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Human Rights Council

Independent Expert

on the issue of human rights obligations related to
access to safe drinking water and sanitation

Consultation on Private Sector Participation
in the delivery of water and sanitation services
and the Right to Water and Sanitation

**Private Water Operators
contribute to making the
Right to Water & Sanitation real
AquaFed's submission**

Part 2

The roles of governments in relation to the different water operators with respect to the Right to Water and Sanitation

22 March 2010

Submission by AquaFed, the International Federation of Private Water Operators, as a contribution to the Consultation on *Human Rights to Water and Sanitation and Private Sector Participation in the provision of water and sanitation services*, organised by Ms. Catarina de Albuquerque, Independent Expert on the issue of human rights obligations related to safe drinking water and sanitation. http://www2.ohchr.org/english/issues/water/iexpert/private_sector_participation.htm

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Important note on Private Water Operators:

The private sector is involved in delivering water and sanitation services directly or indirectly through a number of different mechanisms. The appendix describes a variety of different operators, including privately-owned ones. In this document the term "Private Water Operators" means private companies that deliver water supply or sanitation services through contracts or licenses under the direction of public authorities. Other private providers of water/sanitation are named differently.

1. Acronyms

CBO	Community-Based Organisation
GC15	General Comment 15 to the International Covenant on Economic, Social and Cultural Rights
HRC	UN Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
MDG	Millennium Development Goal
NGO	Non-Governmental Organisation
OHCHR	Office of the UN High Commissioner on Human Rights
PPP	Public-Private Partnership
PSP	Private Sector Participation to the delivery of water or sanitation services
RTWS	Right to Water, including Right to Safe Water and Right to Sanitation, as in GC15
SPSP	Small-Scale Private Service Provider

2. Executive summary: Key messages about the roles of governments

- In each territory, there is normally a public authority responsible for the delivery of general water/sanitation services to the public. Its primary role is to set up local regulations, to decide a policy, to fix targets and priorities and to ensure that these services are delivered effectively to end-users. Obviously, this authority has to respect the Right to Water and Sanitation.
- Depending on countries, the public authorities that are responsible for protecting and fulfilling the Right to Water and sanitation may be different from the authority responsible for service delivery.
- There are many different types of water/sanitation operators. In many areas, the population gets services through several of them, for example a public utility that mandates another operator to undertake part of the service or that sells water in bulk to another operator.
- Depending on the geographical area the authority responsible for delivery of the services falls into three categories with respect to the effective supply of water/sanitation services:
 - a) either it delivers these services directly to water-users
 - b) or it mandates a third party, public or a private, to deliver the service to water-users and provides it with the appropriate instructions
 - c) or the service is delivered by operators whose activity is not organised by the public authority
- Private Water Operators, the water companies that are mandated by central and local governments, serve less than 4% of the population in developing countries¹.

¹ 7% of the urban population according to World Bank (see ref E6, page 1, 13 & 64 in Part1 of AquaFed's submission). This estimate does not include the Small-Scale Private Service Providers who, on the contrary, are very numerous. *'Overall, it is estimated that up to a quarter of the urban population in Latin America and*

- This minority case of Private Water Operators must not be distinguished from the other types of operators mandated by public bodies. It does not require a specific framework with respect to the obligations of the State on the Right to Water and Sanitation because:
 - whilst the role the public authority responsible for delivery of the services in the territory differs from one category to another, its role within each of the three categories is the same with respect to its interaction with operators and the Right to Water and Sanitation. The ownership of the operator (public, private, CBO, NGO) has no impact.
 - the other public bodies have the same role with respect to all kinds of water suppliers
 - Private Water Operators may fall in category a) if this body is a public utility or in category b) if this body is the public authority responsible for services delivery in the territory.
- The necessity for detailed contracts, strict monitoring and detailed regular reporting means that knowledge of the work of private water operators mandated by governments is far more extensive than knowledge of any other type of water supply in both developing and developed countries. Private Sector Participation in water and sanitation services highlights the challenges that are faced by all water operators, public or private.
 - ⇒ Therefore, drawing conclusions from experience with Private Water Operators may be very useful. However, restricting conclusions to Private Water Operators is not relevant. The obligations of public authorities with relation to the Right to Water and Sanitation when they interact with water service providers do not depend on the ownership of the operator (public, private, CBO, NGO). Where the services are organised by the authorities and delivered by one or several operators, their main obligation is to give appropriate instructions to the operator (public, private, CBO, NGO).
 - ⇒ In this context, any obligation given to public authorities with respect to the Right to Water and Sanitation that would be specific to Private Water Operators² would be discriminatory.

We trust that the report of the Independent Expert will take account of the "lamppost syndrome"³, will avoid any discrimination and will build on the reality of the field organisation of the delivery of water/sanitation services. Its conclusions should be applicable to all kinds of operators mandated by public authorities (public, private, CBO, NGO) and not restricted to the case of Private Water Operators only. Any specific requirement related to the Right to Water and Sanitation on a private operator for the sole reason that it is private would have no foundation nor justification and would be discriminatory.

nearly half of urban dwellers in Africa rely on SPSPs for at least a portion of their water supply.' (Source: ref E2 in part1 of AquaFed's submission, page 6)

² See definition on page 2

³ As PSP requires detailed contracts, strict monitoring and detailed regular reporting, knowledge of the work of private water operators mandated by governments is far more extensive than knowledge of any other type of water supply in developing countries. This increased light on PPP contracts, as the increased light under a lamppost, helped to reveal many of the problems of the water sector. However, similar light on the many other types of operators would reveal that these problems are faced by all operators and are not caused by private operation.

3. Introducing AquaFed, Private Water Operators and this report

AquaFed, the International Federation of Private Water Operators, represents private companies that deliver water supply or sanitation services under the direction of public authorities.

Members of the Federation are water services providers of all sizes, operating in around 40 countries, as both locally and internationally owned businesses⁴. The members of our Federation serve a majority of the people who get water from private companies that are mandated and regulated by governments. Our members' business is to be the operators of public services entrusted to them by governments (central government, local government, water authority) through PPP contracts or licenses to supply drinking water and to provide sanitation services to their populations.

In this way they are used by governments as a tool to implement the Right to Water - that includes the Right to access to Drinking Water and the Right to Sanitation - as described in the General Comment 15 to the International Covenant on Economic, Social and Cultural Rights (GC15). Implementing the Right to Water is an integral part of their core business.

As practitioners of this Right they have contributed to, and are continuing to contribute in many ways, to the works of the Office of the UN High Commissioner on Human Rights [OHCHR] and of the UN Human Rights Council [HRC] on the recognition, the definition and the implementation of this Right.

They appreciate that the UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation has been mandated to make a report on their activities with respect to the Human Right to Water and Sanitation.

The necessity for detailed contracts, strict monitoring and detailed regular reporting, means that knowledge of the work of private water operators mandated by governments is far more extensive than knowledge of any other type of water supply in both developing and developed countries. Private Sector Participation in water and sanitation services highlights the challenges that are faced by all water operators, public or private. We would be very proud that this experience with the Private Sector helps the United Nations to promote the Human Right to Water in a way which helps all operators to further the development of access to drinking water and sanitation to the billions of people who need these public services.

As the work of the Independent Expert focuses on our industry we believe that it is important to provide information on our activities, our contributions on the Right to Water and on misconceptions of our work. This is why our submission to the Independent Expert is structured in different parts.

According to the General Comment #15 to the International Covenant on Economic, Social and Cultural Rights, the State parties to this covenant have obligations to respect, protect and fulfil the Right to Water and sanitation [RTWS].

This Part 2 provides information on the many ways responsible public authorities interact with the different water operators, highlighting 3 main situations with respect to the implementation of their duties related to the Human Right to Water and Sanitation. This paper aims to contribute to clarifying this situation in the belief that this will be an important step towards realising the Right to Water and Sanitation on the ground and to improving the lives of many millions of people who do not enjoy adequate access to these services today.

⁴ www.aquafed.org

As the State parties to the International Covenant may not be themselves the organisers of water services delivery in their own country, when identifying in detail who has what obligations it is necessary to distinguish and recognise:

- The duties of the different public bodies in a country with regard to the effective delivery of water and sanitation services in a specific place.
- The different situations of the public authority that is responsible locally for the delivery of those services.

In March 2006, our Federation made a public call⁵ for active implementation of the Right to Water where we identified 3 steps that are necessary for providing universal access to drinking water:

- a) recognition of the Right to Water,
- b) identification of the responsible public authority and its related obligations,
- c) implementation and delivery in the field by an operator.

Our 2007 submission to the High Commissioner on Human Rights⁶ detailed these steps and, in particular the need to clarify the obligations of public authorities and for them to provide adequate instructions to the operators that they choose to implement the Right.

This document goes deeper into the diversity of roles of the different public bodies in delivering water/sanitation services or in respecting, protecting and fulfilling the Right to Water and Sanitation. It differentiates their core roles and obligations from the specific roles they have when they interact with service providers. These core obligations exist whatever the local organisation of water services delivery is.

The obligations of public authorities vis-à-vis the Right to Water and Sanitation when they interact with water service providers do not depend on the ownership of the operator (public, private, CBO, NGO). Where the services are organised by the authorities and delivered by one or several operators, their main obligation is to give appropriate instructions to the operator (public, private, CBO, NGO).

4. Different public bodies have different obligations with regard to water supply and to access to water and sanitation

In the majority of practical cases, the public authority responsible for the organisation of local water delivery is not the central government but a local government (or a local public authority). Formal operators, public or private, receive instructions from this local government.

4.1. Diversity of public bodies contributing to access to water/sanitation services

Different public bodies have responsibilities in the delivery of water and sanitation services and in guaranteeing access to these services. Typically these public bodies are:

- The *central government* which comprises the policy makers and the lawmakers that are responsible for the orientation and organisation of the water sector in the country

⁵ *Private water operators call to turn the right to water into a reality for all people*, 19 March 2006, http://www.aquafed.org/pdf/Operators_Right-to-Water_PR_Pc_2006-03-19.pdf

⁶ *Practitioners' Views on the Right to Water*, AquaFed's submission to the OHCHR study on human rights obligations related to equitable access to safe drinking water and sanitation, April 2007, see Chapter 2 <http://www2.ohchr.org/english/issues/water/contributions/PrivateSector/AquaFedSubmission20070412.pdf>

- The *local public authority (usually a local government)* responsible for the effective delivery of water and/or sanitation services in a territory
- The *different regulators* or public agencies that take part in the regulation of the water sector, either at national level or at local level. There are usually distinct bodies to enforce the law or regulations for health (water quality), environment (water resources) and for economic characteristics of water services delivery. This pattern varies in detail from country to country.
- The *public authorities*, local, regional or national, responsible for social policies and therefore concerned by affordability of access to water.

UN-Habitat has produced interesting documents that recognise this diversity of public bodies and their numerous responsibilities^{7,8}.

4.2. Public bodies that organise the supply and those that ensure the Right to Water may be different

In the context of the Right to Water, it is necessary to recognise that the responsibility for delivering general water services in a territory may be allocated to public bodies that are not the same as the public bodies that intervene in the protection, respect and fulfilment of the Right to Water.

For example, ensuring the individual availability of a minimum quantity of safe water or ensuring the affordability of the price of water - which relates to social solidarity and social policies - may not be the responsibility of the public body responsible for the general delivery of water and sanitation services to all types of freshwater uses⁹.

Another example is the case of public institutions and large public places like hospitals, schools, universities, railway stations, stadiums, shopping malls, etc where the duty to make safe water and sanitation available to the general public lies with the public authorities or private owners specifically responsible for these places and not with the authority responsible for general delivery of water services to all users in the vicinity. The latter is usually responsible for supplying water to the public place but is not responsible for ensuring access to water to all people within the place in question.

These different responsibilities - delivering general water services and ensuring the Right to Water and sanitation - can lie with different governments or public agencies. In other terms, public bodies responsible for supplying water for all uses in a community may not be the same as the public bodies responsible for guaranteeing an individual access that complies with the Right to Water.

⁷ In 2007, the Executive Director of UN-Habitat presented a report entitled *Guiding principles on access to basic services for all* that details the respective roles of national governments, local authorities, non-governmental and civil society organisations, public and private service providers in the delivery of basic services including safe water and sanitation. http://www.unhabitat.org/downloads/docs/4439_18233_K0654583%20GC21-2-Add7.pdf

⁸ In 2009 UN-Habitat approved its *Guidelines on access to basic services for all* in which the roles of public authorities are detailed. http://www.unhabitat.org/downloads/docs/6496_3871_K0951446_CRP8_Rev2.pdf and http://www.unhabitat.org/downloads/docs/6243_488_K0950029_HSP_GC_22_2_ADD6.pdf

⁹ In Chile, pro-poor subsidies are organised neither by the Ministry responsible for urban water supply nor by the water regulator. They are funded by another Ministry and managed by local governments.

In France, pro-poor water subsidies are funded and managed by the Housing Solidarity Funds under the responsibility of regional governments ("Départements") whereas these regional governments have no responsibility for water service delivery; this responsibility lies with municipalities. In France, the authorities responsible for water supply are forbidden to decide pro-poor consumption fees, which makes pro-poor cross-subsidies illegal.

4.3. Roles of main public bodies and interaction with all types of operators

To make progress in identifying public bodies' obligations in relation to the Right to Water it is necessary:

- a) to recognise the different roles of the different public bodies in the delivery of water and sanitation services and/or in guaranteeing access to safe water/sanitation. In particular:
 - the differences between policy-making, policy implementation, administration and organisation
 - the “supply chain” : central government → local government → operator → user
 - the different roles of the different “regulatory bodies” (health, environment, price, etc)
 - the different roles of public bodies responsible for social solidarity and social equity.
- b) to identify the different ways these public bodies interact with the water service providers (the “operators”) or delivery vehicles.
- c) to identify how they can exercise their responsibilities in protecting, respecting and fulfilling the Right to Water when the effective delivery of water/sanitation services to individuals is provided by third parties. This applies to operators mandated by them. It applies also to other providers, often qualified as “informal” even if they operate legally.

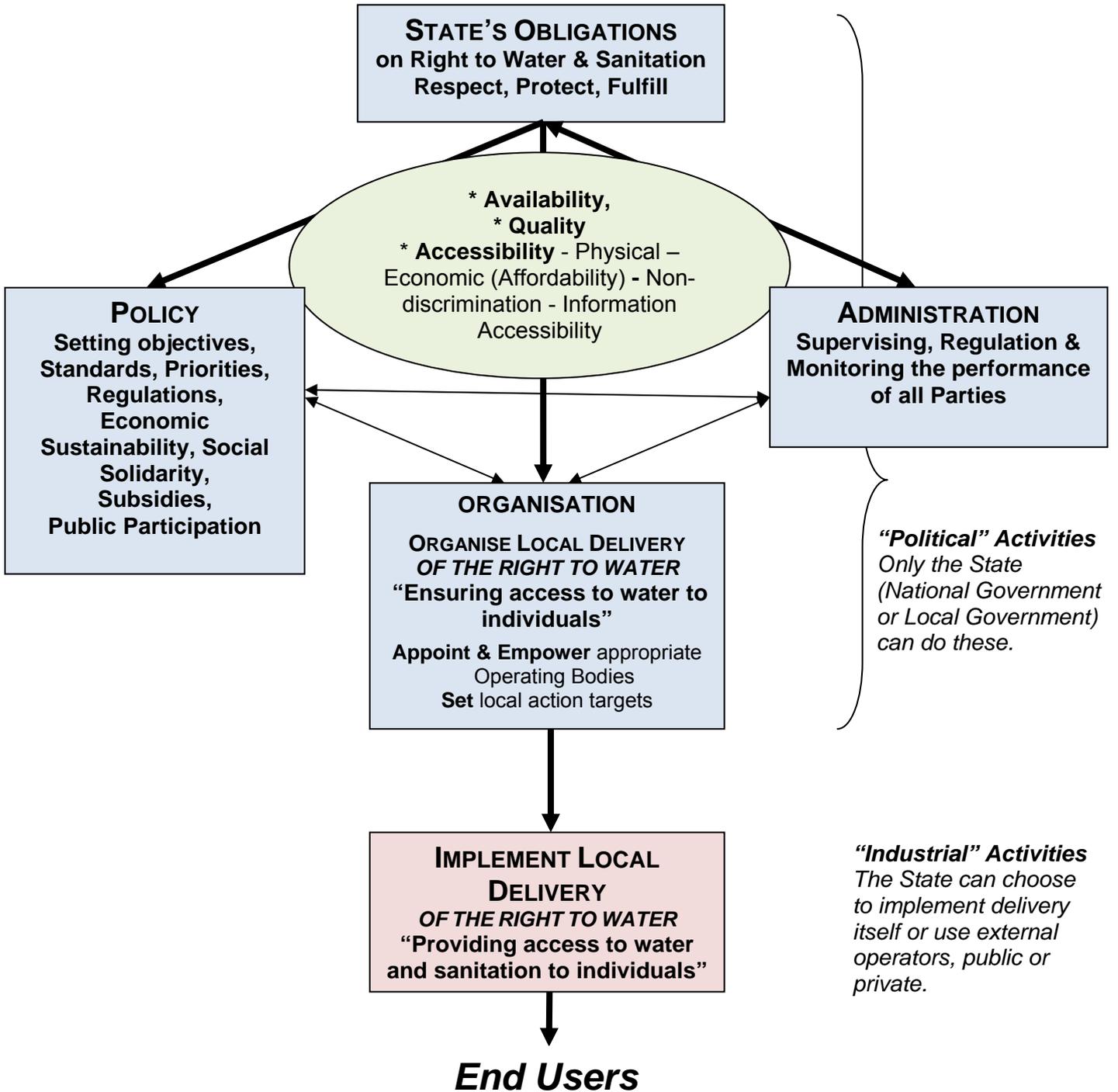
4.4. Different roles of public bodies with respect to the Right to Water and Sanitation

In a discussion about the Human Rights obligations of public bodies with respect to water service providers the diversity of institutional organisations throughout the world must be recognised. There is no single scheme. Any attempt at simplification, must be consistent with the many different types of local organisations. In particular all statements about “States' obligations” must include the roles of all the different types of public bodies that are involved in guaranteeing access to water.

Furthermore, it is useful to distinguish between their **core obligations**, which exist whatever the local organisation of water services delivery is, and their **specific obligations** when they interact with service providers.

Figure 1 below tries to provide a simplified view of the combined roles of these different public bodies with respect to the Right to Water and its effective implementation.

Figure 1. Clarifying the States' Roles and Obligations to the Right to Water and Sanitation



This figure deserves several comments.

The obligations that fall in the “Policy making” category exist whatever the local organisation of water services may be. They are not specific to any type of operator.

The obligations that fall under the “Organise the delivery of the RTWS” category are specific to the interaction with the operators that are chosen and mandated by the public authority responsible for guaranteeing access to safe and affordable water, irrespective of whether these operators are public or private.

“Setting local targets” means instructing each operator with operational targets that fit in the overall policy to develop access to safe and affordable water progressively (progressive implementation).

In many areas where the Right to Water has been recognised in national law, the detailed Right to Water obligations of local public authorities with respect to the end-users have not been made clear for them. In this context, they in their turn cannot define the obligations they give to their water operators clearly.

5. The public authority that is responsible for the local delivery of water services falls in 3 different situations concerning the operators of these services.

Even if several other public bodies contribute to the State’s obligations related to the Right to Water, the public authority that is responsible for the local delivery of water services certainly has some RTWS obligations.

Although some of these obligations, like setting priorities for progressive implementation, cannot be transferred to any other body, these public authorities do not have to supply water themselves. Furthermore, in many countries individuals get water from suppliers other than those that are mandated by the public authority.

For this reason the identification of the RTWS obligations of the public authorities that are responsible for the general delivery of water and sanitation services in a territory with respect to water service providers (the “operators”) is a legitimate question.

There are many types of water operators and the public authority must consider them all. The type of institutional interaction between this public authority and a specific operator depends on the type of operator. From an institutional and legal perspective there are three different types of interaction between the public authority and a water services provider:

- a) either the public authority organises and manages the water delivery up to end-users itself
- b) or the public authority mandates a third party – which can be a public operator, a private operator, an NGO, etc – to deliver water services to the end-users on its behalf
- c) or the service delivery is not organised by the public authority. In this case the operator is often considered as “informal” although this wording is not appropriate for water suppliers that operate legally.

The roles and obligations of the public authority are obviously different in these 3 situations.

Figure 2 below details the range of different operators and delivery modes through which water services are provided in practice to end-users in each of these three categories.

The appendix provides examples of each type of operator.

Figure 2. Three different types of interaction between the public authority responsible for the local delivery of water and sanitation services (“the authority”) and a local water services provider (“the operator”)

Public service	No service by government
<p style="text-align: center;">(DIR)</p> <p style="text-align: center;">Operation by government <i>(Direct management)</i></p> <ol style="list-style-type: none"> 1. The authority and the operator are the same legal entity <ol style="list-style-type: none"> 1a public operator/authority operating itself 1b public operator/authority using a private operator for part of the service 1c public operator/authority using an NGO for part of the service 1d public operator/authority using a CBO for part of the service 	<p style="text-align: center;">(INF)</p> <p style="text-align: center;">Supply not organised by government</p> <ol style="list-style-type: none"> 8. Informal Private operator (small, mid-size) 9. Non-regulated corporate CSR 10. Property developer 11. Company town 12. Non-regulated NGO 13. Non-regulated CBO 14. Neighbour 15. Bottled water, bagwater 16. Own individual means
<p style="text-align: center;">(IND)</p> <p style="text-align: center;">Operation through a third party mandated and regulated by the government <i>(Indirect management)</i></p> <ol style="list-style-type: none"> 2. Public operator legally distinct from the authority <ol style="list-style-type: none"> 2a Public operator operating itself 2b Public operator using a private operator for part of the service 2c Public operator using a private operator for part of the service 2d Public operator using a private operator for part of the service 3. Public-private joint-ventures 4. Private operator acting through PPP contract or license with the authority (all sizes) 5. Regulated corporate CSR 6. Regulated NGO 7. Regulated CBO 	

Figure 2 and appendix show that piped networks or tanker trucks are not limited to any one of the 3 categories. They also show that public or private ownership does not differentiate these 3 categories of operator either, except in situation a) above (direct management), where the delivery is mainly¹⁰ provided by a public entity.

6. Non-discrimination

Figure 2 above shows that the private sector is involved in cases 1b, 2b, 3, 4, 5, 8, 9, 10, 11 and 15. Private Water Operators - i.e. operators mandated by public bodies as defined in the important note on page 2 - are involved in cases 1b, 2b, 3 and 4. These are 4 very different cases with regard to their interaction with public authorities. The role the authority responsible for service delivery in the territory differs from one category to another but is the same within each category with respect to the obligations of the State concerning the Right to Water and Sanitation:

- its role in the “Direct management” category is the same with regard to its own internal department in charge of water/sanitation services delivery if this department operates the full service itself (case 1a) or if it decides to mandate a private operator to deliver part of the service (case 1b).
- its role in the “Indirect management” category should be the same with regard to the different types of operators, public (1a), private (2b, 3, 4 and 5), NGO (6), CBO (7) although in practice the rigour of application of the regulation might differ significantly between these categories of users.

Within each of the above three categories, the role the authority responsible for services delivery in the territory is the same when interacting with operators with respect to the Right to Water and Sanitation, irrespective of the ownership of the operator (public, private, CBO, NGO).

As the other public bodies have the same role with respect to all kinds of water suppliers, this shows that the cases with Private Water Operators are not specific and do not require a specific framework with respect to the obligations of the State on the Right to Water and Sanitation.

⇒ There is no reason to discriminate against Private Water Operators as compared to the other types of operators with respect to the obligations imposed on them by public authorities, either by law or by regulations or by contracts or by licenses, that are related to the Right to Water and Sanitation.

Example

The example of the City of Kisumu in Kenya provides a clear illustration that specific requirements from Private Water Operators would be discriminatory. Indeed, in this city, the three cases 2a, 2b and 2d coexist depending on the areas. This situation with 3 different types of operators interacting with end-users is described by the Water and Sanitation Program of the World Bank in its Field Note dated May 2009¹¹. This is shown in Figure 3 below.

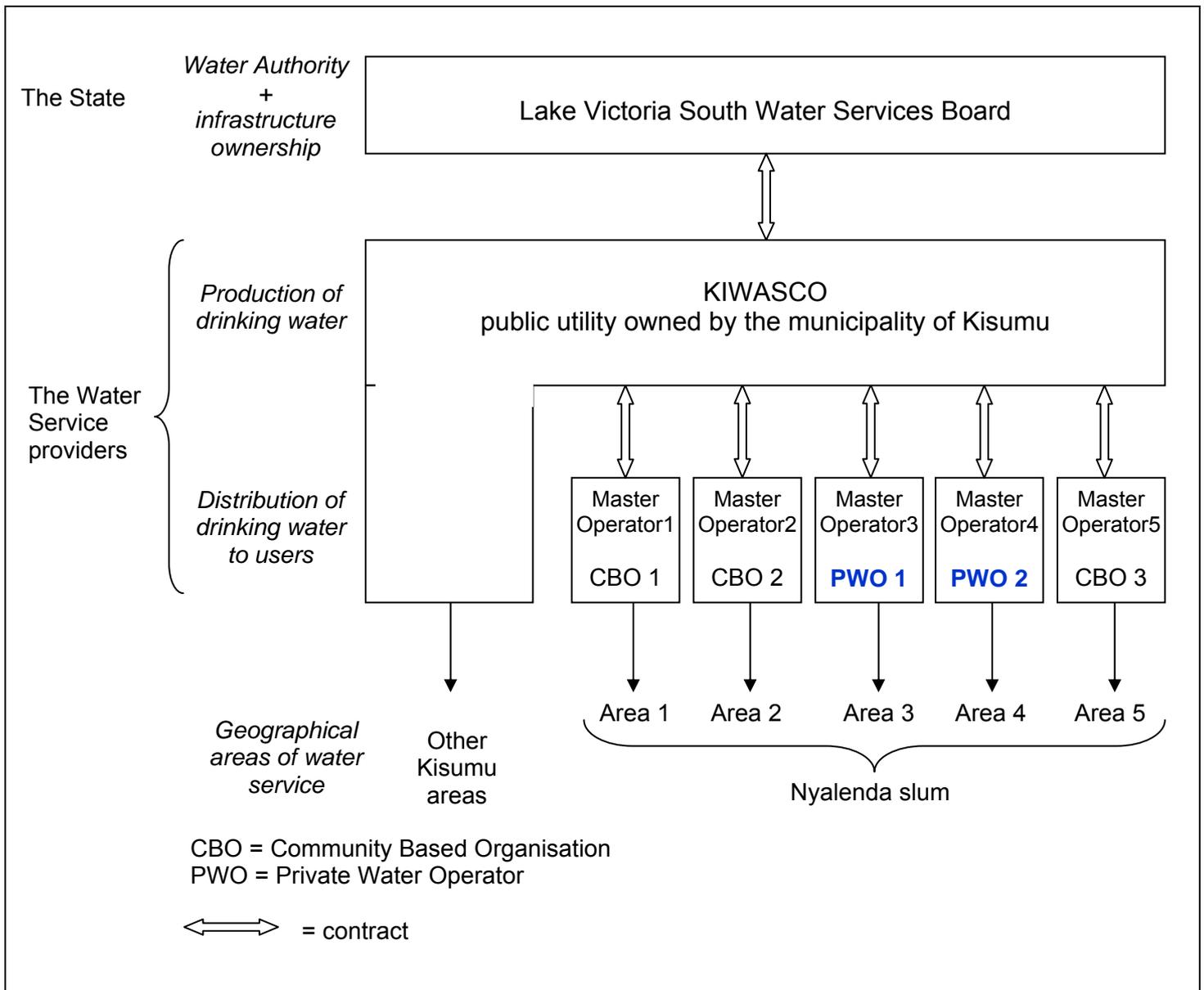
¹⁰ In the case of direct management by the public authority part of the water services may be delivered by a third party as described in case 1b in Appendix 1

¹¹ This field note is referenced in Part 1 of AquaFed’s submission under number E8 and is available on www.wsp.org/UserFiles/file/Af-imp_through_delegated_mgmt.pdf

In the Nyalenda slum where around 50,000 inhabitants live, in 2008 there were five different official water suppliers that operate the supply of water within the slum limits. 3 operators are Community-Based Organisations and 2 are Private Water Operators. Outside the slum, people receive a direct service from the public utility owned by the municipality. In all cases the water is abstracted and purified by the public utility. It is worth noting that the publicly-owned utility (KIWASCO) is not owned by the water authority (Lake Victoria South Water Services Board) and operates through a contract agreement with it. This organisation provides satisfactory results as reported by the WSP¹²: “The MOs [Master Operators = CBOs and PWOs] have been able to run a viable business while at the same time making water more affordable. Poor residents in Nyalenda now pay less for their water, compared to the high and middle-income earners in Kisumu, a path-breaking achievement and in sharp contrast with Nyalenda residents’ previous situation.”

Figure 3. Contractual relationships in Kisumu, Kenya

According to WSP field note – May 2009⁹



¹² WSP means the Water and Sanitation Program operated by the World Bank

The obligations of the three different types of operators that interact with the water-users, i.e. the CBOs, the PWOs and the public utility are obviously the same with regard to the service delivery in their respective service areas. It is clear that discriminating one case against another with respect to the Human Right to Water would not have any legitimacy.

7. Synthesis

To identify appropriate ways to make the Right to Water and Sanitation effective for people, Private Water Operators believe that the respective roles of the different contributors need to be clarified.

The water/sanitation sector is organised differently in the different countries. Everywhere it includes **public authorities** with different institutional responsibilities and **operators** that provide water/sanitation services effectively to end-users.

- ⇒ In each territory, there is normally a public authority responsible for the delivery of general water/sanitation services to the public. Its primary role is to set up local regulations, to determine a policy, to fix targets and priorities and to ensure that these services are delivered effectively to end-users. As instruments of its policy this authority uses one or more operators that it mandates.
- ⇒ Public authorities responsible for delivery of general water/sanitation services to the public may not be responsible for all components of the Right to Water and Sanitation. Specific components of satisfactory access to water/sanitation may be ensured by other public bodies.
- ⇒ Many of these public authorities do not actually supply water by themselves but choose and mandate third parties of many different types to do so. These third parties may be owned by the public sector, by the private sector or by both.
 - No matter what the ownership of the operator is, the interaction between the public authority and the operator should be the same¹³.
 - No matter which organisation is chosen by the public authority, its core obligations to protect, respect and fulfil the Right to Water remain the same and do not disappear when the mission is given to the operator.
 - In developing countries Private Water Operators, the water companies that are mandated by central and local governments, serve only 7% of the urban population¹⁴.

¹³ The 2007 UN-Habitat's *Guiding principles on access to basic services for all* (see above reference 3 above) state in their article 52:

The main responsibility of service providers is to deliver the services required by customers within the framework of their contractual obligations vis-à-vis the local or national authorities, in conformity with sound business practices. State or local government-controlled service providers should be treated as private service providers with the same obligations. These obligations may relate to investments, maintenance, financing, production, delivery and the collection of fees, and also the protection of the environment and an assessment of users' satisfaction. It is for the local authorities to introduce realistic social and environmental clauses and for the enterprise to accept them or not before the contract is signed. In the event of the complete privatization of the production and delivery of a basic service, it is for the enterprise to comply with the goals and obligations set by the highest public authority responsible.

¹⁴ This estimate was made by the World Bank in ref E6, pages 1,12 & 64 (see Part1 of AquaFed's submission): '[by 2007] the market share of water PPP projects in developing and emerging countries stood at only about 7 percent of the total urban population, up from less than 1 percent in 1997 and about 4 percent in 2002.' This assessment does not include the small-scale water service providers who, on the contrary, are very numerous. 'Overall, it is estimated that up to a quarter of the urban population in Latin

- ⇒ In developing countries where many individuals do not benefit from publicly organised water/sanitation services, a public authority, either the one responsible for the public supply, or one given a specific mandate, should ensure that the Right to Water and Sanitation is satisfied for all individuals.

The core roles and obligations of public authorities with respect to the Right to Water and Sanitation must be distinguished from their specific roles when they interact with service providers. They must give appropriate instructions to the operators they mandate. These instructions must be consistent with their obligations to respect and protect the RTWS and must ensure that they contribute to their obligations to fulfil the RTWS. The above discussion shows that they must perform their obligations irrespectively of the ownership of the operators.

There is no reason to discriminate against Private Water Operators as compared to the other types of operators with respect to the obligations imposed on them by public authorities, either by law or by regulations or by contracts or by licenses, that are related to the Right to Water and Sanitation.

Any specific request related to the Right to Water and Sanitation from a private operator for the sole reason that it is private would have no foundation nor justification and would be discriminatory.

Appendix Examples of operators in each different situation

DIR DIRECT MANAGEMENT BY GOVERNMENT

1a Direct management through internal public operator operating itself

Central government

- *Benin*, SONEB, state-owned water supplier in 69 urban centres
- *Burkina-Faso*, ONEA, state-owned water supplier in all urban centres
- *Jordan*, the Water Authority of Jordan supplies most of the country
- *Portugal*, in Lisbon and neighbouring cities water supply and waste water are managed by EPAL a company fully-owned by national public bodies
- *Thailand*,
Metropolitan Water Authority – water supply to Bangkok
Provincial Water Authority – whole country except Bangkok
- *Tunisia*, SONEDE state-owned supplier in the whole country
- *Zanzibar*, the Zanzibar Water Authority owned by the country state

Local government

- *Australia*, water supply in Brisbane up to Jan 2010
- *Canada*, water supply in the City of Montreal
- *Eire*, City of Dublin, City of Cork
- *Indonesia*, PDAM Surabaya
- *India*, Delhi, Delhi Jal Board, a Department of the Government of the National Capital territory of Delhi
- *Netherlands*, all Dutch water utilities like Vitens, Evides, etc
- *New Zealand*, Auckland, Metrowater is fully owned by Auckland City.

1b Direct management through internal public operator using a private operator

- *Mexico*, Mexico City which partly uses 3 private operators in different areas
- *Colombia*, City of Bogota which uses 6 PPP contracts for billing and network management and 1 PPP contract for part of its water production
- *Jordan*, City of Amman where a management contract supported the state utility for 6 years
- *South Africa*, City of Johannesburg which used a private operator through a management contract from 2001 to 2006

IND SERVICES ORGANISED BY GOVERNMENT, DELIVERY THROUGH THIRD PARTIES

2. Public operator legally distinct from responsible government

(this category does not include the “corporatised” operators that are 100% owned by the public authority responsible for water/sanitation services and that operate without performance contract; these fall under category 1a above)

2a Public operator legally distinct from responsible government and operating itself

Central government

- Uganda – The National Water and Services Corporation delivers water and sewerage services in the main cities through a performance contract with the national government
- *Urban Ghana* - Aqua Vitens Rand Ltd, a joint-venture between Vitens, a Dutch public operator, and Rand Water, a South-African public operator, operates a management contract with the State-owned Ghana Water Company Ltd.

Local government

- *Rural Morocco* - ONEP, a public body owned by the Moroccan State operates in the countryside through contracts with the municipalities (which are legally responsible for water supply)
- *UK*, Scottish Water, the public operator that supplies water throughout Scotland is regulated by the Water Industry Commission for Scotland.
- *Australia*, Sydney Water Corporation is a State-owned corporation, wholly owned by the State New South Wales, that supplies water in Sydney as regulated by The Independent Pricing and Regulatory Tribunal (IPART)
- *Spain* – Canal Isabel II, a public regional operator, supplies water in Madrid through a contract with the City of Madrid. This public operator also operates PPP contracts won in competition in Caceres (Extramadura).
- *Tanzania* – In Dar es Salaam, DAWASA, a state-owned public body owns and develops the water infrastructure through a contract with a national ministry.
- *Turkey* – In Istanbul and Ankara water is supplied by ISKI and ASKI, two municipal companies. They operate piped networks. They have also used tanker trucks for many years in some areas.
- *Kenya* – in the City of Kisumu the municipally-owned water utility, KIWASCO, operates through a contract with the regional water authority, the Lake Victoria South Water Services Board (see page 12)

2b,2c,2d Public operator legally distinct from government and contracting out part of the service to a PWO, an NGO or a CBO

- *Kenya* – in Kisumu, the inhabitants of the Nyalenda slum receive water from one of three Community-Based Organisations or one of two PWOs, depending on the area. These PWOs and CBOs receive water in bulk from the local municipally-owned utility and their selling price is regulated. KIWASCO, the local municipally-owned utility operates through a contract with the regional water authority.

3. public-private joint-ventures

3a. public-private joint-ventures controlled by governments

- *Argentina*, Buenos Aires, AYSA, is the water and wastewater operator. Although controlled by public authorities, it is significantly owned by employees under supervision of unions.
- *Brazil*: SABESP, a company controlled by the State of Sao Paulo and partially listed in the New York Stock Exchange, operates through 200 concession contracts with municipalities (which are legally responsible for water supply). Idem for all State-owned Brazilian companies.
- *Colombia*, Barranquilla, AAA, a private company owned by Canal Isabel Secunda, the largest Spanish public operator, operates water supply through a contract with the municipality of Barranquilla. Idem in Santa Marta
- *France* – For 25 years up to 2010, SAGEP, a public-private joint-venture supplied treated water in bulk to the water companies distributing water inside the City of Paris
- *Germany* – many “Stadtwerke”, i.e. multi-utility companies controlled by municipalities, have minority private shareholders.
- *Italy*, The Hera group, born in 2002 out of the merger of 11 publicly owned utilities in Emilia Romagna, is Italy’s second largest water operator by EBITDA and volume supplied. It has been listed on the Milan stock exchange since 2003. The shareholding structure of the Hera Group counts over 190 public shareholders, mainly Municipalities in the Emilia Romagna Region, which hold a total of about 62% of the share capital.

3b. public-private joint-ventures with operation by private sector

- *Chile*
 - Aguas Andinas, a ‘private’ company, (35% owned by the State) supplies water in Santiago as licensed and regulated by national regulator
 - ESVAL, a ‘private’ company, (29% owned by the State) supplies water in Valparaiso as licensed and regulated by national regulator
- *China* – many cities have entered into public-private joint-ventures that operate through a contract with the city. Examples: Pudong (Shanghai), Chongqing.
- *Colombia* – Acuacar, a 50.1% public- 49.9% private joint venture, supplies water in the City of Cartagena through a contract with the City
- *Cuba* - In La Habana, water is supplied by Aguas de la Habana, a public-private joint-venture (51% owned by a State-owned public body and 49% owned by Canaragua, a PWO) that operates through a contract with the Instituto Nacional de Recursos Hidricos (State ministry).
- *Germany* – BerlinWasserBetriebe, a public-private joint venture between the City of Berlin and two private operators supplies water through a contract with the City of Berlin.
- *Mexico* - Water is supplied in the City of Saltillo by Aguas de Saltillo a public-private joint-venture (50.1% owned by the City) that operates through a contract with the City.
- *Spain* - the cities of Murcia and Alicante are supplied through PPP contracts by public-private joint-ventures in which the city owns more than 50% of the shares and the private partner manages the operation.

4. Regulated private operator (all sizes)

4.1. formal PPP contracts / licenses

With Central government

- *Algeria* – Continuity of water supply has just been drastically increased by SEAL, a private company that entered into a management contract with the authorities.
- *Urban Senegal*: Senegalaise des Eaux in charge of operation and management of water infrastructure in most cities through a PPP contract with national bodies
- *Philippines*, Maynilad serves the population of West Manila through a PPP contract with a public body owned by the central government..
- *UK* - In England & Wales water is supplied by private companies such as Thames Water, Severn Trent, Northumbrian Water, etc, that are regulated by several national regulators.

With Local governments or authorities

- *Brazil*, Aguas de Limeira supplies water in Limeira through a PPP contract with the City
- *Ecuador*, In the City of Guayaquil water is supplied through a PPP contract between the City and a private operator.
- *France*, in the Greater Paris 144 municipalities have created a common water authority that supply water services to 4 million people through a PPP contract with a PWO. This contract comes to an end and is being renewed with the same or another private operator.
- *Haiti*, LYSA supplies water in Saint Marc (150,000 inhab.) through a PPP contract.
- *Indonesia*, In Jakarta, Palyja and AETRA, two PWOs, supply water respectively in the Western part and the Eastern part of the City through contracts with the local water authority.
- *Mexico* – In Cancun, Aguakan, a private operator, supplies water through a PPP contract
- *Mozambique* – In Maputo, many private operators of private networks (spaghettis) are now regulated.
- *Morocco* – In Rabat and Casablanca, water is supplied respectively by REDAL and LYDEC, two private operators through PPP contracts with municipalities
- *Portugal*, in the city of Mafra water is supplied by a private operator through a 25-year concession contract with the municipality.
- *South Africa*, Cities of Nelspruit, Dolphin Coast, East London use PWOs through PPP contracts
- *Uganda*, 80 small towns under 15,000 inhabitants are considered as “water authorities” and have contracted out the operation of their water infrastructure to a Private Water Operator with a PPP “management contract”
- *USA* – American Waterworks operates water systems in many areas through PPP contracts with municipalities or licenses regulated by states.

4.2. Regulated operators of water kiosks, standpipes

- *Niger*, Niamey, price of water supplied by standpipes operators is regulated
- *Mozambique* – Maputo
- *Haiti* – City of Saint-Marc, the main operator is a private company. It sells water in bulk to resellers that must respect the price fixed by the Water Authority.
- *Uganda*, Wobulenzi, The 12 standpipes are operated by individuals that are licensed by the main water operator. Their selling price is regulated by the City Council.

- M.Kariuki and J.Schwartz¹⁵ list examples of regulated kiosks in Nairobi, Kenya and Delhi, India
- the so-called BOTT contracts awarded to consortia led by Water Supply and Sanitation Services of South Africa (WSSA) , a former subsidiary of Suez Environnement in South Africa, for the rural areas of two provinces of the country (Eastern Cape and Northern Province) , included the rehabilitation and management of public wells.
- In western Jakarta, Indonesia, the main operator is PAM Lyonnaise Jaya (PALYJA) which operates through a PPP contract. Water kiosks consist of a tank fed by PALYJA's water truck in areas where no distribution network is installed yet. PALYJA invests in the water kiosk infrastructure and a local person from the area, who owns and manages the entity, is in charge of water distribution by pushcart. Compared to the system of "water terminals" used in other parts of the city, the innovation results from the transparency of the system and water price control. Water price and regulated margin for the manager for the service provided (distribution, maintenance, etc.) are clearly visible at the kiosk entrance.

4.3. Regulated tanker trucks / desludging trucks

- *Cuba*, in La Habana , the main water operator, Aguas de La Habana, delivers water through tanker trucks in some areas
- *Indonesia* - East Jakarta, Palyja, a private company, operates piped networks and tanker trucks simultaneously.
- *Philippines*, East Manila, Manila Water, a private company, operates networks + tanker trucks + desludging trucks through a PPP contract
- *Burkina-Faso* – many private desludging trucks take care of wastewater in Ouagadougou, the capital city. They are regulated.
- *Jordan* – Greater Amman, between 1999 and 2006 LEMA, the company operating through a management contract in the Greater Amman area managed a fleet of 26 tankers trucks to supply drinking water in peri-urban settlements.
- M.Kariuki and J.Schwartz¹² list examples in Chennai, India, and Teshie, Ghana

4.4. Regulated supply of bottled water

- Emergency supply further to network disruption (many countries)
- M.Kariuki and J.Schwartz¹² list examples of *bottlers and vendors of tap water (in plastic bags or bottles) in Nairobi, Kenya and Kano, Nigeria.*

5. Regulated corporate CSR

- *Indonesia* - Palyja, a private operator in Jakarta, helped the Banda Aceh public utility after tsunami as instructed by the Indonesian government.
- *Haiti* - after the 2010 earthquake. LYSA, a medium-small company with a PPP contract in the city of Saint Marc, set up and operated an emergency water supply facility in Port-au-Prince. Similar contributions were made by Veolia and Suez on a non for profit basis and under the control of local authorities.
- *The Bill and Melinda Gates* foundation's efforts to develop sanitation in developing countries
- *Borealis and others' contribution to WSUP, the Water and Sanitation for the Urban Poor programme.*

¹⁵ In 'Small-Scale Private Service Providers of Water Supply and Electricity - A Review of Incidence, Structure, Pricing and Operating Characteristics', Mukami Kariuki, Jordan Schwartz, World Bank Policy Research Working Paper 3727, October 2005, referred to as E2 in Part 1 of AquaFed's submission

6. Regulated NGO

- Zambia - WaterAid supports the Government's WASHE (water, sanitation, hygiene and education) policy which calls for water, sanitation and hygiene all to be incorporated in to one project.
- Most projects financed by the EU-ACP Water Facility are with NGOs and local authorities.

7. Regulated CBO

These are Community-Based Organisations that operate under control of a regional public authority.

INF – WATER SERVICE NOT ORGANISED BY GOVERNMENT

8. Informal private operator

7.1. Non-regulated water production

- This is about owners of private wells that sell water to their neighbours.

7.2. Non-regulated operators of standpipes

- Nearly in all cities in developing countries where 24/7 piped supply or public standpipes with regulated tenants could not be organised for the whole population
- In Western Jakarta, Indonesia, the main operator is PAM Lyonnaise Jaya (PALYJA) which operates through a PPP contract. It sells water in bulk in two ways:
 - Hydrants: A hydrant consists of a single connection with meter to PALYJA's distribution network. This system is implemented in remote areas where the distribution network is not installed yet. The hydrant manager is in charge of paying bills to PALYJA and delivers water (mainly by pushcart) to the population of the area. In that particular case, PALYJA has no control of the water price charged by the hydrant owner. Nowadays, 512 hydrants are in service in Western Jakarta.
 - Water terminals: such terminal consists of a tank fed by PALYJA's water trucks. Although water terminal belongs to PALYJA, there is no control on the water price charged by the terminal manager. Therefore these "water terminals" are not regulated contrary to the "Water kiosks" that are used in other parts of the city (see para 4.2 above).

7.3. Non-regulated tankers trucks / desludging trucks

- *Pakistan* - Most parts of Karachi are supplied through private tanker trucks
- *Mexico* - Mexico city. Many parts of the city are supplied through private tanker trucks
- *Argentina* – in the areas of the Greater Buenos Aires where there is no sewerage network sludge is removed by private trucks.

7.4. Non-regulated private networks, (property developers, private condominiums, private estates)

- *Philippines*, In Manila, several private neighbourhoods have their own private networks. Property developers, like Balibago Waterworks System or Prime Water Infrastructure Corporation, install and manage water and sewage networks in newly-built areas.
- *Mozambique*, In Maputo outskirts, many private spaghetti networks cope with the lack of public water supply. The authorities try to regulate them.
- *Argentina* – In Buenos Aires several private condominiums and estates have their own private networks.
- M.Kariuki and J.Schwartz¹² list examples in *Asuncion, Paraguay, Kampala, Uganda; and Cebu City, Philippines.*

7.5. Vendors of water buckets

There are vendors of water buckets in nearly all cities in developing countries where 24/7 piped supply could not be organised for the whole population. In many places their prices rise when there is a power outage that disrupts the supply by the main utility.

9. **Non-regulated Corporate CSR**

This may happen in cases similar to non-regulated NGOs.

10. **Non-regulated company town**

- India, Jamshedpur. The Tata group has been providing water utility services in the industrial city of Jamshedpur since the 19th century. The water service had traditionally been provided as a special department of Tata Steel but was established as a separate water company in 2004¹⁶.

11. **Non-regulated NGO**

Although many NGOs work in co-operation with governments many others organise themselves locally without supervision or authorisations of national water authorities, for example without requesting abstraction permits before digging boreholes.

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¹⁶ Reference E6, page 31