strat, former President of public water operator Eau de Paris and architect of water remunicipalisation in the French capital, engages in conversation on the outcomes of water remunicipalisation after five years of public water operations. She then turns to reflect on the difficulties of the Parisian transition from private to public ownership. This is followed by her insights on citizen participation and the greater level of transparency and democratic accountability that remunicipalisation has made possible, and the role played by Eau de Paris as a source of inspiration for remunicipalisation and public service strengthening outside Paris. This chapter complements both the French and global pictures of water remunicipalisation. In fact, the Paris remunicipalisation is symbolically powerful and many cities in France and elsewhere have regarded and still regard Paris as an example to follow. In addition, Eau de Paris has been proactive in establishing French and European associations of public water operators to promote progressive ideas of public water services.

In Chapter 6 Christine Jakob and Pablo Sanchez of the European Federation of Public Service Unions (EPSU) discuss remunicipalisation as an opportunity to rethink the way in which water and other public services are provided, improving working conditions and strengthening quality public services. This chapter is an invaluable reference for workers and social movements to understand their respective agendas and build alliances for progressive change.

In Chapter 7 David McDonald, co-director of the Municipal Services Project, takes a critical look at current benchmarking systems as pressurising public utilities to behave commercially, and proposes alternative methods for performance evaluation that are more respectful of the needs of community development. These reflections are essential to help the public sector rediscover its true public ethos.

In Chapter 8 Satoko Kishimoto of the Transnational Institute (TNI) explains how investor-state dispute settlement mechanisms protect private sector

interests to the detriment of public authorities, threatening the viability of remunicipalisation. She therefore calls for remunicipalisation to be safeguarded as a window of opportunity for the exercise of local democracy and local communities' decisions on their future.

With Satoko Kishimoto and Olivier Petitjean of the Multinationals Observatory, we offer concluding remarks in Chapter 9. Here, in addition to a check-list for citizens and policy-makers, we offer a summary of all the contributions to this book. This allows us to identify the outcomes of many remunicipalisation experiences as: cost savings, increased investment, innovative social and environmental policies, and democratic accountability. We also consider how public-public partnerships, workers' involvement, and social mobilisation offer opportunities for promoting remunicipalisation and quality public water services. This contrasts with the imposition of policies that prioritise commercial interests over those of communities. Remunicipalisation is here to stay and promises a public water future in which community development comes first. We need progressive policies to help remunicipalisation deliver progressive change.

Emanuele Lobina is Principal Lecturer, Public Services International Research Unit (PSIRU), University of Greenwich, UK. He joined PSIRU in 1998 and has written extensively on the international experience with water service reform. He regularly provides policy advice to international organisations, central and local governments, professional associations, trade unions and civic organisations.

Endnotes

1 While the focus of this book is on remunicipalisation as a reaction to the privatisation of water supply and sanitation services, water privatisation policies are also extending to water resources management and are no less controversial. On the problems with Build-Operate-Transfer (BOT) contracts for the abstraction and storage of water, see: Hall, D. and Lobina, E. 2006. *Pipe Dreams. The failure of the private sector to invest in water services in developing countries*. London: Public Services International and World Development Movement *http://www.psiru.org/sites/default/files/2006-03-W-investment.pdf*. On the problems with large scale consumption of water by multinationals for industrial production, see: Hall, D. and Lobina, E. 2012. *Conflicts, companies, human rights and water – A critical review of local corporate practices and global corporate initiatives.* PSIRU Reports, March 2012 *http://www.psiru.org/sites/default/files/2012-03-W-Resources-noannexe.docx*.

2 For a detailed explanation of why PPPs are an euphemism for water privatisation, see: Lobina, E. and Hall, D. 2013. Water Privatisation and Remunicipalisation: International Lessons for Jakarta. Report by the Public Services International Research Unit prepared for submission to Central Jakarta District Court Case No. 527/ Pdt.G/2012/PN.Jkt.Pst, November *http://www.psiru.org/sites/default/files/2014-W-03- JAKARTANOVEMBER2013 FINAL.docx*. Also see: Lobina, E. and Corporate Accountability International. 2014. Troubled waters: Misleading industry PR and the case for public water. Report published by Corporate Accountability International, November *http://psiru/reports/troubled-waters-misleading-industry-pr-and-case-public-water*.

3 On the problems with water privatisation and PPPs in developing countries, see: Lobina and Hall 2013, op. cit. On the problems with water privatisation and PPPs in developed countries, see Lobina and Corporate Accountability International 2014, op. cit.

4 Lobina, E., Kishimoto, S. and Petitjean, O. 2014. Here to stay: Water remunicipalisation as a global trend. Report by PSIRU, Transnational Institute and Multinationals Observatory, November *http://psiru/sites/default/files/2014-11-W-HeretoStay.pdf*.

5 Ibid.

6 Lobina, E. 2013. Remediable institutional alignment and water service reform: Beyond rational choice. *International Journal of Water Governance*, 1(1/2): 109-132.

7 Lobina, E. and Hall, D. 2009. Thinking inside the box: The World Bank position on the private and public sector. PSIRU Reports, March *http://www.psiru.org/sites/default/files/2009-03-W-wbank.doc*.

8 Lobina, Kishimoto and Petitjean 2014, op. cit.

9 Hall, D. and Lobina, E. 2009. Water privatization. In Arestis, P. and Sawyer, M. (eds.), *Critical essays on the privatization experience*. International Papers in Political Economy Series, p. 75-120. Basingstoke and New York: Palgrave Macmillan *http://psiru/sites/default/files/2008-04-W-over.doc*.

10 Hall, D., Lobina, E. and Terhorst, P. 2013. Re-municipalisation in the early 21st century: Water in France and energy in Germany. *International Review of Applied Economics*, 27(2): 193-214.

11 Lobina, E. and Hall, D. 2008. The comparative advantage of the public sector in the development of urban water supply. *Progress in Development Studies*, 8(1): 85-101.

12 Lobina 2013, op. cit.

13 Castro, J. E. 2009. Systemic conditions and public policy in the water and sanitation sector. In Castro, J. E. and Heller, L. (eds.), *Water and sanitation services – Public policy and management*, p. 19-37. London and Sterling, VA: Earthscan; McDonald, D. 2014. Public ambiguity and the multiple meanings of corporatization.- In McDonald, D. A. (ed), *Rethinking corporatization and public services in the global South*, p. 1-30. London: Zed Books.

14 Lobina, Kishimoto and Petitjean 2014, op.cit.

15 To distinguish between high-income countries and middle- and low-income countries, we followed the World Bank's classification of countries and lending groups: *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS*.

16 Hall, Lobina and Terhorst 2013, op. cit.

REMUNICIPALISATION GLOBAL TREND 2000-2015

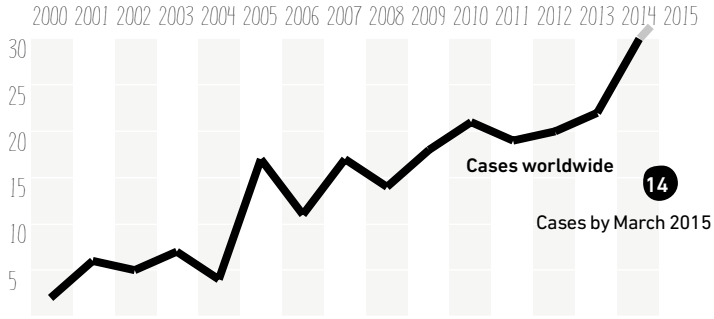
Cases in 2000

Less than one million people in total were affected by remunicipalisation in 2000.

Cases in 2015

The total number of people served by remunicipalised water services has grown to exceed 100 million.

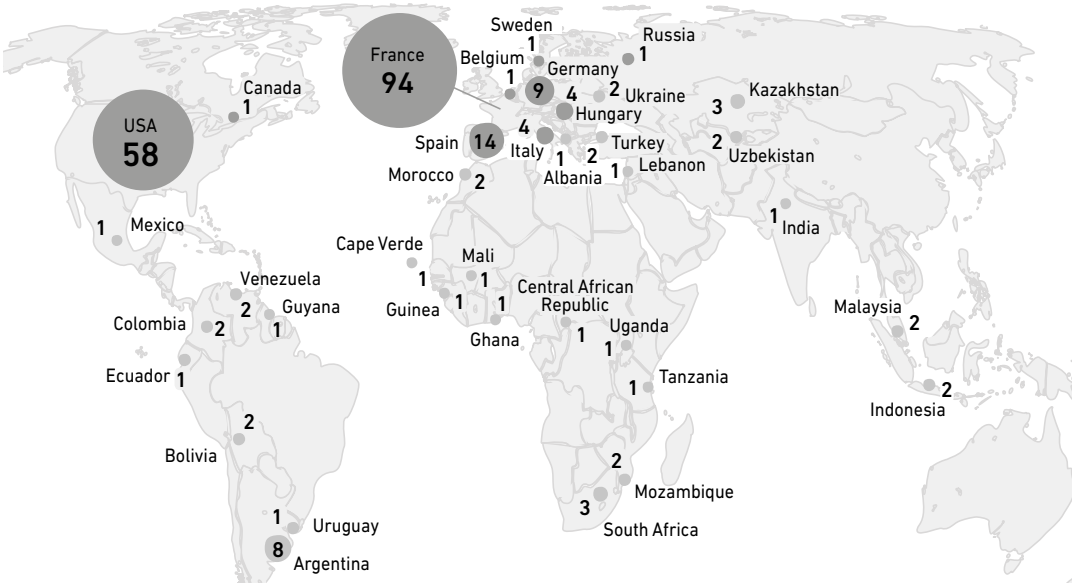
By year:



184
Total cases in
High-income countries

51
Total cases in
Low and middle-income countries

By country:



Sources: PSIRU, France Eau Publique, Food & Water Watch, Corporate Accountability International, Remunicipalisation Tracker

Global list of remunicipalisations

March 2015

The cities that have remunicipalised water and sanitation services between March 2000 and March 2015 are listed in the two tables below: one is for high-income countries and the other for middle- and low-income countries.[1] The tables do not contain cases of central or local governments that remunicipalised to subsequently reprivatise water services.

Where possible, we identified the individual cities that remunicipalised water services (as opposed to areas comprising several cities served by the same water operator) and indicated the date when the new public operator started operating. In a number of cases, information was only available for an area comprising several cities served by the same water operator that remunicipalised at different times, in which specific case we indicated the dates when the first and the last city in the area implemented remunicipalisation.

In other cases we could not identify the exact date of implementation of remunicipalisation, for example because ownership transfer was still being prepared at the time of writing or because the local government had decided that remunicipalisation would take place after March 2015. If ownership transfer was still pending at the time of writing, we indicated the date of the official decision to remunicipalise and the planned implementation date if available. More precisely, status D means that: a) an official decision to remunicipalise was adopted; b) remunicipalisation had not been implemented at the time of writing; and, c) no official decision to reprivatise had been taken at the time of writing.

The acceleration of remunicipalisation can be concluded from comparing the number of cases of remunicipalisation that took place in different five-year periods: 2000-2004, 2005-2009, and 2010 to early 2015. The period 2010 to early 2015 is 63 months, while the period 2005-2009 is 60 months. We do not expect this 5 per cent difference between the lengths of the two periods to significantly affect our findings on the pace of remunicipalisation. To ensure consistency when estimating the acceleration of the trend, we did not consider unimplemented decisions to remunicipalise, only those effective

cases for which the new public operator had started operating, whether remunicipalisation had followed contractual termination, expiry of contract and non-renewal, sale of shares, or withdrawal of the private operator (statuses T, E, S and W, respectively).

Finally, where possible, we indicated the population affected by the remunicipalisation. This figure does not necessarily coincide with the population of the city or cities concerned because the number of residents served by private water contracts is often inferior to the overall population. Where we were unable to identify the population served by a private contract, we indicated the entire population of the city or cities that entered a contract with a private operator to subsequently remunicipalise water services.

Legend

D: Decision to remunicipalise, not implemented

E: Contract expired, and remunicipalised

S: Sold by private operator, contract remunicipalised

T: Contract terminated, and remunicipalised

W: Private operator withdrew, contract remunicipalised

Table 1 *High-income countries*

	Country	City	Served population	Date	Company	Status
1	Belgium	Regional (Aquafin)	3,800,000	2006	Severn Trent	**TS**
2	Canada	Hamilton	490,000	2005	American Water	**E**
3	France	SYDEC Landes	87,000	2000 2014	Veolia, Suez, SAUR	**E**
	Extension of the régies *to new cities for water (+87000) and sanitation (+50000)*					
4	France	Briançon	12,000	2000	SAUR	**E**
5	France	Grenoble (city)	160,000	2001	Suez	**T**
6	France	Grenoble Alpes Métropole	320,000	2001	Suez	**T**
	48 cities excluding Grenoble					
7	France	Neufchâteau	7,000	2001	Veolia	**T**
8	France	Pays Châtelleraudais (communauté d'agglomération)	55,000	2001	Veolia	**E**
	13 cities including Châtellerault and Naintré for sanitation					
9	France	Venelles	8,500	2002	SAUR	**E**

	Country	City	Served population	Date	Company	Status
10	France	Communauté de communes des Albères et de la Côte Vermeille	24,000	2002 2010		E
	12 cities which remunicipalised at expiry					
11	France	Castres	43,000	2003	Suez	T
12	France	Fraisses	4,000	2003	Veolia	
13	France	Varages	1,100	2004	Suez	E
14	France	Cherbourg (communauté urbaine)	46,000	2005	Veolia	E
	5 cities					
15	France	Lanvollon-Plouha	16,500	2005	Veolia/Suez	E
16	France	Embrun	6,500	2006	Veolia	E
17	France	Corte	7,000	2007	OEHC	E
18	France	Cournon d'Auvergne	19,000	2007		
19	France	Le Minervois (communauté de communes)	6,300	2007		E
	15 cities					
20	France	Saint-Paul (La Réunion)	100,000	2007	Veolia	T
	Sanitation remunicipalised in 2007, water remunicipalised in 2010					
21	France	Châtellerault/ Naintré	38,000	2007	Veolia	E
22	France	Tournon-sur-Rhône	11,000	2007	SAUR	E
23	France	Angers Loire Métropole	7,000	2008	SAUR	E
	Extension of the régie to new cities for water and sanitation					
24	France	Hauteville-Lompnes	4,000	2008		
25	France	La Fillière (SIE de La Fillière)	14,000	2008	Suez	E
26	France	Belley	9,000	2009	Alteau	E
27	France	Benfeld et environs	17,500	2009	Suez	E
	Sanitation, joined regional water syndicate SDEA Alsace-Moselle					
28	France	Digne-les-Bains	18,500	2009	Suez	E
29	France	La Grand'Combe (S.I.D.E de l'Agglomération Grand'Combienne)	12,000	2009	Ruas	E
	5 cities					
30	France	Mouthe	1,000	2009	Suez	E

	Country	City	Served population	Date	Company	Status
31	France	Greater Rouen (Métropole Rouen Normandie)	145,000	2009 2014	Veolia, Suez	E
	Progressive extension of the régie *to new cities.*					
32	France	Syndicat d'Eau du Roumois et du Plateau du Neubourg (SERPN)	65,000	2009	Veolia	E
	108 cities					
33	France	Saint-André, Falicon et la Trinité	17,000	2009	Veolia/Ruas	E
	Now part of Métropole Nice Cote d'Azur					
34	France	Greater Albi (communauté d'agglomération de l'Albigeois)	84,000	2010	Suez	E
	Sanitation only remunicipalised (water always remained public)					
35	France	Annonay	17,000	2010	SAUR	E
36	France	Bonneville	12,000	2010	Veolia	E
37	France	Lucé (communauté de communes de Lucé)	15,000	2010	Veolia	E
	14 cities					
38	France	Paris	2,200,000	2010	Veolia/Suez	E
39	France	Saint-Jean-de-Braye	19,000	2010	SAUR	E
40	France	Bordeaux	740,000	2011 (2018)	Suez	D
	This remunicipalisation is still debated and there are signs that the newly elected local authorities might reconsider their decision.					
41	France	Brignole	18,000	2011	Veolia	E
42	France	Causse Noir (SIAEP)	25,000	2011	Veolia	E
	10 cities					
43	France	Gueugnon	9,000	2011	Suez	E
	Sanitation was also remunicipalised in 2015					
44	France	Lacs de l'Essonne	32,000	2011	Veolia/Suez	E
45	France	Le Gouray	1,100	2011	Veolia	E
46	France	Greater Nantes	NA	2011	Veolia/Suez	E
47	France	Ploubezre	3,000	2011	Veolia	E
48	France	Saint Brieuc Agglomération	52,000	2011 2018	Veolia	D
49	France	Syndicat de la Baie	5,000	2011	Veolia	E

	Country	City	Served population	Date	Company	Status
50	France	Tarnos, Ondres, Boucau and St-Martin-de-Seignaux	29,000	2011	Suez	E
51	France	Vierzon	28,000	2011	Veolia	E
52	France	Brest Métropole	213,000	2012	Veolia	E
53	France	Chenal du Four (Syndicat du Chenal du Four)	6,000	2012	Veolia	E
54	France	Gâtine (Syndicat Mixte des Eaux de la Gâtine)	56,000	2012	Suez	E
55	France	Landerneau (SIDEP de Landerneau)	20,000	2012	Veolia	E
56	France	Muret	24,000	2012	Veolia	E
	Part of the service is still outsourced					
57	France	Saint-Malo	48,000	2012	Veolia	E
58	France	Schweighouse (SIVOM)	12,000	2012	Suez	E
	Sanitation, joined regional water syndicate SDEA Alsace-Moselle					
59	France	Sélestat	60,000	2012	Veolia	E
	Sanitation					
60	France	Argenton-sur-Creuse	5,000	2013	Veolia	E
61	France	Basse Vallée de l'Adour (syndicat intercommunal)	31,000	2013	Suez	E
	25 cities					
62	France	Beaurepaire et Saint-Barthélémy	6,000	2013		
63	France	Capbreton	8,000	2013	Suez	E
64	France	Évry Centre Essonne	116,000	2013	Suez	E
65	France	Gannat	6,000	2013	Veolia	E
	Joined SIVOM Sioule et Bouble					
66	France	Kermorvan-Kersauzon (syndicat des eaux)	19,000	2013	Veolia	
67	France	Lamentin, Saint-Joseph and Schoelcher (Martinique)	77,000	2013	Suez/Veolia	E
	Sanitation, joined the communité d'agglomération CACEM's régie					
68	France	Péronne	9,000	2013		E
69	France	Saint-Pierre des Corps	15,000	2013	Veolia	E
	Water service is still partly outsourced to Veolia (installations and meters). Sanitation was remunicipalised in 2012.					

	Country	City	Served population	Date	Company	Status
70	France	Valence-Moissace-Puymirol (syndicat des eaux)	5,000	2013	SAUR	E
71	France	Aubagne	46,000	2014	Veolia	E
	Joined SPL Eau des Collines for water					
72	France	Barousse Comminges Save	58,000	2014	SEM Pyrénées	T
73	France	Beaulieu, Cap d'Ail, Eze et Villefranche-sur-Mer	17,000	2014	Veolia	E
	Now part of métropole Nice Côte d'Azur					
74	France	Blois	48,000	2014 (2016)	Veolia	D
75	France	Capesterre-Belle-Eau (Guadeloupe)	20,000	2014	Veolia	E
	Taking effect 2016					
76	France	Castelsarrasin	13,000	2014	SAUR	E
77	France	Courgent	400	2014	Suez	T
78	France	Montpellier Méditerranée Métropole	350,000	2014 (2016)	Veolia	D
	Taking effect 2016					
79	France	Pays d'Aubagne et de l'Étoile	105,000	2014	Veolia	E
	12 cities, including Aubagne and La Penne-sur-Huveaune, joined SPL Eau des Collines for sanitation					
80	France	La Penne-sur-Huveaune	6,000	2014	Veolia	E
	Joined SPL Eau des Collines for Water					
81	France	Mommenheim (SICTEU)	6,000	2014	Suez	E
	Sanitation, joined regional water syndicate SDEA Alsace-Moselle					
82	France	Portes de l'Eure (communauté d'agglomération)	20,000	2014	Veolia, SAUR	D
	39 cities will be added over time as contracts expire					
83	France	Terre de Bas (îles des Saintes, Guadeloupe)	1,000	2014	Veolia	E
	Remunicipalised together with Capesterre Belle Eau					
84	France	Terre de Haut (îles des Saintes, Guadeloupe)	2,000	2014	Veolia	E
	Remunicipalised together with Capesterre Belle Eau					
85	France	Bastia (communauté d'agglomération)	58,000	2015	OEHC	E
86	France	Brugheas	1,500	2015	Veolia	E
	Joined SIVOM Sioule et Bouble					

	Country	City	Served population	Date	Company	Status
87	France	Fleury les Aubrais	21,000	2015	SAUR	E
	Service is still partly outsourced					
88	France	Lamentin / Saint-Joseph (Martinique)	57,000	2015	Suez/Veolia	E
	Sanitation was remunicipalised in 2013 - both through joining the CACEM régie					
89	France	Nice (city)	348,000	2015	Veolia	E
	Now part of Métropole Nice Côte d'Azur					
90	France	Pays de Bitche	25,000	2015	Veolia	E
	Joined SDEA Alsace-Moselle					
91	France	Pays de Nay (SEPA du Pays de Nay)	25,000	2015	SAUR	E
92	France	Quimperlé	12,000	2015	Veolia	E
93	France	Rennes (Eau du Bassin rennais)	480,000	2015	Veolia	E
	56 cities. Production was remunicipalised over the whole area (480000), distirbution over Rennes city only (230000)					
94	France	SIAEAG (Guadeloupe)	100,000	2015	Veolia	E
95	France	Troyes	60,000	2015	Veolia	E
96	France	Valence	65,000	2015	Veolia	E
97	Germany	Krefeld	222,058	2005	RWE	T
98	Germany	Bergkamen	110,000	2008	Gelsenwasser	T
99	Germany	Stuttgart	613,392	2010-	EnBW	D
100	Germany	Solingen	155,768	2012	MVV Energie AG	T
101	Germany	Bielefeld	328,864	2012	Stadtwerke Bremen/ Essent	T
102	Germany	Oranienburg	42,000	2012	Gelsenwasser	T
103	Germany	Berlin	3,501,870	2013	Veolia/RWE	T
104	Germany	Burg (Sachsen-Anhalt)	22,000	2014	Veolia	E
105	Germany	Rostock	200,000	2014-	Remondis	D
106	Italy	Imperia	200,000	2012-	IREN	D
107	Italy	Reggio Emilia	482,287	2012	IREN	D
108	Italy	Varese	889,000	2013	A2A	D
109	Italy	Termoli	33,000	2015	Acea	D

	Country	City	Served population	Date	Company	Status
110	Russia	Arzamas	120,000	2014	Remondis	W
111	Spain	Medina Sidonia	11,794	2003	Aqualia	T
112	Spain	Huesna (Alanís de la Sierra, Alcolea del Río, Almadén de la Plata, Brenes, Las Cabezas, Cantillana, Carmona, Cañada Rosal, Constantina, El Coronil, El Cuervo, El Madroño, Los Molares, Lebrija, Los Palacios y Vfca., El Pedroso, El Real de la Jara, Tocina, Vva. Del Río y Minas, El Viso del Alcor, San Nicolás del Puerto, Utrera)	126,845	2007	ACS Actividades de Construcción y Servicios	T
113	Spain	Figaró Montmany	1,112	2009	CASSA Group	T
114	Spain	Arenys de Munt	8,588	2011	SOREA (AGBAR)	T
115	Spain	Arteixo	31,005	2013	Aqualia (FCC)	T
116	Spain	La Línea de la Concepción	62,697	2013	Aqualia (FCC)	T
117	Spain	Manacor	41,049	2013	Agua Manacor S.A.	
118	Spain	Alfes	315	2014	Aigües de Catalunya	W
119	Spain	Ermua	10,109	2014	Suez	T
120	Spain	Estella del Marqués	1,486	2014	Aqualia	T
121	Spain	Guadalcacín	5,233	2014	Aqualia	T
122	Spain	Montornés del Vallès	16,217	2014	Familiar privada	D
123	Spain	Rascafría	2,000	2014	Canal Gestión SA	T
124	Spain	Torrecera	1,254	2014	Aqualia	T
125	Sweden	Norrköping	87,247	2005	EON	S
126	Uruguay	Maldonado Department	96,000	2005	Aguas de Bilbao	T
127	USA	Atlanta, GA	1,200,000	2003	Suez	T
128	USA	Angleton, TX	18,862	2004	Veolia	T
129	USA	Plainfield, IN	27,631	2004	United Water	T
130	USA	Laredo, TX	236,191	2005	United Water (Suez)	T
131	USA	Coxsackie, NY	8,918	2005	Veolia	T
132	USA	Jackson, AL	5,228	2005	Veolia	
133	USA	Pekin, IL	34,094	2005	United Water	E
134	USA	East Aurora, NY	6,236	2005	Veolia	E

	Country	City	Served population	Date	Company	Status
135	USA	Conroe, TX	61,533	2005	Veolia	T
136	USA	Demopolis, AL	7,483	2006	Veolia	E
137	USA	Five Star Water Supply District, AL	100	2006	Veolia	T
138	USA	Southern Water & Sewer District, KY	23,524	2006	Veolia	T
139	USA	North Brunswick, NJ	40,742	2006	United Water	T
140	USA	Logan, WV	11,000	2006	Veolia	E
141	USA	Petaluma (wastewater treatment), CA	58,142	2007	Veolia	E
142	USA	Houston (water treatment), TX	2,700,000	2007	United Water (Suez)	T
143	USA	Karnes City, TX	3,042	2007	Veolia	E
144	USA	Winchester, NH	4,341	2008	United Water	T
145	USA	Stockton, CA	300,899	2008	OMI-Thames Water	T
146	USA	Fairfield-Suisun (wastewater treatment), CA	135,296	2008	United Water (Suez)	T
147	USA	Central Elmore Water & Sewer Authority, AL	50,000	2008	Veolia	
148	USA	Cave Creek, AZ	9,000	2008	American Water	E
149	USA	Horn Lake, MS	15,545	2008	Southwest Water	T
150	USA	Odem, TX	2,499	2008	Veolia	T
151	USA	Hayden, ID	13,294	2009	Veolia	T
152	USA	Durham County, NC	8,000	2009	United Water	T
153	USA	Burley (wastewater treatment), ID	9,578	2009	Veolia	T
154	USA	Surprise, AZ	27,116	2009	American Water	E
155	USA	Biddeford, ME	21,383	2009	CH2M Hill OMI	E
156	USA	O'Fallon, MO	25,002	2009	Alliance Water Resources	E
157	USA	Kline, PA	1,591	2009	United Water	W
158	USA	North Adams, MA	13,708	2010	United Water	T
159	USA	Overton, TX	2,554	2010	Veolia	T

	Country	City	Served population	Date	Company	Status
160	USA	Freeport, IL	25,638	2010	United Water	E
161	USA	Evansville, IN	117,429	2010	American Water	E
162	USA	Gary, IN	180,000	2010	United Water	T
	City voted to terminate but then negotiated a "transition agreement" with the company to avoid paying $450,000 in termination fees. So United Water could say the deal was not officially 'terminated'.					
163	USA	Liberty, MO	3,000	2010	CH2M Hill OMI	T
164	USA	Webb City, MO	10,996	2010	CH2M Hill OMI	E
165	USA	Skaneateles, NY	5,116	2010	Severn Trent	T
166	USA	Lampasas, TX	7,868	2010	CH2M Hill OMI	T
167	USA	Leander, TX	25,740	2010	Southwest Water	
168	USA	Whitesburg (water and wastewater),KY	2,139	2011	Veolia	T
169	USA	Brunswick -Glynn County, GA	79,626	2011	United Water	T
170	USA	Tama, IA	2,877	2011	Veolia	T
171	USA	Schenectady (wastewater treatment), NY	66,135	2011	Veolia	T
172	USA	Plymouth (water and wastewater), NC	3,878	2011	Veolia	E
173	USA	Manchester Township, NJ	35,976	2011	United Water	
174	USA	Summit City, NJ	21,457	2011	United Water	T
175	USA	New Albany (wastewater treatment), IN	36,372	2012	American Water	E
176	USA	Gladewater, TX	6,275	2012	Veolia	T
177	USA	Lanett AL	6,468	2012	Veolia	
178	USA	Barstow, CA	22,639	2012	United Water	E
179	USA	Coeburn, VA	2,139	2013	Veolia	T
180	USA	Weslaco, TX	35,670	2013	CH2M Hill	T
181	USA	Cameron, TX	5,770	2013	Severn Trent	T
182	USA	Storm Lake, IA	10,600	2013	Veolia	T
183	USA	Reidsville, NC	14,520	2014	United Water	T
184	USA	Oakland County, MI	59,515	2014	United Water	T

Table 2 *Low and middle-income countries*

	Country	City	Served population	Date	Company	Status
185	Albania	Elbasan	100,000	2007	Berlinwasser International	T
186	Argentina	Buenos Aires Province (74 cities)	2,500,000	2002	Enron	W
187	Argentina	Buenos Aires	9,000,000	2006	Suez	T
188	Argentina	Buenos Aires Province (Gran, 6th subregion)	1,700,000	2006	Impregilo	T
189	Argentina	Santa Fe and Rosario	2,000,000	2006	Suez	T
190	Argentina	Catamarca	200,000	2008	Proactiva	T
191	Argentina	Salta	1,100,000	2009	Latinaguas	T
192	Argentina	La Rioja	200,000	2010	Latin Aguas	T
193	Argentina	Mendoza	1,100,000	2010	Saur	T
194	Bolivia	Cochabamba	900,000	2000	Bechtel	T
195	Bolivia	La Paz/El Alto	1,600,000	2007	Suez	T
196	Cape Verde	National	200,000	2005	Aguas de Portugal	TS
197	Central African Republic	Bangui	80,000	2003	SAUR	WS
198	Colombia	Bogota (treatment plant)	1,500,000	2004	Suez	T
199	Colombia	Bogota (water supply)	7,000,000	2013	Acea, Proactiva	E
200	Ecuador	Machala	240,000	2012	Oriolsa	T
201	Ghana	National	5,100,000	2011	Vitens, Rand Water	E
202	Guinea	Conakry and 16 other smaller urban centres	1,824,000	2003	SAUR and Veolia	W
203	Guyana	National	740,000	2007	Severn Trent	T
204	Hungary	Kaposvar	64,872	2009	Suez	E
205	Hungary	Pecs	150,000	2009	Suez	T
206	Hungary	Borsodviz	190,000	2010	Gelsenwasser	T
207	Hungary	Budapest	1,740,000	2012	Suez, RWE	T
208	India	Latur	390,000	2012	SPML (Shubash Projects and Marketing Ltd)	T
209	Indonesia	Badung Bali	543,332	2013	Mahasara Buana, Intan Dyandra Mulya, Dewata Artha Kharisma	E
210	Indonesia	Jakarta	9,900,000	2015-	Suez	D
	The Central Jakarta District Court on 24 March 2015 annulled the privatised water contracts signed with Suez (Palyja) and Aetra and ordered the water services to be brought back to the state-owned water company					
211	Kazakhstan	Ust-Kamenogorsk	303,720	2007	IR-Group	T

	Country	City	Served population	Date	Company	Status
212	Kazakhstan	Almaty	1,600,000	2005	Veolia	T
213	Kazakhstan	*Astana* (bulk water supply)	639,311	2003	Veolia	W
214	Lebanon	Tripoli	400,000	2007	Suez	E
215	Malaysia	Kuala Lumpur (Selangor state)	5,411,324	2014-	Syabas, PNSB, SPLASH, ABASS	D
216	Malaysia	Indah Water Consortium (sanitation)	6,100,000	2001	Prime Utilities	S
217	Mali	Bamako	1,500,000	2005	SAUR	T
218	Mexico	Ramos Arizpe	48,228	2014	Suez	T
219	Morocco	Rabat-Salé region	2,200,000	2014	Redal (Veolia)	DS
	Outcome still pending					
220	Morocco	Tanger-Tétouan	1,400,000	2014	Amendis (Veolia)	DS
	Outcome still pending					
221	Mozambique	Beira, Nampula, Quelimane and Pemba (and Chokwé, Inhambane, Maxixe and Xai-Xai)	242,143	2008	Aguas de Mozambique (SAUR and Aguas de Portugal)	E
222	Mozambique	Maputo	1,766,184	2010	Aguas de Portugal	T
223	South Africa	Amahthali (Stutterheim)	200,000	2005	Suez	E
224	South Africa	Johannesburg	500,000	2006	Suez	E
225	South Africa	Nkonkobe (Fort Beaufort)	130,000	2002	Suez	T
226	Tanzania	Dar es Salaam	750,000	2005	Biwater	T
227	Turkey	Antalya	2,158,000	2002	Suez	T
228	Turkey	Izmit	1,600,000	2014	Thames Water	T
229	Uganda	Kampala	1,720,000	2004	ONDEO	E
230	Ukraine	Lugansk	424,113	2014	Rosvodokoanal	T
231	Ukraine	Kirovograd	293,444	2008	Water Services, LLC	T
232	Uzbekistan	Bukhara	247,000	2007	Veolia, then Amiwater	T
	A second contract with Amiwater was also terminated in 2007					
233	Uzbekistan	Samarkand	412,000	2007	Veolia, then Amiwater	T
	A second contract with Amiwater was also terminated in 2007					
234	Venezuela	Monagas State	552,000	2001	FCC	E
235	Venezuela	Lara State	1,100,000	2002	Aguas de Valencia	T
	Total served population		**105,917,656**			

Endnotes

1 The World Bank's classification of countries and lending groups is available at: *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS* (accessed on 14 March 2015).

Chapter One

Water in public hands: Remunicipalisation in the United States

By Mary Grant

Most people in the United States receive their water and sewer services from publicly owned and operated utilities, and the movement to retain, secure and strengthen public water services is strong and vibrant.

The United States has about 50,000 community water systems and 20,000 wastewater collection systems.[1] Nearly all wastewater services are publicly owned and public provision also dominates drinking water services.[2] Local governments and other public entities serve 86 per cent of the population through community water systems.[3]

A long history of municipalisation

Historically, private water companies served many of the nation's largest cities until the turn of the 20th century, when cholera outbreaks and destructive fires inspired a surge of municipalisations. From 1880 to 1920, thousands of cities – including Baltimore, Boston, Chicago, Los Angeles, New York City, Philadelphia and San Francisco – assumed public control of water provision to improve water quality and extend service to low-income areas neglected by private providers.[4]

The movement to public ownership continues today. From 2007 to 2013, the population served by privately owned community water systems fell by 7 million, while the population served by local governments grew by 17 million.[5] Local governments are indeed expanding services to new areas and buying private systems with considerable frequency. This often occurs as cities grow;

local governments purchase systems in newly annexed areas and consolidate them with existing public infrastructure to improve services, distribute costs and better manage water resources.[6]

Remunicipalisation: A strong force

Despite aggressive corporate efforts, privatisation of government-owned water and sewer systems remains uncommon in the United States. Further, a 2012 national survey found that only 6 per cent of local governments contract out water and sewer services to private, for-profit entities.[7]

Although privatisation is relatively rare, every year a handful of local governments exit such arrangements and return water or sewer systems to public operation. Remunicipalisation of water and sewer services is a strong force among contracting governments.

Since 2000, major water companies have lost 169 contracts to remunicipalisation.[8] That's a large number compared to existing private water management contracts, considering that four of the largest companies, representing an estimated 70 per cent of the US water outsourcing market, had a total of just 760 government clients in 2013.[9]

How communities remunicipalise

Local governments typically remunicipalise water and sewer services by letting contracts expire or terminating contracts for convenience. That is, many deals allow municipalities to exit the arrangement early for any reason as long as the private operator is given sufficient notice, although governments may have to pay termination fees. "Termination for convenience" clauses and short contract terms are important checks on privatisation. Without them, it can be difficult for local governments to bring services back under public operation.

In some cases, governments have ended contracts because of serious violations of contract provisions. This is known as "termination for cause." It can be difficult, however, for a government to prove that the company has materially breached a contract, and many deals require arbitration first. Sometimes when governments threaten to terminate a contract, companies will try to negotiate a no-fault settlement to avoid blame or bad publicity, while waiving a portion of the termination fees for the government.

Top reasons why local governments seek public control

Local governments remunicipalise their water or sewer services primarily to reduce costs and improve service.

Saving money

Cost savings, in particular, is a driving force of remunicipalisation in the United States. A Food & Water Watch survey of 18 communities that remunicipalised water or sewer services between 2007 and 2010 found that public operation cut costs in these communities by an average 21 per cent.[10] Municipalities have realised significant savings by exiting privatisation arrangements and returning systems to public hands. The cases of Coeburn and that of Fairfield and Suisun are exemplary in this regard.

Coeburn, Virginia. In 2013 Coeburn, a small town in Virginia, was struggling to balance its budget. Its reserve fund had dropped dramatically since the Great Recession. Although the town had been able to reduce costs in every other department, its public works department was locked into a privatisation contract that required a payment increase to the private company.

Since 2009, Veolia Water North America, a subsidiary of the French multinational, had run Coeburn's entire public works department, including the water and sewer systems. In 2013, the town paid the company $1.41 million – an astonishing 96 per cent of total annual budget. The contract was simply too expensive, so the town council voted not to renew the deal when it expired. In April 2014, the town resumed public operation of the department, cutting costs by 28 per cent.[11]

Fairfield and Suisun, California. In 2008, after three decades of private operation of the wastewater treatment plant, the board of directors of the Fairfield-Suisun Sewer District in California unanimously voted to cancel the contract with United Water and use public employees to run the facility. The district determined that remunicipalisation would save money and improve service.

The district had first privatised the operation and maintenance of the treatment plant in 1976. After a series of other contractors, United Water, a

subsidiary of French multinational Suez Environnement, took over the plant in 2007 when it bought the company that had earlier received a five-year deal with the district. By then, the district's board of directors had come to question whether private operation was in the public's best interest. When United Water took control, the district hired independent consultants to review options.[12]

The consultants found that public operation would cut costs in 5 per cent in the first year and 10 to 15 per cent in subsequent years.[13] The report concluded that private contracting costs would otherwise continue to "increase significantly" because of market consolidation and the "profitability goals" of the companies that would vie for any new deal.[14]

With public operation, the district could also attract and retain the necessary qualified personnel and improve performance. Under privatisation, the district's contractors had struggled to maintain adequate staffing and stable management.[15] There were five different plant managers in the previous five years, and the maintenance manager position was vacant at the time of the consultants' assessment. Staffing difficulties would have likely only worsened over time. The consultant projected that one-fifth of the district's staff would retire in the coming years, and that because private contractors offered worse compensation packages than their public counterparts in the area, it would be more difficult for a private firm to hire the necessary staff from an increasingly limited labour pool.[16]

Since 2008, public operation has met or exceeded expectations. The district has increased and then retained operation and maintenance staff levels.[17] In the first year of public operation, remunicipalisation cut total operating costs by 7 per cent, saving taxpayers $1.3 million.[18] In fact, annual operating costs were lower by 2014 than in the final year of the privatisation contract.[19]

Improving service

Beyond financial reasons, communities remunicipalise water and sewer services to improve performance. Unresponsive customer service and inadequate maintenance are frequent complaints under privatisation deals.

Cameron, Texas. In 2013, the city council of Cameron, Texas, unanimously voted to sever its contract with Severn Trent. Four years earlier, in 2009, the company had received a five-year deal to operate and manage the city's water and wastewater systems, promising to cut costs and improve service through better staff training and system upkeep.[20]

Within a few years, the city was deeply dissatisfied with the company's performance – from brown, foul-smelling water to inadequate treatment that prompted requirements to boil water before consumption to other violations.[21] "We hired you to take care of the water," city council member Bill Harris told two senior Severn Trent representatives at a 2012 meeting. "I feel you've fallen down on the job."[22]

In March 2013, the city took over the water and wastewater departments and began "working through challenges that Severn Trent left us with."[23] Despite the problems with and frustration over the company's performance, Cameron had to pay $64,000 to terminate the deal early.[24]

The city then began to address the problems left from the privatisation failure,[25] assisted in part by a $250,000 Community Development Block Grant for water meter upgrades to reduce unaccounted-for water.[26] As part of its water conservation and drought contingency plan, the city also prioritised repairing water leaks. By July 2014, the utilities director Curtis Donovan reported that the water department met all permit requirements and had a satisfactory state review on quality levels.[27]

Gain local control to better manage water resources

Public control makes coordination across municipal departments and government jurisdictions possible, allowing for better resource management. For example, many cities' water and transportation departments work together to time water pipeline replacements with street repairs to avoid redundant repaving work. Cities also use wastewater department trucks for other government tasks, including snow removal, and water department employees can help prepare for emergencies and natural disasters such as hurricanes.[28]

Private contractors and utilities, in comparison, have no incentive to share equipment and staffing with city departments, and they are not required to cooperate with government agencies to protect water resources, manage watersheds and work for long-term sustainability.

Cave Creek, Arizona. In 2008, Cave Creek, Arizona, assumed full public control of its water and sewer services after buying two private water systems and deciding against renewing contracts with American Water.

Cave Creek's water systems had been privately owned since their inception. Worried about insufficient water supplies and system upkeep, and facing water shortages that left county residents with intermittent outages and low pressure, the town decided to pursue public ownership and management to secure its water future.[29]

"We need to have control of the water utility so we can plan five, 10 and 20 years down the road," explained Cave Creek Mayor Vincent Francia in 2005.[30]

The town purchased two private water systems: the Desert Hills Water Company for $2.5 million in 2006 and the Cave Creek Water Company for $19.5 million in 2007. Cave Creek received low-interest loans from the Water Infrastructure Financing Authority, the state agency responsible for distributing federally subsidised State Revolving Fund assistance, to purchase the systems and make necessary improvements.[31]

At the time, the town hired American Water, which already operated the town's wastewater treatment plant, to run the water systems for one year. When the contracts expired, the town opted for full public control. During 2008, the town began publicly operating the water systems and wastewater treatment plant.

At a November 2007 meeting, Jessica Marlow, the town's utilities manager, said that there were three reasons why the town was taking over the operation of the water systems: "to improve customer service," "bring management and services locally" and "improve financial sustainability."[32]

Later during the same meeting, town clerk Carrie Dyrek outlined the "advantages of local control," including that local staff will provide all services. "Who [would be] better to assess the needs of our community?" she asked, answering: "The local employees who live and work in this community."[33]

In just the first two years of public control, Cave Creek invested $16.2 million in upgrading its water systems and storage tanks to improve the reliability and sustainability of its water supply.[34]

Onward

Public operation of drinking water and wastewater services prevails in the United States. Privatisation remains relatively uncommon, but each year several communities across the country remunicipalise their water and sewer services. The decisions to remunicipalise are pragmatic. Municipalities evaluate privatisation contracts on costs and performance criteria and determine that public operation is the best option. Local governments have saved millions of dollars and improved the quality of their water services through locally accountable public management. For communities across the United States, remunicipalisation has been a resounding success.

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Chapter Two

An end to the struggle? Jakarta residents reclaim their water system

by Irfan Zamzami and Nila Ardhianie

Privatisation of water services in Jakarta has failed. The evidence speaks for itself. Water services coverage in the Indonesian capital remains low at only 59 per cent.[1] The infrastructure is in bad shape with the leakage level as high as 44 per cent, a situation repeatedly denounced by the Governor.[2] As a result, among the lucky half of the population that does get access to piped water, water quality is poor.

Consequently, on 24 March 2015 the Central Jakarta District Court annulled the privatised water contracts following a citizen lawsuit. Water privatisation was deemed negligent in fulfilling the human right to water for Jakarta's residents. The court also ordered the water services to be brought back to the state-owned water company.[3]

The private sector got officially involved in Jakarta's water services in 1997, when Suharto's dictatorial power was still solid in Indonesia. At the time, foreign water companies Thames (UK) and Suez (France) obtained a 25-year concession over water management, granting them the exclusive right to deliver water services in the capital city. Each operator was given control over half of the metropolitan area: the western part is serviced by PT PAM Lyonnaise Jaya (Palyja, owned at 51 per cent by Suez and at 49 per cent by Indonesian infrastructure company Astratel Nusantara) and the eastern part by PT Aetra Air Jakarta (Aetra, owned by Singapore-based Acuatico since 2007 with Indonesian company PT Alberta Utilities holding 5 per cent of shares).

Since then, the private operators have been earning high profits in a low-risk business while causing huge financial losses for the public Jakarta Drinking

Water Utility (PAM Jaya), which oversees the contracts with the private concessionaires. These public losses added up to as much as IDR 510 billion in 2010 (approximately US$54 million) and could reach IDR 18.2 trillion if the cooperation agreement were to continue until its expiry date in 2022.

The government is discontented because the capital city's water services are poor and public money is being spent to cover losses caused by privatisation.[4] Water tariffs increased on 10 occasions since, making it much higher than in other cities while service quality remains poor. Outages are frequent and in 2013 alone nearly 40,000 complaints were filed by users regarding tap water deficiency.[5]

Not only are residents and public managers discontented with privatisation, water workers too have been negatively affected.[6] Some 2,800 of the 3,000 utility workers were transferred to the private companies after the concession was signed, but their contractual situation remained unclear. Afterwards, the new workers recruited directly by the private companies obtained better conditions, for example on skills training, health insurance, salary and allowance, as well as safety. This has created a double standard within the workforce. One worker who had been working for nine years with the water utility declares never having received a basic salary raise since privatisation.

Citizens unite to remunicipalise

Even though the resistance against water privatisation is as old as the privatisation itself, it gained momentum in 2011 when residents, water workers and civil society organisations formed the Coalition of Jakarta Residents Opposing Water Privatization (KMMSAJ). The coalition has organised through various strategies, from rallies, public discussions and policy dialogues, to requesting information disclosure, circulating petitions and filing a citizen lawsuit.

In January 2012 KMMSAJ also brought to light an alleged corruption case that involves PAM Jaya and the two private operators by petitioning the Corruption Eradication Commission (KPK). This corruption case, currently being investigated by KPK, would involves IDR 561 billion (US$43.2 million).[7] *Tempo Magazine*, which investigated the case, found a link between this corruption case and the Jakarta gubernatorial election in 2012.[8]

The most important step was taken in November 2012 when KMMSAJ initiated a Citizen Lawsuit against water privatisation. The defendants in the lawsuit were the President, the Vice-President, Finance Minister, Public Works Minister, and the Governor of Jakarta. Other defendants include the Jakarta House of Representatives, Jakarta water company PAM Jaya's president director, and the two private operators Palyja and Aetra.[9]

In this lawsuit, the plaintiff accuses the defendants of negligence by unlawfully arranging the water privatisation contract agreement. Indeed, the contract itself is considered as violating the Constitution and other regulations related with water resources and clean water provision, which require delivery by the state through a public water company.

This lawsuit played an important role for its influence on policy-makers. After the Citizen Lawsuit was launched, the Governor of Jakarta Joko Widodo declared in March 2013 that water privatisation would be ended. In October 2014 then-deputy governor of Jakarta Basuki Tjahaja Purnama confirmed that the government was considering the acquisition of the private firms' shares through Jakarta's public water utility PAM Jaya considering the class-action lawsuit.[10]

The Governor's plan to acquire the private operators' shares through PAM Jaya was taken seriously by the court, and the verdict was postponed twice to create space for an out-of-court settlement. The governor of Jakarta issued a letter in February 2015 instructing the public water company PAM Jaya to take over water services from the private operators. The Central Jakarta District Court's 24 March decision to annul the privatised water contracts on the grounds that the water privatisation was negligent in fulfilling residents' human right to water confirms that this is the road taken. Remunicipalisation is just one step away!

The privatisation context in Jakarta

The cooperation agreement with Aetra and Palyja was restated in 2001 to adjust with the political and economic situation post-1998 financial crisis. It was followed by a five-year target adjustment.

It was not until 2011 that PAM Jaya openly expressed disappointment with the contract agreement and proposed renegotiation. The director of PAM Jaya stated that privatisation would sink the public water utility into huge financial

losses (up to IDR 18.2 trillion) if the cooperation agreement continued as planned until its expiry date in 2022.

The renegotiation process did not run smoothly. Aetra was the first to agree to compromise with some renegotiated items, which were included as addendum to the cooperation agreement in December 2012. The approved items were: to lower the Internal Rate of Return, which was considered too high, from 22 to 15.8 per cent (the Financial and Development Supervisory Agency, BPKP, evaluated the reasonable rate for water services in Jakarta at 14.68 per cent); to eliminate current shortfall debt; and to decrease the leakage level from 29 to 25 per cent. Palyja, on the other hand, refused to make any changes.

The cooperation agreement has been problematic because of its emphasis on the private operators' business profit. The payment mechanism adopted in the contract agreement differentiates between "water charge" and "water tariff". The former is the rate paid by PAM Jaya to the private operators, while the latter is the rate paid by customers to PAM Jaya. The water charge is subject to adjustments regardless of policy decisions related to the water tariff.

The initial water charge as of 1 April 2001 was IDR 2,400, and was to be adjusted every six months. This soon created a structural problem because PAM Jaya did not have similar flexibility in increasing tariffs because most residents could not afford it.

The water charge could be raised liberally by the private operators without considering the water tariff policy, guaranteeing continued private profits. For PAM Jaya, every water charge increase that was not followed by a parallel water tariff increase led to a financial shortfall. This brought the government to issue a policy that allowed raising the water tariff automatically every six months, effective from 23 July 2004 to 2007. Not surprisingly, Jakarta's water tariff has become the highest among other big cities in Indonesia.

This structure has caused massive financial losses for PAM Jaya. In 2011, when the President Director of PAM Jaya proposed contract renegotiation, financial loss was evaluated at IDR 154.3 billion, in addition to a decrease in asset value from IDR 1.49 trillion before the privatisation to IDR 204.46 billion in 2014.[11] A letter of support issued by the provincial government of Jakarta later assumed all these losses from public money while guaranteeing excessive revenue for the private operators despite dismal service quality.

At the same time, the cooperation agreement gave much leeway to the private operators in terms of performance targets. The regulation of performance targets, which are important to ensure quality services to citizens, was designed in such a way that the private operators could easily evade them. For instance, technical targets could be amended from time to time in accordance with the private operators' Financial Projections. The same case applied to the service standards.

Poor private performance, expensive water tariff

With no pressure whatsoever, the private operators' performance has been unsatisfactory. In a recent statement, PAM Jaya explained that the service coverage ratio in 2013 was targeted for 66.37 per cent, but the private operators were only able to reach 59.01 per cent,[12] or lower than that of 2008. The leakage level is 44 per cent, higher than the average level of other drinking water companies nationally, which is 31 per cent.[13] The Interior Ministry's regulation specifies that the leakage level should not be higher than 20 per cent.

While receiving poor water services, customers have to pay expensive water tariffs. At the beginning of the concession, the average water tariff in Jakarta was IDR 1,700/m^3. It continued to increase rapidly, mostly through the Automatic Tariff Adjustment policy, as the private operators kept pushing frequent increases in the water charge. Currently, the average water tariff in Jakarta is IDR 7,020/m^3, which is much higher compared to that of other big cities in Indonesia (see Table 2.1).

Table 2.1 *Comparison of average water tariffs in several big cities, Indonesia (2012)*

	City	Tariff (per m^3)
1	Jakarta	IDR 7,020
2	Surabaya	IDR 2,600
3	Medan	IDR 2,294
4	Bekasi	IDR 2,300
5	Makassar	IDR 2,000
6	Semarang	IDR 2,600

Sources: (1), (2), (4) *TribunNews* 31 January 2012; (3) *Bisnis Indonesia* 24 September 2012; (5) Department of Public Works; (6) *Okezone* 10 May 2012.

Water supply challenges in Jakarta

In a heavily populated city like Jakarta (9.6 million inhabitants), providing safe drinking water through a piped network is no simple task. In the context of rapidly increasing demand, the piped water infrastructure supplies 297 million cubic meters of water per year. Additional water needs tax groundwater resources, and excessive exploitation is causing environmental problems such as land subsidence and saltwater intrusion. Besides, use of Jakarta's groundwater is a serious public health concern because it is vastly contaminated with E-coli (as much as 90 per cent[14]).

Most residents use groundwater because piped water services cover less than half of the population. This unserved population is mostly composed of poor communities, in North and West Jakarta for example. In these neighbourhoods, residents have to buy water in jerry cans at a cost as high as IDR 15,000/day (US$1.15), while daily income is generally less than IDR 30,000.[15] Even more dismal is sanitation coverage that stagnates at a low 5 per cent, accelerating environmental degradation.[16]

In taking back the responsibility for water services, public utility PAM Jaya will have to tackle these daunting challenges.

Public water works better in Indonesia

With ever deepening problems, Jakarta has no other realistic options than terminating the water privatisation contract and bringing back services to PAM Jaya. In Indonesia, public water management is proven to perform better than privatised utilities. Water services in cities such as Surabaya, Palembang, Banjarmasin, Medan and Malang, which are fully managed by public entities, perform far better than Jakarta's and at lower water tariffs (see Table 2.2).

In taking over the water services from the private operators, three possible scenarios have been considered: 1) PAM Jaya buys the private operators' shares; 2) the governor declares through a decree that the contracts are unilaterally terminated; 3) the citizen lawsuit leads the court to nullify the contract agreements and water management returns back to PAM Jaya. After the court's decision of March 2015, the city administration is eager to pursue the third option. The governor hopes that an expected private operator attempt in

appealing the court decision will be rejected. At the same time, the city administration's legal bureau is also preparing in case that the private operators resort to international arbitrage.[17]

Table 2.2 *Comparison of water utilities performance in several cities, Indonesia*

	Water utilities	Average water tariff	Leakage level (%)	Service coverage (%)
1	Surabaya	2,800	34	87
2	Palembang	3,800	30	93
3	Banjarmasin	4,120	26	98
4	Medan	2,226	24	66.62
5	Malang	4,000	30	80
6	Jakarta	7,800	44	59.01

Sources: (1) The Indonesian Drinking Water Association (Perpamsi) 2013; (2) *TribunNews* 2013; (3) Department of Public Works 2013; (4) Perpamsi 2010; (5) Malang Drinking Water Company 2015; (6) *JPNN* 2013.

Towards remunicipalisation: Financing

Should the governor decide to follow the initial plan for PAM Jaya to buy Palyja's shares, PAM Jaya needs to gather sufficient funds for the repurchase. In early 2015, PAM Jaya stated that if the share purchase were to take place, it would consider assistance from banks.[18] PAM Jaya, however, still has another alternative through internal financing if public water management can generate enough savings through enhanced efficiency due to the merger of two contracts into one sole public operator.

Based on Amrta Institute's estimation, the efficiency gains from terminating the privatisation contract could yield as much as IDR 171 billion. These savings would come from the reduction of operational costs compared to the private operators', costs which were previously borne by PAM Jaya through the water charge. After privatisation is ended, PAM Jaya will be free from the water charge scheme and will be able to stop accounting costs not related with water production.[19]

For instance, there would be no more costs for "technical assistance", which in the Jakarta contracts refers to the fees paid to shareholders every year. Under public management, administrative fees will be reduced significantly. Salary

costs will go down too as expensive foreign executives will no longer need to be paid. Direct public management has a significant advantage on costs of insurance and rent for buildings. Travel, external consulting services, advertising will be reduced dramatically compared to the amount spent by private operators.

Public-public partnership as a way forward

Furthermore, the next task for PAM Jaya in the post-privatisation period would be to rethink water management to improve services. The public water utility could benefit from external expertise through a partnership with another public institution, known as public-public partnership (PuP).

A PuP is "collaboration between two or more public authorities or organisations, based on solidarity, to improve the capacity and effectiveness of one partner in providing public water or sanitation services. They have been described as: "a peer relationship forged around common values and objectives, which exclude profit-seeking."[20]

As mentioned above, a number of public water utilities in Indonesia have outstanding performances. PuPs would give an opportunity for PAM Jaya to work together with other good water utilities such as in Surabaya, Palembang, Banjarmasin, Medan, Malang, and even with foreign public water utilities, in the areas of "training and developing human resources, technical support on a wide range of issues, improving efficiency and building institutional capacity, financing water services, and improving participation."[21]

The priority objectives of such an initiative would be to improve its basic performance on service coverage and to reduce leakage. PAM Jaya has set to achieve the goal to increase water coverage to 80 per cent in 2015, which at current production rates would amount to a 10,999 liter/second deficit, and to 97 per cent in 2030, which will create 22,636 liter/second of water production deficit. Teaming up with a public water utility that has proven to be able to boost service coverage and reduce leakage level could bring the experience, skills, and technology necessary to up production considerably.

A PuP could eventually be an opportunity for public operators to work together to achieve ambitious goals. The people of Jakarta should receive drinkable water, and serious efforts to boost sanitation coverage must be made.

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Chapter Three

German municipalities take back control of water

By Christa Hecht

In Germany, water has traditionally been owned and managed by the municipalities. Since the Middle Ages, there have existed public associations to carry out irrigation and drainage operations. In the 19th century, corporations and cooperatives were formed to ensure water management and wastewater removal in the growing industrial centres, mainly to prevent epidemics.

Today, there are more than 12,000 water and land associations, water and wastewater associations, and dike and sluice associations in Germany. In addition to water supply and wastewater treatment, they are also responsible for the preservation of water resources under the EU Water Framework Directive. An estimated 6,060 water operators deliver clean tap water to citizens and there are over 6,900 wastewater operators.

Water governance is based on local working units that are close to users. Sustainable management of water resources for future generations and environmental protection are key principles.

Municipalities are responsible for providing citizens with drinking water and wastewater removal as public services of general interest (named *Daseinsvorsorge*). Local governments have the competence to determine the organisational form of water management. Smaller towns often join municipal associations to provide water and/or sanitation services and benefit from such inter-municipal cooperation. The right of self-government of the municipalities is protected by the German Constitution.

Municipalities can use several organisational and legal forms for water supply and wastewater removal in Germany:

- Government-operated system
- Municipal Company or Public Law Company (PLC)
- Special-purpose association
- Water and land association
- Special legal association in North-Rhine-Westphalia
- Other forms of inter-municipal cooperation
- Public-private partnership
- Concession/operational contract with a private company

Table 3.1 *Water management in Germany (2014)*

Legal structure	Wastewater treatment	Water supply
Public service legal structures	92%	64%
Public companies/municipal companies (PLC/Ltd. Co)	(28% associations and inter-municipal cooperation)	(23% associations and inter-municipal cooperation)
Public-private partnerships		21%
Other private companies	8%	15%

Source: *Branchenbild der Deutschen Wasserwirtschaft* 2011 and own research.

From the 1950s to the 1990s

After the Second World War water management developed in different ways in the East and West. In the Federal Republic of Germany (West), the historically decentralised structure survived with the constitutional protection of local self-government. In the German Democratic Republic (East), the water sector was centralised in departments for ground and surface water and for urban water management oriented on river basins and government districts

with 15 large state-owned utilities. After the fall of the Berlin Wall and the reunification the latter were decentralised and the utilities and their water network infrastructure were handed over to the municipalities.

Through this process the German states in the eastern part of the country wrote clauses into their new federal laws to open up for private investments in the water sector, allowing concessions, operation agreements and public-private partnerships. As a result, some full-fledged privatisations and partial ones took place in the 1990s in the former eastern part of Germany. On the western side of the country some privatisations had already taken place beginning in the 1980s in financially stressed municipalities.

While in the 1980s and 1990s advocates of privatisation promised greater efficiency and better service from the private sector, the traction of these arguments in favour of privatisation has now faded completely. These days Germans equate privatisation with higher rates for users, while profits soar for the private operators. Studies have indeed demonstrated that after privatisation prices for water services generally increased.[1]

Politicians have had to acknowledge that in the public water management sector the knowledge and experience of engineers, scientists or technical experts was at least as valuable as in the private industry. When it comes to taking social and environmental concerns seriously in the planning of infrastructure, to setting tariff pricing and to using the resources responsibly, they now see that the public water sector is also clearly superior.

Public water operators also tend to be of great significance to the regional economy because they often concentrate their investments in local small and medium-size companies for infrastructure and maintenance works – contrary to private operators who tend to contract out work exclusively to their subsidiaries.

In 2007 the Alliance of Public Water Associations (AöW) was founded by public water operators to fight against privatisation and to lobby for public management. In the last few years, there has been significant progress towards achieving these objectives. Since 2012, at least six German cities have decided to remunicipalise water services.

Key remunicipalisations in Germany

Berlin

In 1999 the Berlin House of Representatives approved the Senate proposal to sell 49.9 per cent of Berlin Wasser Holding AG to a consortium of private German and French companies. RWE Aqua GmbH and Vivendi (now Veolia Wasser GmbH) bought the shares for €1,679 billion. This was preceded by tense discussions and a largely unsuccessful complaint filed by two members' groups of the Berlin Parliament before the state's Constitutional Court.

Nonetheless, the project went ahead, negatively affecting the 3.5 million residents of the German capital. The main terms of this partial privatisation included: a four-year exclusion from any increases in tariffs, a ban on layoffs until 2014 as negotiated with the trade union[2] and a level of investments of €2.5 billion for the first 10 years (€250 million per year). The state of Berlin also guaranteed profits for the private investors; if the profit targets were not met, it would be obliged to make up for the difference by drawing from its budget. The contract was signed until 2028.

Additional terms of the contract secured a decisive influence for the investors on the Management Board, even though they did not have a majority of shares. They included the expansion of activities in the German and international telecommunications and water markets and creating 700 new jobs in subsidiary companies by 2009. The partial privatisation of Berlin's water utility (*Berliner Wasserbetriebe*) was intended to become a flagship for successful privatisation.

However, by 2004 water prices had increased in roughly 35 per cent.[3] Between 1999 and 2011 the private investors banked €1,526 billion in profits, equivalent to a 7 per cent annual profit rate relative to purchase price.[4] The revenues to the state of Berlin increased, but the €365 million of its possible share of profit were not accessed. The cause is not explained.[5] Despite high profits, the investments in infrastructure decreased after 2009 and in 2013 a study showed an investment gap compared to planned spending.[6] Due to financial losses in its international activities, Berlin's water operator reduced these activities and they

will be stopped completely in the future. The exclusion of layoffs for employees was extended until 2020.

Popular discontent with the high prices of water fuelled political debate and voices emerged against the privatisation. A referendum proposal was pushed forward by the citizens' initiative *Berliner Wassertisch* (Berlin Water Table) in 2011 to demand transparency on the terms of the privatisation contract, which had been kept secret until then. The initiative was supported by 98.2 per cent of voters. A few days after this referendum the contracts were published online by the *Berliner Wasserbetriebe*. Berlin citizens saw the favourable conditions the private investors had guaranteed for themselves as the main reason why the water price had increased so much.

Moreover in 2012 the German Federal Cartel Office ordered Berlin's water utility to lower the water price in 18 per cent due to what it considered to be abusive pricing. A comparative analysis of the Cartel Office showed that the price was significantly higher than in comparable companies (they are all publicly owned).

In 2012 Berlin bought back the shares from RWE Aqua GmbH for €654 million and in 2013, the shares from Veolia for €590 million. To do so the city of Berlin took a loan that must now be repaid through water bills (and thus citizens) over a period of 30 years.

Since the buy-back, investments in infrastructure have increased and the price for wastewater treatment was lowered too.

Rostock

In 1993 the urban water and wastewater systems of the city of Rostock and the 29 surrounding municipalities were privatised through a 25-year contract with Eurawasser Nord GmbH (originally part of the Suez Group). Some 200,000 residents and 320 staff were affected.

The municipalities have decried the lack of transparency ever since and their inability to influence the private operator. Compared to other cities, prices are roughly 20 per cent higher, but this does not translate into higher quality

services or significant reinvestment in the water systems. The utility was sold in 2011 to Remondis Group by the first private owner and the affected municipalities did not have a say.

In 2014 the City Council of Rostock decided to cancel the contract at the end of the term in 2018, in consultation with the 29 other municipalities. After this decision, Eurawasser Nord GmbH stopped sponsoring events and sporting clubs in the city. In the coming years, difficult negotiations are expected for the transfer of water management from the private investor to a new public company.

Stuttgart

In 2002, Stuttgart, a city with 613,392 inhabitants in the south of Germany, fully privatised the water supply by contracting EnBW Regional, a subsidiary of EnBW AG (exchange-listed stock corporation).

Citizens in Stuttgart led a strong public campaign for some years. In 2010 the local citizens' initiative *Wasserforum* successfully collected 27,000 signatures for a referendum on remunicipalisation. At the 17 June 2010 City Council meeting, Stuttgart decided to terminate the contract with EnBW Regional at the end of December 2013. Following this decision EnBW Regional decided to increase the price for the water service in 2012. The City of Stuttgart has appealed the court against this increase, but a judgement has not yet been rendered.

After Stuttgart's decision to remunicipalise the water works, a major conflict over the repurchase price of the water network erupted. The city is willing to pay €150 million, whereas EnBW AG wants to sell at €600 million. Now the management of water supply by EnBW Regional was extended until this conflict about the water price increase and the repurchase price is resolved.

Lessons learned

Selling away the municipal silverware during financial crunches is not a good solution. Municipalities end up making themselves vulnerable to blackmail by private investors.

The contracts are usually designed in favour of private investors and any buy-back is very expensive for the citizens. In Germany, citizens have paid as much as twice or triple the combined value of utilities and infrastructure, although all along they were the ones to finance these through water charges.

The message to mayors and members of city councils is to steer clear of privatisation.

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Chapter four

Turning the page on water privatisation in France

By Christophe Lime

France is home to the leading water multinationals and is one of the few countries in the world to have given private companies a predominant role in managing water and sanitation services. Its particular type of concession and lease contracts (*délégation de service public*) has been both promoted by the private sector as a model to replicate across the world, and reviled by others as the epitome of water privatisation and its ills. Recently, however, there have been several large-scale cases of remunicipalisation of water services in France, including in Paris in 2010. This shift back to public management is a significant breakthrough in a landscape that was once largely dominated by the private sector. France Eau Publique is a national network of public water operators created to foster the sharing of experiences and expertise and to promote public water management to counter the lobbying of private water companies.

A fragmented landscape

In France, water supply and sanitation services fall under the jurisdiction of city councils, which can either provide these services themselves (25 per cent provide water services and over 40 per cent, sanitation) or transfer them to an inter-communal body. Such bodies are growing in importance. There are some large water services that serve large populations of more than 1 million people, such as Eau de Paris, the Interdepartmental Syndicate for Sanitation of Greater Paris (SIAAP), the Water Syndicate of Île-de-France (SEDIF), Grand Lyon, Marseille Provence Métropole and Lille Métropole Europe. However,

for the most part, water and sanitation services in France remain very small: 9,500 water and 13,500 sanitation providers (mainly municipal) serve less than 2,000 inhabitants; only 75 water and 100 sanitation providers serve more than 100,000 inhabitants.

Local authorities choose between public and private management

When it comes to public services, under French law water and sanitation services are considered of an "industrial and commercial nature" and the competent local authority may choose between:

- Managing the service directly through a "*régie*", which is either financially autonomous and legally integrated with the local council or financially *and* legally autonomous, operating at arm's length from the council.

- Delegating management to an external company, usually private under a fixed-term contract called *délégation de service public* (DSP, "public service delegation"). This is not exactly a "privatisation" in the narrow sense of selling publicly owned assets, since the water system remains the property of the council, which may also decide to modify or terminate the contract unilaterally before its term (but usually not without paying hefty compensation, as illustrated below).

Since 2010, a new law gives councils another option: Local Public Companies (*sociétés publiques locales*, SPL). These are public limited companies governed by private law, but whose shareholders are two local councils or more. They must operate for the sole benefit of the shareholding councils; as such they can be considered a form of public management.

Opposition to outsourcing water services

There was a marked increase in delegation contracts and outsourcing to private companies during the 1970s and 1980s in France, as well as substantial consolidation among private companies providing water and sanitation services. This consolidation led to the constitution of three major private groups,

with stakes in other local services (waste management, heating, parking, food services) and in the construction sector: Veolia (formerly Générale des Eaux, Vivendi), Suez Environment (formerly Lyonnaise des Eaux) and SAUR. The proportion of the French population served by a private operator eventually peaked at the turn of the millennium at more than 70 per cent for water supply and about 55 per cent for sanitation.

Delegation contracts became the dominant management model in the absence of competition requirements and because of the widespread practice of enticing councils with "entry fees" (large sums paid at the onset of private contracts) – and in some cases because of outright corruption. The associated tariff increases and high profit margins (often hidden in unspent "provisions" or "guarantees" for network renewal) highlighted by council-commissioned audits, auditors' courts and citizen groups, and several cases of proven or alleged corruption led French lawmakers to introduce new regulations in 1993. Law No. 93-122 on the prevention of corruption and transparency in economic life and public procedures – the so-called "*loi Sapin*" updated several times since – required competitive awarding of contracts, prohibited "entry fees" and any form of payment or service provision outside the contract's purpose, capped the duration of contracts to 20 years (with exceptions), limited the use of "additional clauses" and set reporting obligations, among others.

Twenty years on, the rate of contract renewal for private providers remains high and stable (87 per cent on average, with a 0.3 per cent drop per year since 1998, excluding remunicipalisations). For long, competition among private providers was virtually inexistent, its sole engines being a small number of independent companies that survived consolidation in the water sector and the "threat" of remunicipalisation. However, since 2009-2010, there are signs of increased competition between the large private operators, but it largely focuses on prices and takes the form of extensive internal restructuring to achieve a "low cost" service, resulting in a decline in service quality. This change can be partly explained by the trend towards greater control of water and sanitation services by local councils, whether they choose to renew the outgoing provider or not.

Despite these positive developments, asymmetry of information remains part and parcel of service outsourcing. There is little transparency particularly when it comes to financial reporting, with private providers drafting their annual reports based on allocation assumptions unrelated to actual expenses. At the same time, in the long history of outsourcing, small and medium-sized councils have too often lost the in-house expertise necessary to monitor and control the proper implementation of contracts (a role that cannot be replaced by external auditors).

Lastly, delegation-type contracts are characterised by a lack of flexibility and adaptability to changes in the scope and organisation of water and sanitation services (particularly in relation to the development of inter-communal management bodies). Even if the average duration of such contracts has been significantly reduced (11 years on average since 1998), it still amounts to nearly two local electoral mandates.

Amendments to the original contracts are usually possible, but local councils rarely have the higher hand when it comes to negotiating such amendments, while unilateral modification or termination can prove extremely costly because it usually involves compensating the private providers for the unamortised portion of investments incurred and sometimes even for "lost profits". The latter compensation scenario is highly questionable, especially when providers have been reporting budget deficits for years and suddenly claim that they will lose profits if their contract is terminated...

Return to public management

Over the last 20 years, all of these factors have led a growing number of councils in France to challenge the very principle of "public service delegation" and to choose a return to public management, the first cases being the Tursan Water Syndicate in 1995, SIVOM Durance Luberon in 1997, and Grenoble in 2000 against the backdrop of criminal prosecutions and strong media attention. But given the "contractual inertia" mentioned above, actual remunicipalisation has often been delayed (unilateral terminations are rare).

It is only since the mid-2000s that there has been a significant trend towards a return of water and sanitation services to public management. Public water management has been "gaining" about 1 per cent on average every year since 2008 (in terms of population covered). Water remunicipalisation in Paris, initiated in 2003 but not completed until 2010, was a flagship case in this regard and has inspired other policy-makers.

Today the remunicipalisation movement brings together councils of all sizes, from "small" towns of a few thousand inhabitants (such as Neufchâteau, Venelles, Varages, Embrun and Digne-les-Bains) to large cities or syndicates (such as Brest Métropole Océane, the agglomeration of Aubagne-Pays de l'Étoile, Rennes). Remunicipalisation took effect at the beginning of 2015 in Nice Côte d'Azur and should be a reality in Montpellier Méditerranée Métropole in 2016.

It should be noted that the very term "remunicipalisation" of water and sanitation services is not always entirely appropriate. On the one hand, an increasing number of services are no longer managed at the municipal level, having been taken on at the inter-communal level. On the other hand, some cities have never had public water management, such as Rennes whose water services have been privately managed since the late 19th century or Nice where Veolia has been providing water for 151 years.

Furthermore, with the rise in inter-communal cooperation and the resulting reorganisation of water and sanitation services, all remunicipalisations do not result in the creation of a new *régie* (or SPL). Several inter-communal bodies have expanded their service area upon the expiry of smaller delegation contracts, as the Urban Community of Cherbourg did (approximately 35,000 new users in 2002) and the Metropolitan Rouen Normandie (about 100,000 new users since 2011). And let us not forget that large, predominantly rural *régies* have been expanding their service area for 50 years by integrating already existing *régies* or councils, which had previously outsourced their services. Primarily rural services such as Noréade in the North of France, the Alsace-Moselle SDEA and the Vienne Water Syndicate are among the largest public water services in France today.

Key issues and challenges

The experience of dozens of successful remunicipalisations of water and/or sanitation services in France demonstrates that returning to public management is both desirable and feasible, including for small councils. There are important lessons and recommendations that can be drawn:

- The need for political "champions" is absolutely essential: by definition, public management involves stronger accountability by officials and employees; the active involvement of politicians is therefore critical.
- Remunicipalisation can create legitimate concerns and hurdles (especially when councils no longer have strong in-house expertise), and the active support of peers (officials or managers) from other councils that have already returned to public management – or from long-standing *régies* – is an undeniable advantage.
- Anticipation and preparation are important. Although some new *régies* were created quickly after contract termination (e.g. Castres established a special team to create its *régie* and take over the management of water and sanitation services in less than six months), experience shows that there is a lot of benefit in initiating preliminary studies at least two years before contract expiry (or even longer for larger services), and in separating the issue of contract liquidation (which is often insufficiently addressed in the drafting of contracts) from that of setting up a new public operator, because they require a different set of skills and expertise. It can also be difficult to choose one or more consultants for project management assistance that are sufficiently competent and independent; feedback from other councils is an important contribution in this regard.
- Integrating employees of the former private provider requires great care. As their knowledge of the water network and service is comprehensive, it is critical to attract them to the new public provider and, if possible, to involve them in the remunicipalisation project. Maintaining existing wage conditions is now standard practice, although it may be necessary to simplify and streamline the various employment conditions accumulated over the years. We have found that employees (if not top

executives) are generally willing to join remunicipalised operators. They tend to appreciate the fact that their work becomes more focused on public service values and the common good, which are often undermined by private operators' fixation with profitability and market competition. The main difficulty lies in establishing the list of employees to be transferred in such a way that the new entity can take over the service without being encumbered by surplus staff or employees with unsuitable profiles. To achieve this, a process of social negotiation is recommended, involving elected councillors, labour representatives and managers, in order to agree on a framework agreement as soon as possible.

- Lastly, given that information and communication technologies are becoming increasingly sophisticated and indispensable, the transfer of data and information systems (supervision of works, client management, asset management, etc.) should be as high a priority as transferring equipment.

While each situation is unique and one council's experience is never identical to another's, exchanges are always positive and contribute to managing change better. This is why France Eau Publique offers local authorities wishing to return to public management a "sponsorship" programme that brings them support from one or several councils that share the same characteristics and have already gone through a remunicipalisation process.

Beyond remunicipalisation, councils and their public operators must constantly seek to improve their performance. Committed to the twin principles of cooperation and solidarity – versus commercial competition – the members of France Eau Publique can pool their knowledge, expertise and best practices, develop synergies and share tools to serve the common good and build sustainable water services.

Lastly, the cause of public water management needs to be promoted and defended against the powerful lobbying of private operators. Policy-makers need to hear that outsourcing water services to private operators does not guarantee better performance, neither from an operational (technical, service

quality, etc.) nor an economic point of view. Most public providers can offer quality water, safe services and environmentally friendly orientations.

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France Eau Publique brings together councils and public operators that are members of the National Federation of Contracting Councils and Régies (FNCCR in its French acronym) and that wish to share knowledge and experience, seek mutual support and promote public water management. France Eau Publique is an extension of FNCCR's earlier *"conseil d'orientation des régies"* and of the work conducted within the Aqua Publica Europea network.

For the members of France Eau Publique, the performance imperatives of public water management must serve the public good, not private interests. Members consider public water management as the sole guarantor of transparent, sustainable and civic-minded services, of public assets, and of water resources.

France Eau Publique has four main objectives:

* ***Develop synergies*** and exchange good practices and contacts between experts and representatives of public operators;
* ***Foster mutual emulation***, to demonstrate the excellence of public management;
* ***Support emerging public operators*** by providing ongoing assistance, helping them to succeed and strengthening the collective momentum;
* ***Gradually constitute a counterweight*** to the lobbying of the large private corporations, in order to promote public management and its values.

Chapter five

Taking stock of remunicipalisation in Paris: A conversation with Anne Le Strat

By Olivier Petitjean

France's Regional Court of Auditors recently published two reports: an assessment of Paris's water policy and an audit on the performance of remunicipalised public water utility Eau de Paris. These were the first official evaluations of water services since the 2010 flagship return to public management in the capital. As such, the stakes were high for the future of the debate on public versus private management of water in France. Both reports turned out to be generally very positive on Eau de Paris. Is it an implicit endorsement of the remunicipalisation?

The report does not directly seek to compare current public management with the performance of the former private providers Suez and Veolia. To make this kind of comparison, one needs to go back to previous reports by the Court of Auditors on water management in Paris, particularly that of 2000, just before we took over the Paris council. It's like night and day! These reports are often quite critical as they are meant to identify gaps to encourage local governments to improve public management. All things considered, the recent reports on water in Paris were actually extremely positive.

The second report of the Regional Court of Auditors does stress that the return to public management enabled Paris to lower the price of water while maintaining a high level of investment.

That is correct, and it is rewarding to see it acknowledged by the Court of Auditors. The report on Paris's broader water policy is even more positive than the one focused on the transition to public management because it endorses the main strategic directions we have given to this policy. This includes those decisions that were initially met with scepticism among the administrative services of the council, for instance keeping the non-potable water network[1]

and developing it for use in public gardens, for street cleaning, etc. The report also commends the Paris administration for its implementation of a water policy that goes beyond the smaller water cycle and takes into account issues of water conservation, sustainability and democracy.

So all in all, the return to public management of water in Paris seems like a resounding success?

Eau de Paris enjoys a good reputation, and rightly so. It works! We have lowered the price of water while maintaining an ambitious investment programme over the long term, and our governance is very innovative in many ways. Some of our innovations are even adopted by private companies.

This is interesting to note, because private companies keep claiming that they are the "innovators"... What kind of "innovation" are you talking about?

Eau de Paris is the only water operator that has its staff, users and civic associations represented on the Board, with full voting rights. It is a democratic breakthrough that has inspired others. Representation of users on the Board is something that is now being openly considered by Antoine Frérot, the CEO of Veolia; this would have been inconceivable a few years ago. Eau de Paris was also a trailblazer on issues such as gender equality at work; protecting water resources through partnerships with farmers to protect water quality upstream; water conservation, with extensive distribution of "water conservation kits". In the technical realm, we have also been very innovative in terms of user services (call centre, monitoring leaks, managing letters and complaints, etc). This is why Eau de Paris has been awarded the prize for "best customer service" in water distribution in France for the last three years.

Despite the Regional Court of Auditors' very positive account of water management in Paris, when the reports were made public the French media seem to have only picked up on one aspect: the likelihood of a future water price increase in Paris. Why is it so?

First, it should be noted that not all media focus on the negative aspects. Some media emphasised how positive the reports actually were. That said, some media chose to focus their headlines on a possible future increase in the price

of water. Obviously these journalists did not take the time to read the whole report, and one might question their objectivity. Private corporations are an important source of advertising revenue, and it was mostly those outlets that are heavily dependent on advertising that hammered on this issue.

In any case, the reality is that Eau de Paris is confronted, like most water services in France and Europe, with the so-called problem of "price scissors": on the one hand, revenue from billing tends to decrease because of lower water consumption; on the other hand, costs keep going up, mainly because of new water treatment standards. This trend is not related to the debate on public versus private management of water, and is not specific to Eau de Paris. In fact, Eau de Paris is comparatively in a pretty good financial situation to face these changes. But it's true that eventually Eau de Paris will probably have to increase its prices to balance its budget, like other water services. For me, the fundamental issue should be how the water service is financed: it's no longer possible to fund water services solely through a consumption-based tariff calculated from a set price per cubic meter of water. This is all the more true if the utility's policy is to encourage users to reduce their consumption of water, as is the case for Eau de Paris.

What is the solution to keep water services affordable for users?

We should differentiate between types of water usage in Paris, notably commercial and domestic. Commercial users should be charged more. Today, commercial users (such as cafes, restaurants, hairdressers, dry cleaners, dentists, etc) are actually paying less for their water than households, because they can deduct this expense from their tax bill. It is a politically sensitive issue and it would not be an easy policy to implement from a technical point of view either, but I think it would create a fairer system.

Transition

Can you talk about the complexity of the transition to public management, and how it has been managed?

It is true that the transition was complex. One must recall that before the creation of Eau de Paris, we had three distinct contracts for water: one for

water production with a *"société d'économie mixte"* whose majority shareholder was the city government, while Suez and Veolia had minority shares;[2] and two separate contracts for water distribution with Suez and Veolia, for the city's left and right banks respectively. It was a very complex situation, and there was no real precedent on which to build. We encountered a number of difficulties in taking back the service in-house, for example with the transition from private to public sector accounting systems. But these difficulties have now been overcome, as the report from the Court of Auditors highlights.

How difficult was it to integrate former employees of Suez and Veolia into the new public entity?

The French labour code allowed for the transfer of the technicians who worked on the distribution network, but most of Suez and Veolia executives were transferred within these companies just before remunicipalisation. There were negotiations to reach a social agreement on harmonisation of wage conditions for all staff. But the remunicipalisation was sometimes perceived as a merger of the two former distributors (subsidiaries of Suez and Veolia) into the publicly managed production side (the former *"société d'économie mixte"*), which was a source of frustration for some formerly private employees. These are common problems with such restructuring. Building a common culture takes time.

Did Veolia and Suez try to create obstacles?

That much is clear. This is something I will talk about in my forthcoming book, and it is also recounted in some detail in Agnes Sinai's book about the remunicipalisation process: *L'eau à Paris, retour vers le public.*[3] Nevertheless, there was a sharp difference between Suez, which remained relatively constructive, and Veolia, which really tried to make our task as difficult as possible.

Are water services now entirely provided by Eau de Paris, or are there still some aspects of the service that are outsourced to the private sector?

There is no service "delegation" to the private sector any more. We signed transitional outsourcing contracts for managing information systems over the first two years, so that Eau de Paris would have time to set up its own

information system. Information systems are an incredibly important issue because they are used for billing, for water meter data collection and management, and for monitoring maintenance works, but this issue is too often overlooked. Eau de Paris currently controls and manages its own information system, but remains semi-dependent on Suez and Veolia, as some of their proprietary software is still being used to process the information. A study is underway within Eau de Paris to break off this dependency completely. Even today, when we request some purely technical information from Veolia, it can be hard to get it.

There is still another contract with Veolia, which is a simple outsourcing contract and not a service delegation, for water meter management (installation and maintenance). Again, Eau de Paris is currently looking at taking over this task internally.

The Paris Water Observatory

What was the initial idea behind the creation of the Paris Water Observatory?

The aim of the Paris Water Observatory is to establish a space for citizen oversight and information, and to make the elected representatives of the City of Paris, its administration and the employees of Eau de Paris accountable to citizens. All acts, reports and official proceedings related to water management must be submitted to the Observatory before they are considered by the Paris Council. Initially, people were sceptical, but now they see the benefit. The Observatory is not just another so-called citizen committee that only rubber-stamps decisions already made. The Observatory does not have decision-making powers but citizens' views are taken into account and, perhaps more importantly, all the information is made available in an accessible way.

This is also why Eau de Paris integrated both non-profit organisations and a representative of the Water Observatory on its Board, with voting rights. The Council staff may not always be happy with this because it may take them more time to explain issues or to get their points across... But ultimately it leads to greater water democracy, and this is good for public management.

Is there any equivalent elsewhere?

Grenoble has created a users' committee, which is consulted on the price of water. Viry-Châtillon (Lacs de l'Essonne) also has an open governance model with a strong role for civil society, inspired by what is happening in Paris. But overall the Paris Water Observatory has no real equivalent. Most public operators are reluctant to open up their governance to users and civic associations because it is seen as time-consuming and resource-intensive. Yet I think it is essential for a quality public service. It is these democratic innovations that are of most interest to peers from other water services abroad who visit Paris in preparation for a return to public management.

Does it involve a great number of people?

The Observatory has enabled a number of people to build knowledge on water issues. They are not necessarily very many, but they come from neighbourhood committees, social housing institutions and associations among others. They believe in the Observatory and have wide networks and influence among Parisians. The consumer and environmental organisations that have a seat on the board of Eau de Paris are influential in a similar way: *Que Choisir* and *France Nature Environnement* are very big organisations, with national scope. The return to public management and the creation of the Paris Water Observatory have revitalised civil society participation. This is paradoxical because when we decided to remunicipalise in the early 2000s, Parisian civil society was not very active on the issue of water. We were quite isolated, because most of the council administration and most of the unions were not in favour of a return to public management of water. Now this has changed.

To what extent is the role of the Observatory formalised?

The Paris Water Observatory exists by virtue of an official order from the Mayor, as an extra-municipal committee on water policy. It was the Paris Council that created the Observatory, not Eau de Paris. It might have been possible to set it up as an independent organisation, but what's interesting about an extra-municipal committee is that the City administration is in charge of the administrative functions and logistics. As long as the politicians give enough power to the Observatory, it is a win-win situation.

Networking and support for public management elsewhere

The Paris remunicipalisation quickly acquired a huge symbolic and political importance both nationally and internationally. You travelled the world to support movements against the privatisation of water, and Eau de Paris entered public-public partnerships with other public operators worldwide and played a key role in the creation of French and European networks of public operators (France Eau Publique and Aqua Publica Europea, respectively). When did this global outreach start?

It began quite early, even before the remunicipalisation itself, because I took a strong stance in favour of public management. I was often asked to talk about the Parisian experience, beginning with the referendum campaign on the human right to water in Colombia in 2009, then in Berlin, in Italy, etc. The position I found myself in was unusual in that I had both political responsibilities as an activist, a councillor and deputy mayor, and operational responsibilities as the president of the *"société d'économie mixte"*, and then of Eau de Paris. I am also one of the few people to have been around for the whole remunicipalisation process from 2001. Over the last 12 years, directors have changed, and other politicians have left. And of course, we're talking about Paris, the capital of France, home of the big water multinationals – a huge symbol. All of this gave me a very singular outlook.

Eau de Paris is often seen as an "activist" water operator, committed to the promotion of public water management. Is this an institutional reality, or did it only reflect your personal commitment while you were president?

There are two aspects to this question. On the one hand, there is the active promotion of public management and the fight against privatisation – this was a personal commitment on my part, rather than an institutional commitment. Within Eau de Paris, most employees are satisfied, but they are not activists, and do not want to dedicate their free time to the defence of public management, which is perfectly understandable. Eau de Paris is not in itself an activist organisation. But there is also the question of public service values, and commitment to these values within Eau de Paris. There are people from

the private sector who have joined us in this creative venture to build a local public service, and who would now find it impossible to go back to narrow market-based orientations.

You also played a role in setting up other institutional structures, such as Aqua Publica Europea[4] and France Eau Publique. Can you tell us about these networks?

Aqua Publica Europea was originally founded by a small group of people who shared the idea that it was necessary to defend public management at the European level and to create a counterweight to the lobbying of the private water sector in Brussels. With regards to France Eau Publique, there already existed a committee of public operators, but we wanted to create a French branch of Aqua Publica Europea in order to build up our own strength and pool our resources. The comparative advantage of a multinational is the ability to pool skills, expertise and resources across the whole company. The objective of France Eau Publique is to introduce the same kind of mechanisms among a large number of public operators, including group purchasing.

What is your view on the progress of public water management in France since 2011?

There's clearly a positive trend towards remunicipalisation, but it's not massive. There have been significant remunicipalisation cases, including in cities such as Nice that have right-wing councils. This is very important because it shows that the preference for public services goes beyond political differences (on the other side of the political spectrum, some left-wing politicians have had a very ambiguous position on this debate). When Eau de Paris returned to public management, it was a cause for celebration for many public operators in France, because they knew they would no longer be regarded as black sheep. And many cities that have maintained privatised services have used the threat of remunicipalisation to negotiate better terms with their private providers. Suez and Veolia have had to change their contracts, and now they make less profit. The burden of proof is reversed: now it is private providers that have to convince cities that it is better for them to remain with a private operator than to remunicipalise. Given the history of water management in France, this is an enormous achievement.

Until 2014 Anne Le Strat was President of Eau de Paris, deputy mayor of Paris in charge of water and sanitation, and president of Aqua Public Europea. Since her election to the Paris Council in 2001, she has played a key role in the remunicipalisation of water services in Paris.

She was interviewed by French writer and researcher Olivier Petitjean, who is currently the chief editor at the Multinationals Observatory, an investigative website on French transnational corporations.

Endnotes

1 Paris is one of the few cities in the world to have two water networks, one for drinking water and one for non-potable water.

2 In French law, a "société d'économie mixte" (mixed sector company) is an anonymous company that is majority owned by public shareholders, with at least one private shareholder. It is often used by local councils to undertake public works or in some cases to manage public services.

3 Eau de Paris. 2014. *L'eau à Paris, retour vers le public.* Second edition, April. Paris: Eau de Paris. *http://www.eaudeparis.fr/uploads/tx_edpevents/LivreRemunicipalisation_01.pdf*

4 Aqua Publica Europea (APE) brings together publicly owned water and sanitation operators, and their national and regional associations, from all over Europe. Its members provide water and sanitation services to over 70 million European citizens.

Chapter six

Remunicipalisation and workers: Building new alliances

By Christine Jakob and Pablo Sanchez

Remunicipalisation is a major political development that is taking shape globally. It is rooted in the failures of public-private partnerships (PPPs) and of privatisation generally speaking.

After a 20-year privatisation and outsourcing drive in many cities, policymakers have started to draw up a balance sheet. Even global financial institutions such as the World Bank and the International Monetary Fund have acknowledged the mixed effects of privatisation, especially regarding its disappointing technical efficiency and labour productivity.[1] There is now increasing evidence in the water and waste sectors of an important trend in the opposite direction to counter well-documented negative effects on levels of inequality, child poverty and other social indicators.[2]

However, there is very little comparative analysis about the effects of privatisation on public sector workers. One reason is that workers affected by privatisation tend to be 'bought off' through early retirement schemes, while others do not even oppose it. Labour relations change for incoming employees of a newly privatised utility, creating a two-tiered system with senior staff keeping their privileges negotiated under public ownership.

Public sector workers tend to have higher protection through collective bargaining coverage and are less affected by precarious work. Once the private sector takes over, workers being transferred from the previously public employer may have a competitive advantage within the enterprise. This makes the privatisation versus remunicipalisation debate more complex because workers and their trade unions are not only concerned with efficiency gains or the

public good but need to look broadly at the 'bread and butter' issues behind such policy options.

On top of that, in some countries of the European Union, the status of public service workers and in particular their ability to act through collective bargaining and social dialogue has been undermined during the neoliberal reforms that followed the financial crisis. This adds to the complexity of the decision-making process for labour organisations.

For trade unions, privatisation tends to be bad news in terms of the general level of pay and working conditions. However, it would be overly idealistic to think that all trade union organisations oppose privatisation in all circumstances[3] and support public management. This article draws some lessons and highlights some avenues for further investigation on remunicipalisation from the point of view of workers. As there is scant literature about the employment conditions of workers after remunicipalisation, this article tries to modestly contribute to a debate that will require further reflection.

Remunicipalisation under austerity

Each case of remunicipalisation is different because the conditions for taking back services in-house depend on the way they were first privatised. So it is very difficult to compare the effects of privatisation and remunicipalisation on workers.

However, the debates about remunicipalisation mirror those that took place at the end of the 19th century during the expansion of the organised labour movement in Europe. The rise of labour and social-democratic organisations made the demand for public services very popular among working class people, and especially organised workers. The society they envisioned would create publicly owned schools, transportation, electricity and water, among others. In many countries the rise of this new political force created the municipal model.

The main difference today is that we have a much more integrated global economy with transnational service providers, which did not exist during the previous wave of municipalisations and nationalisations, and the financing of

the economy is much more subject to speculation and the power of financial markets. In that respect it is important for the organised labour movement, and the trade union movement in particular, to rediscover a vision of society and not just deal with the 'bread and butter' concerns of their unionised members.

Local governments are facing budgetary cuts related with austerity policies implemented by central governments as well as European and international financial institutions. Some cases have made the headlines in France, Spain and Greece where it is often argued that public sector workers are "too expensive" or that it is difficult to sustain pension funds given the high levels of unemployment.

Remunicipalisation is an opportunity to rethink the ways public services are provided while protecting the living conditions of public sector workers and that of the communities they cater for. Remunicipalisation should re-open a debate about the values of the public sector: equal access to services for all citizens, accountable, democratic and transparent management with a decision-making process in which all stakeholders are involved.

In practice: remunicipalisation and the trade union movement

Once a remunicipalisation process gets started, workers' organisations look at the way in which working conditions may be affected. There is a need to have a full understanding of the proposed legal status for the new utility in order to be able to improve the delivery of public services.

One of the first important steps is to look at what labour code will apply after the change of ownership because it can have an important impact in terms of job creation by the new municipal owner.

In several concrete cases, such as in France, unions have not openly supported remunicipalisation, in particular in the water sector, to avoid undermining the level of pay and employment terms and conditions. In the recent remunicipalisation in Montpellier the union movement was split, some trade unions having consulted only those employed in the company. Others did more comprehensive consultations. In the end those unions communicating about the type of company they wanted were key to garnering the necessary

support to continue with the process. An employer is normally bound to replace the employment contract keeping the same terms and conditions but it can start applying different ones to the new employees (due to the change in collective agreement). This can certainly be dangerous. So it is important for trade unions to discuss with each other what kind of ownership model they support and to be united in the remunicipalisation process.

Also the level of social dialogue with the new employer is important. For example, how will issues of outsourcing and subcontracting be dealt with in the new public structure? Therefore it is important for new employers to explain the potential gains for workers but also for trade unions to make the case among their individual members that remunicipalisation can create better companies.

This is quite problematic as trade unions tend to represent the interests and views of their affiliated (individual) members, not often do they represent the views of all workers. This might seem obvious but trade unions in their democratic decision-making process will consult those who participate in the organisation through paying dues and attending meetings. So it is likely that affiliated members have better working conditions and safer ones than others working in the subcontracted or outsourced sectors. This 'divide and rule' logic has been used in different sectors to increase profits for private companies but also to undermine labour density. Trade unions need to counter this trend by promoting the good of society as a whole and not just their members.

Therefore it is advisable for the trade union movement to see remunicipalisation as an opportunity to increase its influence in society and in the labour force as a whole.

Remunicipalisation is a reality

Remunicipalisation is defined as taking back municipal services that were previously under private management, for example under a long-term concession. It can also mean bringing regional services back into public ownership. This trend has built up over the last 10 years. A recent study[4] shows that most remunicipalisation drives are happening in historic municipal sectors such as water and sanitation.

Despite continued financial and ideological pressures driven by neoliberal policies there are clear signs that municipalities in Europe are increasingly moving towards remunicipalisation and no longer see privatisation as a viable option. Some European trade union organisations such as the European Federation of Public Service Unions (EPSU) encourage their affiliates to promote remunicipalisation in their transnational meetings and through targeted research in this area.[5]

In Germany more and more municipalities are trying to reverse privatisation in the energy and gas sector and become themselves producers of energy. Some 72 new public energy companies have been created in Germany since 2005. In addition, more than 1,000 cooperatives active in the energy sector have been created. By 2016 over 2,000 concessions in the energy sector will come to an end in Germany, announcing a new wave of remunicipalisations.

A study in 2011 by Leipzig University of over 100 German municipalities concluded that the trend is moving towards greater provision by the public sector. Half of the municipalities with budget deficits plan some form of restructuring of municipal services, of which 41 per cent are considering moving towards inter-municipal cooperation and 36 per cent would opt for remunicipalisation; less than 3 per cent are considering privatisation.[6]

However, antitrust authorities and the courts are making it very difficult for municipalities to take back their water networks as they are obliged to publicly tender and then have to apply themselves to this call. There is currently an exemplary case in the municipality of Titisee-Neustadt where the mayor is challenging the constitutional court on this issue.

In Medina Sidonia (in the province of Cadiz, Spain), the water sector company was transformed into a multi-sectoral local company dealing with public street lighting, water, laboratory analysis and waste. The idea is to make economies of scale in order to generate savings and to create more jobs. The city's waste company was remunicipalised in January 2014 and it has increased its workforce in two months by almost 20 per cent.[7] At a much bigger scale, the remunicipalisation of water in Paris in 2010 has led to the 'exporting' of public

worker know-how to other public companies trying to build solidarity and public-public partnerships.

Last but not least, remunicipalisation has helped to slow down the privatisation trend elsewhere around the globe. When private utilities are going back to public ownership many wonder why they privatised in the first place. This has fuelled debates about the benefits and interests behind privatisation that very often are linked to aggressive lobbying and corruption. For unions that defend a more democratic and transparent society this should be a motivating factor to encourage remunicipalisation as an alternative to privatisation.

In France, municipalities and regions continue to remunicipalise water services or public transport. Even in the UK, where the national government itself is pushing through privatisations in health care and prisons, outsourcing has rarely been used by municipalities, despite having to achieve cuts of 7 per cent per year: the *Financial Times* suggested that "local authorities have grown skeptical about the savings outsourcing can deliver, as well as fearing a backlash against private companies making large profits from the taxpayer."[8]

Table 6.1 *Recent remunicipalisations in selected European countries*

Sector	Process	Countries	Factors
Water	Municipalisation of services	France, Hungary	Private failure, cost, control, contract expiry
Electricity	New stadtwerke, purchase of private companies	Germany	Private failure, cost, control, contract expiry
Public transport	Municipalisation of contracts and concessions	UK, France	Cost, private failure, public objectives, control
Waste management	Contracts brought in-house, inter-municipal incinerators	Germany, UK, France, etc.	Cost, control, contract expiry
Cleaning	Contracts brought in-house	UK, Finland	Cost, effectiveness, employment, contract expiry

Source: Hall, D. 2012. Re-municipalising municipal services in Europe. Report commissioned by EPSU to PSIRU, May. London: PSIRU. *http://www.epsu.org/a/8683* (accessed 23 February 2015).

Benefits of remunicipalisation

In addition to the reasons that have led municipalities to end privatisation, including cost-savings or regaining democratic control, there are numerous opportunities for the trade union movement emerging from remunicipalisation. *Remunicipalisation is an opportunity for trade unions to improve working conditions.* A private company running a long-term concession, especially in the water sector, tends to externalise key elements of technical know-how. This can be used as a bargaining chip during the renegotiation of the contract and it adds to its profitability to convince employers to keep the valuable technical knowledge of workers in-house because it is a profitable investment over the long-term for all workers. For organised workers the aim should be to improve the conditions of all the workers of a company in order to reach a level playing field between pay scales and unite rather than divide workers. A remunicipalised entity tries to make economies of scale to be able to improve employment and wages. This rationalisation can allow achieving broader social goals by generating discussions with workers on how to run the company better. For instance, in the municipality of Almada in Portugal a consultation with workers raised awareness on access to water as a basic human right. This resulted in an improvement of in-house services and a decision was taken to outsource only to local small and medium-sized enterprises.[9]

The improvement of governance and worker participation in the public company. The remunicipalisation process improved the transparency of local service provision in the cases of Paris, Naples and Hamilton.[10] This resulted in a broader consultation with workers newly employed by the local companies. Remunicipalisation is not only about the renegotiation of wages and benefits but it also encourages consultation with workers on the general performance of a public company. Socially responsible companies should include decent work, social dialogue and should have at heart workers' participation.

Trade unions can gain from a better understanding of socially responsible standards in municipal companies. A public company with social, environmental and community goals that consults its workers (and their organisations) can serve as a model of progressive management. Further, working for a company that takes

into account social goals is more rewarding and motivating for workers. The current economic crisis and austerity measures have hit a number of European economies. It is essential that the trade union movement exemplify that you can make a difference locally if you start with your own workers. Medina Sidonia is a good example. The new multi-sectoral municipal company created more jobs and improved working conditions to ensure more effective service provision. The company also promotes sustainable public procurement with small and medium enterprises that are based in the city to maintain local jobs.[11] Insourcing can result in savings because it increases efficiency. This allows increasing the number of workers as Medina Sidonia did.

Remunicipalisation clearly can have major benefits and should be broadly supported by the trade union movement.

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5 Remunicipalisation was promoted at the last EPSU Congress (see p. 53-54): *http://www.epsu.org/IMG/pdf/brochure_resolutions_EN.pdf*

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7 The scale is too small to be able to make this a general rule but the team of 17 workers grew to 20 immediately after the remunicipalisation.

8 *Financial Times.* 2012. Savings from outsourcing doubted by state. 23 January.

9 Although technically not remunicipalised this company demonstrates how strong public ethos can benefit communities more broadly speaking.

10 See the Remunicipalisation Tracker for details on these cases: *http://www.remunicipalisation.org*.

11 Medina Sidonia has almost 12,000 inhabitants and in December 2014 it had 2,223 registered unemployed residents, see: *http://www.foro-ciudad.com/cadiz/medina-sidonia/mensaje-12415004.html* (accessed 1 February 2015).

Chapter seven

You are public…now what? News ways of measuring success

By David A. McDonald

Congratulations! You've just taken back public control of your water services after years of privatisation. The struggle was hard, the transition was challenging, but your public systems are now up and running.

The challenges do not end here, of course. If remunicipalisation is going to be effective it will require new ways of thinking about 'success' and how water services are measured and evaluated.

Undoing the structures and logics of privatisation will take years, possibly decades. The ideologies and mechanisms of neoliberalism have penetrated so deeply into state organisations that remaking public services will require much more than just a change of ownership; it will also require a deliberate effort to remake and rethink how we evaluate performance.

The vast majority of performance indicators used in the water sector around the world are driven by notions of financial efficiency, used in turn to compare water operators with one other. Benchmarking – as these inter-utility comparisons are called – has become ubiquitous, ushering in an increasingly homogenised form of performance evaluation, often foisted upon water operators regardless of their social, political or economic contexts.

This is not to say that we should never compare water systems or measure operator performance. Far from it. Water operators can learn from each other, and water users should be supplied with information that allows them to demand better outcomes locally, knowing what is possible elsewhere.

The problem with current benchmarking systems is their narrow emphasis on financial performance evaluation, the highly centralised nature of

decision-making, and the lack of indicators that look specifically at the 'public' nature of a water operator.

If remunicipalisation is going to be effective it will require new ways of thinking about success and how this is measured and evaluated. Herein lies what may prove to be the most difficult part of the remunicipalisation process. Although there is no singular way to measure public sector water performance, any alternative to the current benchmarking systems must begin with a critical review of the institutions and ideologies that inform them.

The aims of this chapter are to briefly review the history of benchmarking systems, highlight their main problems, and hint at possible alternatives for the future.

Current benchmarking systems

Performance benchmarking in the water sector is a relatively new, but well-established practice.[1] The International Benchmarking Network for Water and Sanitation Utilities was the first major international initiative – established by the World Bank in 1996 – followed by the formation of two benchmarking task groups within the International Water Association (IWA) in the late 1990s.[2] The International Organization for Standardization (ISO) published its framework on drinking water and wastewater services in 2007, with more than 260 performance indicators.

There are now dozens of national water benchmarking associations and a growing number of regional groups. European water operators have been particularly active in this regard (e.g. the European Benchmarking Cooperation and Aquabench), but there are few national – and virtually no regional – benchmarking associations dedicated to water services in Africa, Asia or Latin America.[3] Performance evaluation does exist in these regions, but assessment methods are largely imported (some would say imposed) by international financial institutions and funders such as the World Bank and the United States Agency for International Development.[4]

Despite this diversity there is broad consensus within the benchmarking community as to why performance should be compared: it is seen to enhance

transparency and accountability among water operators; to create opportunities for public participation in decision-making; and to contribute to "consensus-based global solutions" for water service provision.

There is also broad agreement as to what gets measured. Although every benchmarking system has its own unique characteristics, most draw heavily (if not entirely) on the more than 260 metrics established by ISO and IWA. The European Benchmarking Cooperation system, for example, is "fully aligned" with IWA protocol and indicators, which are used as "repositories" of performance criteria "for reasons of standardisation."[5]

Although too lengthy to list in their entirely here, the kinds of criteria used include such measures as: number of water and sanitation workers per 1,000 connections; length of transmission and distribution mains renovated; percentages of unaccounted-for water; number of complaints due to water supply interruptions; volume of electricity consumed; per capita consumption of water; number of mains failures; average time to complete repairs; and price variations for different types of consumers.

Collecting this data is another matter. With so much information to gather benchmarking can overwhelm managers and frontline staff. Even the best trained and resourced water operators in the world complain about how taxing it is.

But even more challenging is the question of how to analyse and compare this data once it is gathered. There are highly technical debates about statistical methodologies, making the full benchmarking process almost impossible for some municipalities, and with outcomes that are largely impenetrable to the average citizen even if it is completed.[6] Continued outsourcing of some water services can make it hard to track costs, while different ages of infrastructure (and uncertainty about their condition) greatly affect statistical evaluations. In other words, there may be considerable agreement on what kind of performance data to collect and why, but there are substantial differences in terms of how it is assessed, leading to diverse outcomes and interpretations across jurisdictions.

Another concern is that performance measurement can oversimplify complex problems.[7] For example, metrics looking at the maintenance and replacement

of infrastructure can focus on technical or managerial questions while ignoring deeper political or governance questions, such as equitable coverage and environmental sustainability. Internal decisions can be skewed by this misplaced focus on quantitative *outputs* at the expense of qualitative *outcomes*, with benchmarking becoming an end, rather than a means, to improved water services.

Criticisms of benchmarking

For proponents of benchmarking, none of these challenges are deemed fatal to the measurement enterprise, and they have not altered the underlying principles of, or enthusiasm for, performance evaluations and the criteria they use.

There are more radical critiques of the process, however. One of these concerns is that benchmarking practices are anti-democratic, conducted by 'experts' with little effort to include citizens or workers in the evaluation process. Instead of enhancing transparency, benchmarking systems tend to be conducted behind closed doors and can be manipulated by managers and policy-makers that want to "produce truth" in ways that may be completely disconnected from realities on the ground, possibly reinforcing unequal forms of service delivery, and serving to shape the way people perceive water planning and investments.[8] In this regard, benchmarking becomes a gatekeeping tool for constructing 'common sense' from the top-down, often celebrating market-based concepts of success and progress while marginalising alternative forms of water governance and valuation.[9]

A second critique is that benchmarking is used to promote commercialisation in the water sector, by giving competitive advantage to private operators in rule-setting. Critics argue that benchmarking organisations are stacked with large multinational corporations acting in their own interests, shaping 'international standards' across a wide swath of topics, from environmental sustainability to corporate governance.[10] The ISO has come under particular fire, with critics arguing that most of its committee work is conducted in a handful of countries in the North and dominated by large multinationals, making it little more than a "corporate private regime."[11]

On a related note, current benchmarking systems are also criticised for encouraging – even requiring – commercial behaviour by water operators. When used as a way to simulate market pressures, water benchmarking "strongly motivates operators to be efficient and innovative, mitigating their operating costs and expenses" and easing the way for market-oriented water managers to succeed.[12] Benchmarking can even prepare the ground for outright privatisation, forcing public water operators to make their financial performance accessible for corporate review, in an effort to "pinpoint those [utilities] with revenue-generating potential"[13] and to "identify viable markets"[14] for private takeover.

A third fundamental criticism of current benchmarking systems is that its universal performance criteria homogenise water and the people that use it, ignoring cultural and political differences and imposing Eurocentric standards on the rest of the world. By contrast, critics argue that there are no constant, universal truths: "the common good can never be specified *a priori* (…) as a static measure for the quality of governance,"[15] implying that universal standards for performance measurement are practically and philosophically impossible – a radical critique indeed. At the very least, these concerns suggest that we must "remain vigilant about the temptation to unequivocally use 'science' and the objectification it entails in dealing with water's complexity."[16]

An alternative measurement system?

Where does this leave us with regards to performance evaluation of remunicipalised water utilities? Should benchmarking be rejected outright as a top-down, commercial and homogenising force? At one level, yes. Mainstream benchmarking systems are so deeply embedded in market ideology and so inherently technocratic as to make them difficult to reconcile with the aims of public, transparent and equitable water services.

But I am equally convinced that we cannot abandon efforts to measure the success (or failure) of water services entirely. Nor are all benchmarking systems – or the people that run them – inherently neoliberal. Tracking and understanding unaccounted-for water can take on many different aims and characteristics, for example.

And without some commonly agreed upon performance criteria how are we to establish global demands for improved water access, affordability or worker health and safety? How can we share common experiences of 'good' (versus 'best') practice and use these to improve equity in water services elsewhere? And most concerning of all, if we abandon benchmarking altogether, are we simply leaving this powerful tool in the hands of those who (intentionally or otherwise) can use performance indicators to commercialise water services or overlook inequalities?

My proposal is thus an urgent but modest one: to work towards building alternative methods of performance evaluation and to create counter narratives of progressive reforms. An alternative model would offer some standardised measurement principles and criteria – without which it would be impossible to have a meaningful dialogue across jurisdictions – but be much suppler than current benchmarking systems in their encouragement of local interpretations and prioritisations that are not captive to the logic of the market.

I would also advocate for an alternative model that retains some existing mainstream performance indicators, such as measurements of water quality, response times for repairs, and the numbers of employees per 1,000 connections. Not only are such indicators important in their own right, they offer a strategic entry point for the introduction of new and modified systems of measurement that ask deeper questions about water quality across income groups, about the impact of the inability to pay on unaccounted-for water levels or the gendered composition of the workforce to name but a few of the types of equity-oriented metrics that could be employed.

These alternative indicators build on work that has already begun in practice, such as the 'performance principles' used by more than two dozen public water operators in Brazil, including universality, equity, social participation and access.[17] The Municipal Services Project has expanded on these indicators in the form of 'normative criteria' for performance, which have been applied to the study of a wide range of public services around the world.[18] Qualitative factors such as public ethos and public sector solidarity have also been added.

These alternative frameworks remain fairly abstract, however, serving as high-level reference points for comparative research on public services, as opposed to sector-specific indicators with clear quantitative measurements. In this

regard, much work remains to be done in translating these broad principles into concrete day-to-day variables of analysis that can empirically foreground questions of equity and public access.

It may also be wise to consider a much reduced number of indicators than current benchmarking systems employ. As noted above, the more than 260 measurements that make up mainstream benchmarking systems are difficult (if not impossible) for many water operators to manage, and impenetrable in their scope and analysis for the average citizen. The challenge is to find a balance between the complex reality of water systems and the need for simplification that "helps focus people's minds."[19] It may also be useful to look at ways of representing benchmarking in visual formats, such as the 'spider diagrams' employed by City Blueprints for Water used to simplify and pictorialise its benchmarking system,[20] though other visual representations could also be effective.

None of this will be easy. Decisions on the total number of performance indicators and how to compare and prioritise these metrics will be challenging. It will also be difficult to attract managers and policy-makers to an alternative benchmarking model if they do not see (or want to see) the problems of current systems, not to mention the time and resources that will be required to make the analytical and organisational shift.

And yet, the timing could not be better. With more than 180 water services having been remunicipalised over the past 15 years, and with dozens (if not hundreds) looking at the possibility of remunicipalisation in the next decade,[21] the political will to think about what it means to be 'public' is as strong as ever. These newly remunicipalised entities are well placed to see the need for changes to the way we do performance evaluation, and they have the operational mandate to try and make it happen. This trend provides an exceptional opportunity to collectively build an alternative measurement future.

Congratulations are still in order, but the longer term struggle has really just begun.

David A. McDonald is Professor of Global Development Studies at Queen's University, Canada, and co-director of the Municipal Services Project.

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Chapter eight

Trade agreements and investor protection: A global threat to public water

Satoko Kishimoto

Investor-state dispute settlement (ISDS) cases are emerging as a major threat to public water, especially in remunicipalisation cases where municipalities want to take back water into public hands after failed privatisation. ISDS is included in numerous bilateral investment treaties and is being used by water multinationals to claim exorbitant amounts of public money in compensation for cancelled service management contracts. The sole threat of an ISDS case in opaque and industry-biased international tribunals can be enough to convince a local government to stick with private water despite poor performance.

With new trade and investment treaties such as the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP) expected to promote ISDS further, the balance of power will tip even more in favour of private firms and leave public authorities with limited policy control over essential services. No less worrying is the international Trade in Services Agreement (TiSA) that could make the liberalisation and privatisation of water irreversible.

Remunicipalisation: A global trend

Remunicipalisation in the water sector and for other social services is a significant trend because it demonstrates that past decisions to privatise are reversible. By March 2015, more than 235 cities and communities in 37 countries had taken back control of their water services over the last 15 years.[1]

Box 1 *What is investor-state dispute settlement?*

ISDS gives foreign investors the ability to directly sue countries in private international tribunals for compensation over health, environmental, financial and other domestic policies that allegedly undermine their corporate rights. Arbitration mechanisms generally designate the World Bank's International Centre for Settlement of Investment Disputes (ICSID) or other tribunals such as at the International Chamber of Commerce as adjudicators. Investor-state lawsuits are decided by private arbitrators selected by the conflicting parties, not by independent judges. There is a demonstrated arbitrator bias in favour of investors: 42% of cases[2] have been decided in favour of the state compared to 31% for investors. Another 27% of cases were settled without ruling (often resulting in major payments by governments).[3] This extended investor protection mechanism is found in over 3,000 existing international and bilateral investment treaties worldwide.

And this number is growing. Reasons to remunicipalise water services are similar worldwide: deterioration of services, under-investment, disputes over operational costs and price increases, soaring water bills, difficulties in monitoring private operators, and lack of financial transparency. Generally, municipalities decide to revert to public management when they find private contracts to be socially and financially unsustainable. How best to provide essential services is a critical matter for citizens, and elected officials have to make a responsive choice based on citizens' needs. Almost all cases of remunicipalisation happened when it was (newly) elected local councils that took the bold decision to reverse privatisation. In some cases, residents exercised direct democracy to be heard by their local governments, for example through a referendum.[4] When service providers do not meet expectations, policymakers can reverse a service contract based on pragmatic considerations to best respond to citizens' needs in a cost-effective way. The ability to respond to new information on service performance or shifting public opinion is an essential part of democracy.

This chapter examines remunicipalisation cases in which national and local governments were sued by water multinationals using traditional litigation strategies in national courts and the increasingly common investor protection clauses from bilateral investment treaties (BITs), and how this has affected their policy options. The chapter also explains why trade and investment agreements such as the TTIP, TPP and TiSA would undermine the remunicipalisation trend if signed.

Companies are well protected against remunicipalisation

In the last 15 years, many of the municipalities that have terminated private contracts around the world have experienced harsh financial consequences. Termination fees or compensations paid to private water companies are commonplace. Multinationals are generally well protected by national commercial law in the event of contract termination to be compensated for profits that were expected until the end of the contract period. The water privatisation contract in Jakarta (analysed in this book), for example, defines that in the event of any type of termination either by the municipality or the private company, even if due to bankruptcy, the municipality will have to pay a considerable compensation to the private company.

Another stark example is Castres, a city in Southern France that terminated the contract with Suez in 2004 after a seven-year battle initiated by a small group of committed citizens. In 1997, citizens filed a court case and the regional Toulouse Administrative Court ruled that the price of water was too high; moreover, the contract itself was deemed illegal as the former mayor had signed it without consulting the town council, as legally required. Nevertheless, the company, stung by the unilateral termination that followed, went to the court again in 2003 to ask for the reimbursement of investments (€66 million) and damages (€58.8 million). The court ruled that the city had to pay €30 million to Suez to compensate for investments.[5]

We observe how private water companies have the higher hand in similar litigations elsewhere. Set compensation for investments made tend to overlook

past profit gains from the private contract. Commercial law also disregards the quality of public service delivery when examining such contracts.

Yet serious violations of service provision standards by private companies are often at the centre of the motivation for remunicipalisation. Many cases, from Buenos Aires to Jakarta, show that disputes and conflicts over violations of contractual obligations between parties tax public authorities of enormous time and resources to prove.[6]

Municipalities face even harsher conditions when investor protection regimes are strengthened through BITs. In other words, private companies can use this additional tool to maximise gains when they lose a contract.

ISDS as a mounting threat to public water

In the 1990s, Argentina privatised most of its utility services as part of the neoliberal government's agenda. During the same period, Argentina entered 50 BITs whose investor protection mechanisms would come to play an infamous role in future renationalisation cases. In water and sanitation services, 18 concession contracts were signed. Among them, nine were terminated between 1997 and 2008.[7] Tariffs, service performance and investment became core issues and sources of conflict between companies and the responsible public authorities in all cases. Six cases were brought before the ICSID. Argentina is the country that has been most sued under international investment treaties in the world (on 55 known cases). To put this case in context, two-thirds of those cases have to do with recovery measures taken by Argentina following the 2001-2002 national economic crisis. The government passed an Emergency Law in 2002 abandoning dollar-peso parity of exchange and devaluated the currency, in order to help the crisis-hit economy to recover. Argentina also defaulted on its debt and froze the public services tariffs to keep them affordable for residents.

For example, France's SAUR International filed against Argentina in 2004 concerning a water and sewerage concession in the Mendoza province, claiming they had been expropriated without compensation. SAUR invoked

a violation of the *fair and equitable treatment standard* under the Argentina-France bilateral investment treaty. The ICSID tribunal found Argentina liable for claims by SAUR in June 2012.[8]

As another example, the province of Buenos Aires made a concession contract with Azurix, a subsidiary of US-based Enron in 1999 for 30 years and quickly faced opposition over tariff increase, water quality and delays in infrastructure investment. During the ensuing negotiation process, Azurix terminated the concession contract without complying with commitments made due to the bankruptcy of its parent company Enron. Azurix still filed a complaint with ICSID against the Argentine government and the province of Buenos Aires, claiming public authorities purposely delayed the permission to increase the water tariff and breached the Argentina-US treaty. ICSID ruled in 2006 that the Argentine government should pay US$165 million with interest to Azurix and cover the ICSID expenses.[9]

During that time, Santa Fe province terminated the contract with Aguas Provinciales de Santa Fe whose majority shareholders were Suez (France) and Agbar (Spain) due to dissatisfaction with services and a strong public campaign in 2005. Prior to this, Aguas Provinciales de Santa Fe filed a case at ICSID and demanded US$243.8 million from the Argentine state, blaming the public authority for its failure to increase tariffs after the country's abolition of the dollar-peso parity in 2002, which changed trading conditions. The company said the government's action destabilised the concession, and amounted to expropriation, breaching the clause on fair and equitable treatment under the Argentina-France and the Argentina-Spain BITs. ICSID accepted this jurisdiction in 2006.[10] Aguas Argentinas SA, the Suez-led water company that operated in the city of Buenos Aires made almost identical claims[11] at ICSID prior to the government terminating the contract in 2006.

The use of ISDS in BITs to demand compensation has increased in the last few years. Mexico, for instance, received notice of four investor disputes during 2013.[12] One of them was from French water treatment company

Degrémont, which notified Mexico of a potential ISDS claim at ICSID under the France-Mexico BIT. The dispute concerns investment in local company Tapsa, which operated four water treatment plants from 1999 in the city of Puebla until the contract with the municipal government was terminated in 2012 on the grounds that water quality had fallen below official standards. Degrémont says the termination and subsequent occupation of the plants by state officials amounted to an indirect expropriation and exercise of arbitrary power. The compensation requested by Degrémont is still unknown.

In fact, a state can be sued over mere disagreements on tariff increases, before remunicipalisation is even considered. Estonian company Tallinna Vesi and its owner United Utilities Tallinn brought a claim against the national government under a BIT in October 2014. United Utilities is a UK company registered in the Netherlands, which enables Tallinna Vesi and United Utilities Tallinn to use the Estonia-Netherlands BIT. The company alleges that Estonia breached the fair and equitable treatment standard of the BIT in refusing Tallinna Vesi's application for tariff increases on the basis of a new law passed in 2010. The law gives the Estonian competition authority power to cap utility companies' profits at what it determines to be "reasonable" levels. The companies are seeking damages over €90 million to cover their projected total losses over the lifetime of the contract up until 2020.[13]

Chilling effect on policy

The threat of a lawsuit often prevents governments from passing laws or adopting new policies in the public interest. The case of Bulgarian capital Sofia is a good example. Residents of Sofia have suffered from illegal water price increases and scant investment since the city signed a privatisation contract in 2000 with Sofiyska Voda, whose major shareholder is Veolia. Additional clauses were secretly added in 2008 and one of these clauses enables the company to take Bulgaria to the Vienna International Arbitral Centre. In 2011, the city disconnected 1,000 households from water supply and prosecuted 5,000

more for non-payment of water bills upon a request from the privatized utility. While these actions were violating the human right to water, the municipality said its hands were tied by the private concessionaire's threat to sue authorities for unpaid bills. Citizens and some elected officials had collected enough signatures to hold a referendum on remunicipalisation of water services but the city did not allow such a plebiscite since the private company was also ready to file a lawsuit should it take place.[14]

This kind of chilling effect is observed in many places. Montbéliard in France decided in 2010 to remunicipalise the water system managed by Veolia since 1992. The decision was confirmed by an official vote of the council in 2013 and was expected to take effect in 2015 (seven years before the end of the concession contract). But Veolia challenged this decision before a national court and asked for litigation to obtain €95 million in compensation for breach of contract.[15] In 2014 the city gave in to the threat and reversed its decision to remunicipalise.

These cases show that private companies effectively exercise their power and end up distorting public policies. Across the globe, there is mounting evidence that investors successfully reverse new policies and regulations drafted to protect public health and the environment. If the threat of traditional litigation was already an effective deterrent, it is even more so with ISDS disputes because they raise the costs of such a political decision even further and tend to lead to even more unaffordable compensations.[16] It is not difficult to imagine that water multinationals will use this powerful tool against states and municipalities in the event of remunicipalisation.

Remunicipalisation is not easy. It requires overcoming a range of technical hurdles in addition to the legal ones discussed above. Public authorities often have to either buy back shares or disburse significant compensation costs.[17] The current global investment framework marked by the rise of ISDS certainly makes remunicipalisation harder. The choice of how to provide essential services such as water should be based on democratic decisions and should not be guided by foreign investors' interests.

Box 1 *TTIP*

The Transatlantic Trade and Investment Partnership (TTIP) is a proposed trade and investment agreement that has been under negotiation between the United States and the European Union since the summer of 2013. The negotiators on both sides want to include ISDS. The process is widely criticised, in large part because of its secrecy, the agreement's expansive scope, and some controversial clauses including ISDS. According to the European Commission, there will be sectoral exceptions for public services (public education, health and social services, and water).[18] Whether this will indeed be the case remains to be seen. Moreover, exempting the water sector from trade liberalisation under the TTIP is not an effective guarantee against investor-state cases by water multinationals: If investor protection and ISDS are included in the agreement, the corporations can make use of this to 'protect their investments' even in the water sector, effectively circumventing the exemption. In those countries where the water sector is already partly liberalised, the TTIP would create a serious obstacle for remunicipalisation.

Box 3 *TPP*

The Trans-Pacific Partnership (TPP) is another proposed regulatory and investment treaty. As of 2014, 12 countries throughout the Asia-Pacific region had participated in negotiations: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. While the text under negotiation is secret, it is known to include cross-border services, government procurement and investment, among others. The TPP's starting point on government procurement for instance seems to be based on a similar agreement under the World Trade Organisation, which excludes water services. However, there is a tendency to expand and deepen liberalisation's scope and it is still unknown how water services are treated under the TPP.

New trade and investment treaties

Including investor protection clauses in the TTIP, TPP or Comprehensive Economic and Trade Agreement (CETA) would extend the use of ISDS globally. Regarding remunicipalisation and renationalisation, as foreign investors private operators can claim a violation of investor protection on the grounds of expropriation and exercise of arbitrary state power (e.g. Degrémont vs Mexico, Azurix vs Argentina) or following devaluation of local currency (e.g. Aguas Provinciales de Santa Fe vs Argentina). Civil society campaigners fighting excessive investor protection and investor rights see the concept of "*fair and equitable treatment*" as potentially the most dangerous for taxpayers and regulators. This principle is the one most used in investors' successful claims. Protecting investors' "*legitimate expectations*," it creates the "right" to a stable regulatory environment for investors, preventing governments from altering laws or regulations, even in light of new conditions or democratic processes.[19] Public protests are rapidly building up on the trade and investment treaties under negotiation because they would strengthen massively such investor protection and cover large parts of the world.

TiSA and public services

Although TiSA has gotten less attention so far compared with the TTIP, TPP and CETA, it may have the biggest potential impact on public services and may effectively restrict the policy space of municipalities. One could question why TiSA is needed as the comprehensive General Agreement on Trade in Services (GATT) already exists under the World Trade Organisation. TiSA is an attempt to go further and speed up the process among like-minded states that are committed to extending service liberalisation outside of the WTO. The transnational private services industry pushes this agenda openly and aggressively.

How would TiSA affect public services? In theory, the GATT and TiSA both exclude services "provided in the exercise of governmental authority" from their scope. However, TiSA defines public services extremely narrowly as "any service which is supplied neither on a commercial basis nor in competition

with one or more service suppliers." In practice, public services such as health care, social services, education, waste, water and postal service systems are delivered to the population through a more complex and mixed system than that, being funded in whole or in part by governments and regulated more or less tightly. So in fact this narrow definition leaves little or no effective protection for public services.[20]

What is even more striking about TiSA is that it could effectively deprive local authorities of key public service policy space. Its "standstill" clause would lock in current levels of service liberalisation permanently, by banning any moves from market to public provision of services unless there exist explicit exemptions. That is, once a city or state liberalises and/or introduces a public-private mix to service delivery, the level of liberalisation is fixed and a (future) government cannot go back on this decision.

Take the example of the National Health Service (NHS) in the UK, which is publicly run. The government's Health and Social Care Act of 2012 opened the door for private service providers. Since this act came into force, 70 per cent of health services put out to tender have gone to the private sector.[21] Saving the NHS from further privatisation has been the focus of the growing protest against the TiSA (and the TTIP) in the UK. Indeed, if the UK government wanted to change health policy and regulation after signing on to the agreement to bring the NHS fully back into public hands, TiSA's standstill clause would likely prevent it.

In the UK, water, railway and energy services were privatised in the 1980s and 1990s. After decades of private management, public opinion polls have shown that the majority of people want public ownership of these services (71 per cent for water, 68 per cent for energy, 66 per cent for railway).[22] TiSA's standstill provision would be enough for private investors to claim the impossibility to reverse privatisation and they would not even need to bring the government before an international arbitration court to settle the matter (while they could certainly do so to obtain lucrative compensation). The standstill provision precludes remunicipalisation and renationalisation unless sectors have been explicitly excluded in the agreement.

Box 4 *TiSA*

The Trade in Services Agreement (TiSA) negotiations were launched in late 2012 with the aim to liberalise global trade in services and to improve rules in the areas of licensing, financial services, telecoms, e-commerce, maritime transport and professionals moving abroad temporarily to provide services. The EU and the US are the main proponents of the agreement. The original 16 members of the TiSA have expanded their ranks to include 23 parties. Since the EU represents 28 member states, there are 50 countries represented. Criticism about the secrecy of the agreement arose after WikiLeaks released part of the negotiated document in June 2014. Public Services International (PSI), a global trade union federation, warns that TiSA makes it easier for multinationals to take over vital public services, such as health care and education. PSI warns that TiSA will also restrict governments' rights to regulate stronger standards in the public interest. ISDS does not appear to have been included in the negotiation so far but this treaty could have devastating impacts on the prospects for remunicipalisation.

Trading away democracy

The TTIP, TPP, CETA and TiSA are increasingly being challenged in Europe and elsewhere. In October 2014, over 400 actions were organized in 20 European countries to reject the secret trade deals that the EU is negotiating.[23] A European Citizens' Initiative had collected one million signatures in just two months by December 2014 to call on the EU to stop negotiations on the TTIP and not to ratify CETA.[24] Critics are particularly concerned about ISDS provisions in CETA and their probable inclusion in the TTIP.

The European Commission held a public consultation on ISDS in the summer of 2014. Nearly 150,000 people contributed from a wide range of institutions – the highest number of responses ever for an EU consultation – showing the strength of public opinion on the matter. This included the European association of public water operators Aqua Publica Europea, which considers "that recourse to ISDS will not improve in any way the investment flow between

the US and EU, may create discriminatory conditions for domestic companies and, above all, can lead to a limitation of states' right to decide how to organize the provision of public services."[25] The European Commission nevertheless made clear that it would not drop the controversial ISDS provisions from the TTIP negotiation.

There is growing concern by parliamentarians and local authorities with the secrecy of negotiations. The three umbrella organisations of German municipalities jointly denounced the risks posed to public services by the CETA, TTIP and TiSA.[26] They argue that public services should be taken out of these agreements and remunicipalisation of public services should not be impeded. Herta Däubler-Gmelin, professor of law and former Minister of Justice in Germany, sharply pointed to the lack of legitimacy of these negotiations and the threat they represent to the principles of democracy[27] as they will require changes in laws at the national level.

At least CETA now excludes certain services such as drinking water due to strong public pressure. If drinking water services were to be included in TiSA, the effect would be even greater than what was feared in the case of CETA.

Box 5 *CETA*

The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between Canada and the EU. It includes an ISDS mechanism. On September 2014, Canada and the EU announced the conclusion of the negotiation process. The agreement must still be approved by the European Council and the Parliament, and ratified in Canada. If approved, the agreement will come into effect in 2016. As regards water services, after considerable pressure from the public to exclude them from the agreement, Canada and the EU have included broad reservations on 'market access and national treatment' obligations with respect to the collection, purification and distribution of water. These reservations give governments the authority to restore public monopolies where water privatisation has failed, but foreign investors can still challenge this decision under the fair and equitable treatment principle and the expropriation provisions of the investment chapter.[28]

Conclusion

Remunicipalisation is a response of municipalities and citizens to devasting privatisations and is a clear expression of the desire to take services back into public hands. Remunicipalisation is a remedy for municipalities when a private company fails to meet its contractual obligations and when a private contract becomes socially and financially unsustainable. This small but legitimate window to exercise democracy must not be allowed to close due to excessive investor protection through ISDS.

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Conclusion

Reclaiming public water through remunicipalisation

Satoko Kishimoto, Olivier Petitjean and Emanuele Lobina

Remunicipalisation is an undeniable trend as evidenced by the analysis presented in this book. Despite more than three decades of relentless promotion of privatisation and public-private partnerships (PPPs) by international financial institutions and national governments, many cities, regions and countries have chosen to close the book on private water and to bring services back into public control. More than 235 cities from 37 countries have remunicipalised water services over the last 15 years.

Remunicipalisation is generally a collective reaction to the unsustainability of water privatisation and PPPs. The pace of this trend has accelerated dramatically. It has been most symbolic in France, the country with the longest history of water privatisation, which is also home to the leading water multinationals. The experiences in other key countries (US, Germany) and major cities (Paris, Jakarta) featured in this book also demonstrate that privatisation and PPPs fail to deliver on the promised benefits to local governments and citizens and that public management is better suited to meet the long-term needs of end users, local authorities and society at large – including the need to protect our local and global environment.

In most countries, the expansion of modern water and sanitation systems happened as a result of public ownership and investment in response to increasing demand and public health concerns in urban areas. In the 1990s, however, many countries privatised their water and sanitation services as a result of strong international pressure to open up the services sector. Thus a similar public effort is required today to address our pressing water challenges, such as urbanisation and access to water and sanitation in the South, climate change

and water conservation. The global experience with remunicipalisation shows yet again, that a collaborative and democratic public sector is in a better position to lead the way into a sustainable water future.

By way of conclusion, we offer an overview of the key lessons from the cases presented in this book and also draw from our global list of remunicipalisation to illustrate additional cross-cutting themes such as the challenge posed to public water services by investor protection clauses, the position of the trade union movement vis-à-vis remunicipalisation as a social project, and performance evaluation as a way of measuring the success of remunicipalisation.

Stop irresponsible policy prescriptions

Despite the failures of the flagship privatisations of the 1990s, including in Buenos Aires and Jakarta, international financial institutions continue to promote water privatisation as a solution to provide access to safe water in the South.

A more recent example is that of Lagos, Nigeria, the largest city in Africa with 21 million people. Only 5 per cent of residents have household water connections and sanitation is non-existent across much of the metropolis, while hospitals are full of people suffering from diarrhea and other waterborne diseases. Because of the lack of access to water, people have either illegally connected to the public water network of the Lagos Water Corporation (LWC) or rely on buying low quality water from private vendors. Lagos's reality mirrors the challenges in many other places in the world where access to clean and affordable water is an ongoing struggle. It is clear that investments and institutional reform are needed. In 2014, the World Bank's International Finance Corporation recommended private sector participation in LWC. The public utility rejected this policy advice, leading the bank to withdraw its loan commitment.[1] International and regional development banks have to stop imposing such irresponsible policy conditions and abusing the power of money. The Nigerian government and the public water utility LWC have to create space for democratic discussions on how they want to improve services. The international community should respect and support this process.

Today, the same flawed model of water privatisation and private sector investment prescribed in the South is being promoted in the European Union in the context of the financial and economic crisis, as a way to improve public finances and to fund cash-strapped water services. This has been the case in Greece where the attempt to privatise the water operators of Athens and Thessaloniki failed in the face of public resistance and concurring court decisions[2]; other countries such as Portugal, Ireland, Spain or Italy have experienced similar attempts. The Portuguese Court of Auditors recently uncovered the asymmetry that is intrinsic in PPP contracts between municipalities and private companies, which makes it difficult for municipalities to monitor the quality of investments and to assess financial implications.[3] Indeed, past experience shows that such policies turn out to be worse for public budgets in the long term, and lead to poor services and a loss of democratic transparency.

There is too much counter-evidence to believe naively what the private water sector promises to deliver. The growing list of remunicipalisation from around the world demonstrates that privatisation and PPPs are socially and financially unsustainable; it also shows how hard local authorities and citizens have to work to take back their services. There is growing awareness and evidence that service management by the private sector is very expensive.

Reject privatisation and PPPs, there are other solutions

Because of popular discontent with water privatisation, private water companies have used their marketing propaganda to encourage people to believe that PPPs are distinct from privatisation; they are not. PPP means the transfer of services management control to the private sector. PPP promotion within governments remains aggressive today and its proponents have managed to present it as a solution to bring 'innovative financing' to the water sector.

Local authorities and policy-makers should be extremely careful when considering privatisation and PPPs in water services. Reversing private contracts is possible but is not easy at all; it involves major costs, time and expertise. It is advisable to avoid privatisation and PPPs in the first place and seek assistance

from and partnerships with other local authorities and public operators instead because they share common missions and values. Inter-municipal cooperation can generate economies of scale and such public-public partnerships (PuPs) can strengthen operators' capacity to solve problems. It is encouraging to learn that national and regional public water operators' associations are starting to play an active role in sharing knowledge and providing peer-to-peer support. Their basic values of cooperation and solidarity (instead of competition) can go a long way to improving services and enhancing (rather than undermining) local capacity. At the international level, the Global Water Operators' Partnerships Alliance (GWOPA) was established to foster not-for-profit, peer-to-peer knowledge sharing to strengthen local capacity. GWOPA is one among many initiatives to pool knowledge and commitments to support utilities that wish to enhance their capacity to provide better services.

Remunicipalisation is a viable remedy

If water services are already privatised in your town, remunicipalisation is a possible and viable remedy to end financially and socially unsustainable contracts. Again, remunicipalisation is not easy and even if negotiations go smoothly with a private contractor there are a series of steps that should not be neglected: technical issues such as the transfer of accounting and information systems, worker transition, institutional knowledge recovery and the need to build a new culture among managers, engineers, technicians, etc. Fortunately local authorities and citizens can learn precious lessons from the more than 235 cities in the North and South that have successfully remunicipalised their water services. There is strong evidence that remunicipalisation brought them operational effectiveness, increased investment in water systems and higher levels of transparency. Moreover, remunicipalisation offers a chance to reinvent public water services and make them more effective and accountable to the local community. It offers an opportunity to build socially desirable and environmentally sustainable public water models for the benefit of present and future generations.

Building alliances

The experience of the remunicipalisation movement, as analysed in this book, shows the value of building broader alliances and collaboration between public operators, local officials, workers and citizens, not only to remunicipalise but also to improve public management afterwards. All of the authors in this book have been involved in one way or another in remunicipalisation movements for years. As such, they share their hands-on experience with a view to supporting cities and communities that are seeking to remunicipalise water services or want to create safeguards against privatisation.

France, Germany, US and Jakarta

The majority of the population in Germany and in the United States enjoys public water provision while France is one of the few countries in the world where the majority is served by private water operators instead. Having had the longest and deepest experiences in private water management, France is now the seismic centre of remunicipalisation. Anne Le Strat, former President of Eau de Paris and deputy mayor of Paris, and Christophe Lime, President of France Eau Publique affirm that the political landscape has changed with major cities such as Paris, Grenoble, Nice, Montpellier and Rennes[4] returning to public management. Such is the remunicipalisation wave that private operators today need to lobby hard to convince cities to renew the private contracts that were once so easy for them to obtain, according to Le Strat. In Nice, even if the majority of the council and the mayor are considered conservative, they have decided not to renew the private water contract in 2013, showing that this issue goes beyond ideological choice. Because of mounting criticism on private management, stricter regulations were introduced in the 1990s in France to increase competition and transparency but Lime argues that this only translated into cost-cutting within private utilities and worsening service quality for users while financial transparency remained limited.

Mary Grant, a researcher with Food & Water Watch explains that the population served by local governments grew by 7 per cent between 2007 and 2013 in the US. This pace is comparable with France where the population served

by public providers has been increasing by 1 per cent annually since 2008 according to Lime. The movement to retain and strengthen public water services is vibrant in the US, and it is interesting to see that the country shares a common trend with France: many public water systems have expanded their services to neighbouring areas using the existing network, and remunicipalised water companies have merged with other towns and cities to harmonise water quality and services.

The population of Germany is well informed about the pitfalls of privatisation too following failed experiments in cities such as Berlin and Stuttgart and no longer accepts to sell away water management and assets to the private sector, as explained by Christa Hecht, General Manager of the Alliance of Public Water Associations (AöW). Her claim is backed by opinion polls showing that 82 per cent of the population supports public water. Hecht stresses that the knowledge and experience of engineers and technical experts from the public sector is at least as valuable as that found in private companies. This coincides with International Monetary Fund and World Bank analysis from 2004 that recognises that there is no significant difference between public and private operators in terms of efficiency or other performance measurements.[5] Hecht concludes that the public water sector is clearly superior when it comes to taking social and environmental concerns seriously in the planning of infrastructure, as well as in setting tariffs.

Remunicipalisation is not a phenomenon only in developed countries. Jakarta, Indonesia is the most recent and significant win in the struggle to end water privatisation. Water multinational Suez signed a privatisation contract in 1997 that would have run until 2022. But Suez failed to fulfill its obligations to extend and improve water supply to the city's inhabitants, overcharging water users, forcing public authorities in heavy debt while it was making high private profits. Nila Ardhianie and Irfan Zamzami, researchers at the Amrta Institute for Water Literacy, have investigated the flaws of privatisation in their city for more than 10 years and organised countless public debates to advocate for the right to water and public management. The citizen mobilisations gained momentum when a coalition of Jakarta residents filed a civil law suit in 2012 against local authorities and the private companies by claiming the illegality of

the original privatisation projects. While such a strategy cost enormous energy and resources, it became a critical reference for citizens to consolidate their position and contributed to shifting public authorities' discourse. Without the persistent efforts of committed citizen groups, Jakarta's privatisation would go on and private companies would keep profiting. It is unfortunate that Jakarta had to bear as long as 16 years of water privatisation and such setbacks in achieving universal access to water. It is high time that residents and public authorities got this fresh start to build an efficient and democratic public water system to serve people's needs and protect the environment. As exemplified by this case, citizen engagement remains a critical factor in building a genuine public culture in water services after remunicipalisation.

Reasons to remunicipalise

The chapters in this book and ongoing research on 235 cases of remunicipalisation worldwide confirm that the reasons to remunicipalise water services are universal. The false promises of water privatisation that have led to remunicipalisation include: poor performance, under-investment, disputes over operational costs and price increases, soaring water bills, monitoring difficulties, lack of financial transparency, workforce cuts and poor service quality. In the case of Jakarta notably, all of these factors combine.

Water quality problems are often linked with job cuts and inadequate system maintenance by private operators, putting public health at risk and creating environmental hazards as happened in the US and elsewhere. Grant explains how local governments remunicipalise their water services primarily to secure the local control necessary to reduce costs and improve services in the US. Water price increases accompanied by worsening quality of water due to the lack of investment in network upgrades was experienced in Rennes, France where 30 per cent of residents were delivered insufficient quality drinking water. Today, in France, private operators claim to have introduced greater transparency in their contracts, but in practice, as Lime argues, asymmetry of information is intrinsic to service outsourcing, and local authorities only have a very limited ability to verify the information provided by private operators.

Water tariff increases coupled with non-compliance with investment obligations were also recorded in Berlin.[6] Hecht points out that public authorities could neither oversee nor influence private operators in Germany. In the South, the tariff increases and connection fees that followed privatisation in Bolivia, Argentina, India (Latur) and Mali also made the service unaffordable.[7]

Cost savings

The driving force behind remunicipalisation is the desire to secure local control over essential resources and to reduce costs. The most common and obvious change is that local authorities can save significant costs when taking water service provision back in-house. The survey on 18 small US communities found that return to public operation cut costs by an average of 21 per cent (see chapter 2, this volume); a big city like Houston (2.7 million people) cut costs in 17 per cent, or $2 million annually. This was made possible thanks to efficiency gains in public operations, by stopping outsourcing, and reducing the cost of monitoring external contractors. The same kinds of savings were achieved in Hamilton, Canada (C$1.2 million), in Grenoble (€40 million) and Paris (€35 million within the first year of operation), France.[8] In many cases such public savings allow increasing investments to improve the network or reducing the water bill for users (Paris).

Private companies tend to use their own subsidiary companies for outsourcing and overcharge for services. A small town in Spain, Arenys de Munt,[9] found that the previous private concessionaire was charging fees nearly four times higher to expand the municipal network than the town later did. Local authorities in Germany also realised that they could get more competitive rates by contracting local service providers, contributing to the regional economy at the same time.

The experience of Buenos Aires province[10] and its 2.5 million inhabitants is just as dramatic. The newly established public company ABSA collaborated with the workers' cooperative, 5 de Septiembre S.A., to improve operations and successfully reduced 75 per cent of technical costs compared to the private management period. Together they were able to restore drinking and wastewater plants. In Jakarta, the Amrta Institute estimates that public water

company PAM Jaya could potentially decrease operational costs by 29 per cent post-remunicipalisation.

Remunicipalisation carries other inherent advantages associated with public management, such as cooperation among municipal departments to rationalise operations and share equipment. For example, water and transport departments can work together to time water pipeline replacements with street repairs to avoid redundant repaving work. Municipal inter-departmental cooperation permits better use of resources.

Investment

Operational cost savings can be used towards increasing investments to expand access to water and sanitation (in the South) and/or to replace old infrastructure in order to meet stricter environmental regulation (in the North). This is a fundamental difference from private management in which cost savings tend to translate into dividends for shareholders. In 2014, France's Regional Court of Auditors published reports to evaluate Eau de Paris and explicitly pointed out that the return to public management enabled the city to lower the price of water while maintaining a high level of investment (conversation with Le Strat, this volume). Argentine cities (Buenos Aires, Santa Fe) also underwent ambitious investment programmes to expand services following remunicipalisation, with support from the national government, and were able to maintain water tariffs at affordable levels. Similarly, national governments made major investments in La Paz/El Alto in Bolivia and Dar es Salaam[11] in Tanzania after remunicipalisation with the aim to expand services to unserved people. These cities' experiences tell us that public commitment is essential to achieve an ambitious social goal like universal access to water and adequate sanitation.

Obstruction and new threat

Almost all cases presented in the book chapters were fraught with a range of difficulties. In particular, cities that terminated a private contract before expiry often entered into conflict with private contractors, which often led to litigation procedures. Private companies are well protected in the event of contract termination, both by commercial and national laws.

In general, remunicipalisation is smoother when it is the result of non-renewal of a contract upon expiry. Municipalities in France tend to wait for contract expiry to avoid paying compensation; in the meantime the municipality can prepare the new public model. Many municipalities face serious breach of contractual obligations and this situation is often the most direct motivation for remunicipalisation. However, it is hard for municipalities to prove such violations and filing cases before courts requires a lot of time and legal costs.

Moreover, the book chapter that examines investor-state dispute settlement (ISDS) mechanisms found in many bilateral investment treaties shows how they are emerging as a major threat for remunicipalisation. ISDS gives power to investors to bring states before international arbitration tribunals and this tool is increasingly used by companies to maximise compensation. Policy space for local authorities that wish to reverse privatisation is shrinking in the face of excessive investor protection, which undermines democracy.

Remunicipalisation can also take place by purchasing shares back from private companies. Berlin is a clear example of how the state government had to bear high costs to buy back shares (€1.3 billion in total). Similarly, the amount that Selangor state in Malaysia disbursed to buy back four private concessionaires' shares added up to €1.9 billion.[12] In these cases, local governments can avoid legal battles but they impose a heavy financial burden on tax payers for decades by taking up loans to buy back assets. Berlin citizens had already paid a lot through their water bills for services and assets as well as companies' generous profits during privatisation; they now have to repay the debt of local authorities after remunicipalisation. In such cases, despite ownership change, public companies may be forced to remain profit-seeking and little space is left to build a new public service culture and values. Expensive share repurchase results in high water bills and may prevent the public company from taking on social and environmental challenges.

Workers in remunicipalisation

Workers are at the frontline of the remunicipalisation challenge to provide quality services. The European Federation of Public Service Unions (EPSU)

sees remunicipalisation as an opportunity for trade unions not only to improve working conditions but also to push for greater worker participation in governance of the public company to rebuild public service values. Nevertheless, workers are seen as costly (salary) and job cuts are frequent with private management as well in the context of austerity policies imposed on public administrations in most European countries.

It is essential to recognise that committed and qualified workers are key to providing good services. Thus working conditions and worker safety should be a high priority in public water management. Workers have played active roles in building public water services in the city of Buenos Aires and the province. Workers own 10 per cent of shares in the new public companies and training for workers has increased dramatically. A creative strategy was also developed with the workers' cooperative in Buenos Aires province, *5 de Septiembre*, which is not only responsible for technical operations and quality, but also for outreach with neighbourhood associations and communities. For their part, the worker cooperatives of public utility AySA (city of Buenos Aires) have worked with residents in expanding water access in low-income neighbourhoods, connecting more than 700,000 new water users.

Public water operators as innovators

Eau de Paris has changed the image of public operators. It has demonstrated that public operators are innovators when it comes to social and environmental policies and building a new democratic culture. Water conservation is one of the central strategies in Eau de Paris and the utility has taken the water pollution challenge seriously. It has developed partnerships with farmers around water catchment areas to help them switch to organic agriculture and reduce the use of chemicals. Anne Le Strat confidently says that democratic governance helps achieve quality services and build public service values. The Water Observatory in Paris has created a space for Parisians to engage in water policies. The observatory together with other civic organisations and workers' representatives sit on the board of Eau de Paris, with voting rights on strategic decisions. High levels of information disclosure and transparency are a precondition for democratic governance. Using different models, citizen participation in decision-making

are also a reality in Grenoble and Lacs de l'Essonne[13] in France. Despite the tough social circumstances, Bolivian cities have also experimented with building social control in municipal companies. This tells us that remunicipalisation is not merely about a change in ownership but is also an opportunity to build a close relationship with users and to reinvent public services and values. The Paris Water Observatory model can be tried out elsewhere in the world. When citizens see the benefits from public water services and take ownership, they also become active defenders of their system.

New opportunities for collaboration

Two chapters in this book were written by leaders of national public water associations in Germany and France. The Alliance of Public Water Associations (AöW) and France Eau Publique counter-lobby private water operators to protect the interests of public operators, and increasingly pool knowledge and experience to offer concrete alternatives. Such associations provide peer support based on the values of cooperation and solidarity, versus market competition, as explained by Christophe Lime (this volume). Collaboration is particularly important in the French context as many private contracts will expire in the coming years. From small towns to big cities, it is necessary for local authorities to equip themselves to make a logical decision on water management for citizens. Public operators' associations have a unique role to play in uniting their members to serve the public interest.

AöW and France Eau Publique are part of the European public water network Aqua Publica Europea. Regional and national public water associations, as well as civic organisations, are increasingly prepared to provide concrete support for remunicipalisation. Solidarity, cooperation and partnerships among public authorities can unlock more democratic, inclusive and sustainable water services. The authors of the chapter on Jakarta propose in a similar way that public utility PAM Jaya set up a PuP with well-functioning public operators domestically and internationally to receive peer support for its rehabilitation.

Public operators would also benefit from developing common understandings of success in service provision. David McDonald, co-director of the Municipal Services Project, argues that indicators that enable the articulation

of public service values could go beyond current benchmarking systems that are driven by financial performance evaluation and are deeply embedded in market ideology. Although mainstream benchmarking may aim to enhance transparency and participation in principle, its technocratic and centralised nature paradoxically dominates the process. Measuring success is essential, but we need to account for the 'public' character of services. Equity, regardless of income, gender or ethnic group, means that people must get the same access to and quality of services, at affordable rates, all the while protecting workers' health and safety. Such alternative benchmarking should provide the basis for users' and workers' participation. Public water associations can play an active role in rethinking ways of measuring the success of public water provision.

Citizen mobilisation

Many of remunicipalisation's successes would not have been possible without the tireless mobilisation of committed citizens. In Jakarta, citizens studied the problems of privatisation despite having limited access to information for years. Berliners had to organise a referendum just to demand that the secret private contracts be disclosed. Pressure from citizens swayed local authorities' positions on privatisation in Hamilton (Canada), Stuttgart (Germany), Grenoble, Rennes, Montpellier (France), Arenys de Munt (Spain), Stockton (US) and Buenos Aires (Argentina). The role of citizens and social movements illustrates that, ultimately, more is at stake than just a shift from private to public ownership in remunicipalisation. Remunicipalisation is about building better public services: services that are more transparent, more accountable, more efficient and focused on people's needs over the long term. If citizens are willing to fight for remunicipalisation and against privatisation, it is also because they believe that the public sector is better equipped to meet broader social and environmental goals, and in a better position to address fundamental issues such as affordability and equity, as well as climate change adaptation, water conservation and the protection of ecosystems, as opposed to private companies' focus on financial aspects. Clearly we cannot afford to continue to rely on private water 'solutions'.

Practical guide for citizens and policy-makers

As you prepare to remunicipalise water, please consider the following check list.

- ✓ Verify the private contract to see if there is a 'termination for convenience' clause. This allows municipalities to exit the arrangement early for any reason as long as the private operator is given sufficient notice, although municipalities may have to pay termination fees.
- ✓ In the event of serious contract violations, you may need to pursue 'termination for cause' and this may allow exiting without compensation. However, municipalities may have to submit to legal arbitration.
- ✓ Check whether your country has signed a bilateral investment treaty with the country of origin of the private water operator. If so, extra attention will need to be paid to avoid a law suit before an international arbitration tribunal.
- ✓ Prepare well and take at least two years to examine the best way to terminate and to (re)establish the new public company. In the case of Paris, preparation took place over as much as seven years.
- ✓ Do not waste precious time renegotiating with the private company. The city of Buenos Aires spent six years doing so and ended up remunicipalising as a last resort. Jakarta spent four years in renegotiation without much gain. These years can be better spent on preparing remunicipalisation instead.
- ✓ Information systems are essential in service provision (e.g. billing, data collection) and great care has to be given to their transfer to the public utility. Private companies may not cooperate as much as desired in this transfer of information. Arenys de Munt was handed down incomplete, encrypted and illegible information from the previous private owner.
- ✓ Political will is important for remunicipalisation to succeed. Engaged city councils can greatly help by seeking peer support from other councils that have successfully remunicipalised services.

- ✓ Consult and involve workers from the early stages of remunicipalisation. Their knowledge on the day-to-day operations of the water network and service is comprehensive. It is therefore critical to attract them to the new public company. Social dialogue on how to harmonise wage and conditions for all staff is needed to reach mutual agreement.
- ✓ Social dialogue can be expanded to have a broader discussion on what kind of public water company to (re)build. It is useful to explore how to better reflect the knowledge, commitment and demands of workers and users in the new public model. Public utilities can innovate by involving users and workers in strategic decision-making. This process helps make the new public company transparent and accountable.
- ✓ Develop indicators to measure the success of the new public model. In addition to measuring financial performance and operational efficiency, consider how to measure the quality of services through the lens of equity and sustainability.
- ✓ Search for public operator partner(s) to enhance local capacity if needed.

Endnotes

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About the organisations

The **Transnational Institute** (TNI) is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars and policy makers. TNI serves as the coordinating hub of the Reclaiming Public Water network.

Contact: Satoko Kishimoto *satoko@tni.org*
www.tni.org

The **Multinationals Observatory** aims to provide independent online news resources and in-depth investigations on the social, ecological and political impact of French transnational corporations, in a way that is useful for the action of civil society, MPs, businesspeople and communities. The website is published by Alter-médias, a French non-profit organisation that also runs the news website *Basta!*

Contact: Olivier Petitjean *opetitjean@multinationales.org*
www.multinationales.org

The **Public Services International Research Unit** (PSIRU) investigates the impact of privatisation and liberalisation on public services, with a specific focus on water, energy, waste management, health and the social care sectors. Other research topics include the function and structure of public services, the strategies of multinational companies and influence of international financial institutions on public services. PSIRU is based in the Business Faculty, University of Greenwich, London, UK.

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www.psiru.org

The **Municipal Services Project** (MSP) explores alternatives to privatisation in the health, water, sanitation and electricity sectors. The MSP is an inter-disciplinary project made up of academics, labour unions, non-governmental organisations, social movements and activists from around the globe. Our website offers an interactive platform for researchers and others from around the world to engage in discussions on this topic.

Contact: *mspadmin@queensu.ca*
www.municipalservicesproject.org

The **European Federation of Public Service Unions** (EPSU) is the largest federation of the ETUC and comprises 8 million public service workers from over 265 trade unions. EPSU organises workers in the energy, water and waste sectors, health and social services and local and national administration, in all European countries including in the EU's Eastern Neighborhood.

www.epsu.org

How to get involved

The **Reclaiming Public Water** (RPW) network promotes people-centred and democratic public management in order to make the human right to water a practical reality for everyone. RPW is an open and horizontal network connecting civil society campaigners, trade unionists, researchers, community water associations and public water operators from around the world.

The **Remunicipalisation Tracker** website aims to increase the visibility of the remunicipalisation trend by showcasing cities, regions and countries that have rolled back privatisation and embarked on securing public water for all that need it. New examples are added and existing cases updated regularly, with the support of water campaigners, public water utility managers, trade unionists and others committed to successful remunicipalisation.

www.remunicipalisation.org

PSIRU runs the project on "Post-New Public Management and water reform in the 21st century" which maps water remunicipalisation around the world. The results of the project are made available at *www.psiru.org*. For further information and to signal additional cases of remunicipalisation, please email *e.lobina@gre.ac.uk*.

After three decades of often catastrophic results, many cities, regions and countries are closing the book on water privatisation. A quiet citizen revolution is unfolding as communities across the world reclaim control of their water services to manage this most crucial resource in a democratic, equitable and ecological way.

Over the last 15 years, 235 cases of water remunicipalisation have been recorded in 37 countries. More than 100 million people have been affected by this global trend, whose pace is accelerating dramatically.

From Jakarta to Paris, from Germany to the United States, this book draws lessons from this vibrant movement to reclaim water services. The authors show how remunicipalisation offers opportunities for developing socially desirable, environmentally sustainable and quality water services benefiting present and future generations.

This book aims to engage citizens, workers and policy-makers in the experiences, lessons and good practices for returning water to the public sector. It is a critical resource to build the alliances that have the potential to turn the surge towards democratic, sustainable public water into an unstoppable wave.

ISBN 978-90-70563-50-9