

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

Submission by AquaFed, the International Federation of Private Water Operators, to the Office of the United Nations High Commissioner on Human Rights (OHCHR) in response to the Human Rights Council's Decision 2 / 104 - Human Rights and Access to Water. It is a response to the call for "Stakeholders views for the study on human rights obligations related to equitable access to safe drinking water and sanitation", publicised on the United Nations OHCHR website at: <http://www.ohchr.org/english/issues/water/>. The closing date for submissions is April 15, 2007.

We would be pleased to respond to any questions or clarifications that the OHCHR may have regarding this submission, either in writing or verbally.

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Abbreviations

GC15	General Comment n°15 to the International Covenant on Economic, Social and Cultural Rights
HDR2006	Human Development Report released by the United Nations Development Program in 2006
Gui2006	Guidelines on the realization of the Right to Water prepared by Mr Guissé and adopted in 2006 by the Sub-Commission on the Protection and the Promotion of Human Rights
Gui2004	Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation. Final report of the Special Rapporteur to the Sub-Commission, El Hadji Guissé

Executive Summary

- Through this submission, private water operators intend to make their experience available to the OHCHR and to suggest ways to progress towards the implementation of the Right to Water. They also want to contribute practical considerations in improving the development and the legal definition of the Right to Sanitation.
- Water operators, both public and private have significant practical experience of the implementation of the Right to Water. Their mission as instruments of public water policies is to make the Right to Water a daily reality for people.

Priority to implementation

- Proclaiming the Right to Water is not sufficient to bring one single drop of water to those who most need their right to be recognised and realised. Action is about making the Right to Water effective for all the people who need drinking water and sanitation. The Right to Water has now been widely recognised. The priority is its implementation in the field.
- Private operators are motivated to continue to help governments to implement the Right to Water. Based on their experience, private operators have indicated publicly through their international federation that three steps are necessary for providing universal access to drinking water. These are:
 - o Recognition of the Right to Water,
 - o Identification of the responsible public authority and its related powers and obligations,
 - o Implementation and delivery in the field by an operator.
- Delivering water for all is a very complex challenge. The responsible local authorities and their operators, public or private, have a better chance to succeed if their efforts are consistent with a well-designed national policy. National policies should define which authority is in charge of implementing the Right to Water and ensure that this authority has the necessary means and powers.
- Implementing public authorities Right to Water obligations also requires clear powers and instructions to be given to all operators, public or private.

Advancing the Right to Sanitation

- In many respects the challenge of sanitation is even more difficult than that of drinking water. Additional work is necessary to define and clarify the content and application of the Right to Sanitation. This submission highlights a number of practical questions that need examination.

Mobilising all available energies, public and private

- The needs are so enormous (more than half the population of developing countries have to carry water every day) that providing water services to all requires all available energies, expertise and abilities to be mobilised. Ideologies, dogma and vested interests should not interfere with the implementation of this basic human right.
- Making the Right to Water effective is the duty of governments who should use all available options to deliver water services to their population as quickly as possible. Public and private operators are instruments that governments can use to implement their water policies.

Comments and proposals about the implementation and the content of the Right to Water

- Wide diversity exists at the practical level of delivering the Right to Water to people on the ground. Recognising this diversity is necessary at both the "policy" and "implementation" stages.

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- Beyond the essential volumes of water needed for survival, individuals need water to live. The volume of water they actually need varies from place to place and between lifestyles and cultures.
- Equitable access to water does not necessarily mean access to a fixed quantity of water; it means that individuals have a right to obtain a fair share of the available water resources and services. It also means that they must exercise their use and access in ways that are not detrimental to others.
- Right to Water policies and procedures should include monitoring and remedy procedures that are designed to protect the public good and the public interest against abuse by individuals.
- Determining realistic and sustainable pricing and tariff policies for water and sanitation is a government action that is critical to ensure sustainable realisation of the Right to Water.
- Current professional wisdom suggests that the most effective forms of subsidy are those that support connections rather than those that cover consumption charges. It is important to ensure that the subsidies really do flow into additional connections and are not diverted to reduce the financial deficit of the local water utility. If this happens the people who benefit are those who are already connected and not the unserved.
- The design, implementation and monitoring of cross subsidy policies requires very close and continual attention by public authorities. Cross subsidy policies are much more difficult to enact than is generally perceived.
- The challenge of non-payment and sanctions that may include cutting off the water supply needs to be looked at from a point of view of equity and solidarity. There is a significant difference between those people who don't pay because they can't pay and those people who could pay but won't pay. Pro-poor policies should aim at differentiating between these by helping those who cannot pay and ensuring equity between the other water-users.
- In the field there are multiple conflicts between the Right to Water and land tenure and building ownership rights.

Private operators are implementing agents of the Right to Water

- There is a broad diversity of private operators in the world. These operators are either working under the control and guidance of public authorities through PPP contracts or privatisation schemes, or are in the informal sector. In both cases they make a significant contribution to the implementation of the Right to Water.
- Private operators have connected millions of people to drinking water and sanitation networks.
- In many places, private operators have increased the availability, safety, continuity of supply and economic accessibility of water services.

1 Introduction

"The violation of the human right to clean water and sanitation is destroying human potential on an epic scale" (HDR2006¹ p. 27)

"What we are dealing with here is really a grave and systematic violation of a very basic and fundamental human right, which is the Right to Water". (Kevin Watkins- UNDP – Verbal evidence to the UK House of Commons International Development Committee November 30th., 2006.)

These quotations illustrate the vital importance of converting the established human Right to Water into a daily and tangible reality for those billions of people who suffer deprivation because their right is not realised in practice. AquaFed and its members believe that urgent action at all practical levels is essential to correct this situation. We are pleased to have this opportunity to provide comments to the Office of the United Nations High Commissioner for Human Rights in response to the call for stakeholders' views on Human Rights and Access to Water.

Our organisation represents field practitioners and water service operators. In our comments we have tried to advance practical ideas that have been learned from experience on the ground in a wide variety of different situations throughout the world. We have tried to place the emphasis of our comments on the knowledge of what works well and also draw attention to pitfalls and things that impair progress in the physical realisation of the Right to Water through actual delivery to people.

Water service operators, both private and public, contribute to making the Right to Water a reality every day. Supplying water to people is their "raison d'être". The implementation of the Right to Water is a challenge for which water operators have significant practical experience. Their mission, as instruments of public water policies, is to make the Right to Water a reality for people.

For the most part, both public and private operators face very similar challenges when it comes to converting the concept of the Right to Water into meaningful service delivery in the communities where they are charged by public authorities to do so.

Private operators know that implementing the Right to Water in all countries is a tough challenge that requires time, professionalism and the combined energies and resources of many stakeholders.

Based on their experience, private operators have indicated publicly that three steps are necessary for providing universal access to drinking water. These are:

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

As members of the international community, private operators would like to continue to contribute to making the Right to Water effective for individuals and to making their experience available to public decision-makers.

This is why our Federation is strongly committed to contributing to the reflections of both the OHCHR and the Human Rights Council on the Right to Water by making the experience of its members available to them.

1.1 Private operators support the Right to Water:

The private water industry has publicly supported the Right to Water for many years. Recent actions include:

- active contribution to the deliberations leading to the publication of General Comment 15
- public support with other members of the business community at the United Nations 13th Commission on Sustainable Development, April 2005.
- at the World Water Forum in Mexico City in 2006 they contributed to the debates on the Right to Water
- at this forum they also made a public call for implementing the Right to Water²
- on March 7, 2007 they renewed this support and highlighted the need for increasing the number of drinking water and sanitation projects worldwide to meet the need to deliver Right to Water.³

¹ HDR2006 means the Human Development Report published by UNDP in November 2006 accessible on <http://hdr.undp.org/>

² http://www.aquafed.org/pdf/Operators_Right-to-Water_PR_Pc_2006-03-19.pdf

1.2 Rationale and organisation of this submission

Looking back over the last few years of evolution and development of the human Right to Water one recognises that General Comment 15 is a landmark document. Work has then continued with the various drafts of the "Guissé Recommendations" which are seeking to progress to a more concrete stage by giving guidance to State Parties on converting the right into their own national legislations. What have these two documents achieved and what remains to be done?

- General comment 15 has given recognition, definition and legal status to the Right to Water.
- There is growing convergence between the objectives of the Right to Water and the UN Millennium Objectives within the UN system and international development community.
- The continuing work of the Guissé report begins to provide guidance on more practical aspects of realisation of the right. It recognises many of the practical difficulties and begins to propose some solutions. The challenge is to complete this in a way that enables the development of practically applicable legislation that in turn supports feasible action under real field conditions.
- The legal definition and practical guidelines are much further advanced in the case of water than in the case of sanitation, for which additional work is required.

We understand that the objectives of the current study are to develop and reinforce the concepts outlined to date in the Guissé report. This means clarifying and validating the issues and recommendations and avoiding pitfalls.

Water and sanitation are complex issues in themselves and have very complex interrelationships with other aspects of managing collective and individual concerns within the context of both human rights and sustainable development. It is a difficult challenge to find the right trade-offs between apparently competing solutions. It is also necessary to overcome some common misconceptions and avoid the influence of ill founded dogma that confuse the outcomes.

1.3 AquaFed Objectives

Our objectives and the contribution that we wish to make the OHCHR's study are based on the following:

- to make a meaningful contribution to the definition of the human right from our position as practitioners
- to contribute to overcoming the practical challenges of realising the Right to Water on the ground
- to draw attention to practical considerations that need to be taken into account in defining water policies in a way that enables both policymakers and operators of all kinds to perform their tasks effectively
- to contribute practical considerations in improving the development and legal definition of the Right to Sanitation

Our overall objective is to contribute to better performance and realisation of the Right to Water and Right to Sanitation so as to contribute to the Millennium Objectives and the advancement of the common good and interest as far as water and sanitation services are concerned.

Whilst the structure of this submission does not follow precisely the questions a) – g) in the call for submissions, we have borne those questions in mind and attempted to provide answers to them in the most effective manner that our expertise permits.

³ http://www.aquafed.org/pdf/Gender_AqF_PR_EN_Pc_2007-03-07.pdf

2 Priority should be given to implementing the Right to Water

General Comment 15 to the International Covenant on Economic, Social and Cultural Rights has clarified the content of international legislation regarding the Right to Water. It has been recognised by lawyers as the appropriate international legal basis for the Right to Water in complement to several other international agreements. As a consequence of this, the international community should now give priority to **action** in the various countries where people are waiting for access to water.

“More than 90 countries have the Right to Water in their constitutions. For the most part, this has been a matter of profound irrelevance to their citizens. Constitutional provision has not been backed by a coherent strategy for extending access to water.” (HDR2006 p.63)

This quotation from the most recent UN Human Development Report reminds us that proclaiming the Right to Water is not sufficient to bring one single drop of water to those who most need their right to be recognised and realised. Action is about more than proclaiming the Right to Water; it is about making it effective for all the people who need water.

In March 2006, our Federation made a public call for active implementation of the Right to Water. Committed to make the practical experience of private water operators available to the international community, we identified 3 steps that are necessary for providing universal access to drinking water:

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

In this submission we will explain these 3 components and then describe the need for specific public policies.

2.1 Recognising and acknowledging the content of the right to drinking water.

Thanks to the General Comment 15 to the International Covenant on Economic, Social and Cultural Rights it is now understood by many that this Covenant legally validates the Right to Water. After all the discussions and support by many stakeholders at the Fourth World Water Forum in Mexico City and all the preparatory work, including the reference report that has been released by the World Water Council⁴, several governments confirmed their acknowledgement of the content of the Right to Water.

At the global level, the international community should now move the focus from debate to promoting the action that is required in each country where the Right to Water needs to be made a reality.

In addition to access to drinking water the Right to Water includes a Right to Sanitation⁵. It appears that this part of the right requires additional work at the global level in order for it to be clearly defined and understood. Please refer to chapter 5 below for more details about this.

2.2 Identifying the public authority in charge of the implementation of the Right to Water, its related duties and its means of action.

“If access to clean and affordable water is a human right, who has the duty to deliver water services? And how should the infrastructure that water provision depends on be financed?” (HDR 2006 p.96)

Proclaiming the Right to Water in national law or even in a national constitution does not in itself provide one single litre of water to anybody. Additional legal and institutional arrangements are necessary. The individual right to drinking water is only meaningful if a public authority has the clear obligation to implement it and does so.

⁴ Right to Water **Webpage** by World Water Council: <http://www.worldwatercouncil.org/index.php?id=1748>

Reference report by the World Water Council:
http://www.worldwatercouncil.org/fileadmin/wwc/Programs/Right_to_Water/Pdf_doct/RightToWater_FinalText_Cover.pdf

⁵ General Comment 15, article 37 defines “ensuring access to adequate sanitation” as a core obligation of States.

2.2.1 Identifying the responsible public authority

The World Bank estimates that worldwide more than 60% of investment decisions in the water sector are made by local governments. In consequence, it is not sufficient to declare that the national state is responsible for implementing the Right to Water. To make the Right to Water effective, it is necessary to identify which level of government is directly accountable to the citizen rights holders and has the duty to implement the Right to Water for them.

It is also essential to clarify the relationship between this government body (the responsible public authority) and the delivery authority or organisation that is charged with physical delivery of the water supply. In many cases these are not the same bodies and it is usually preferable that functions of implementation and delivery are separated and executed by different bodies.

2.2.2 Identifying the obligations of the responsible public authority

The individual situations of people needing access to drinking water are numerous and diverse⁶ (see chapter 5 below). As providing freshwater to individuals incurs a cost for the community, individuals cannot have a right to obtain unlimited quantities of water. Equitable access means that no one is entitled to a better service than his neighbour. It is therefore incumbent on the responsible public authority to define the rules and practicalities for accessing to water.

2.2.3 Identifying adequate means to implement the Right to Water

A local government may be assigned the obligation to ensure the Right to Water. If it has inadequate financial means or if there are legal hurdles, this assignment may be ineffective or even impossible. This is why it is important that the country government develops an "access to water" policy that balances objectives with the appropriate financial mechanisms, budget allocations, subsidy mechanisms and institutional frameworks needed to attain them.

In many places in the world this identification of the responsible public authority in charge of the implementation of the Right to Water, its related duties and its means of action has yet to be clarified. We believe it is a prerequisite to any sensible approach to making the Right to Water effective for all people.

2.3 Implementation - making the right a reality to every individual through delivery in the field.

Efficient operators are needed to produce the results that are expected by the responsible public authority and the citizens. Water operators, public or private, are the instruments of public water supply policies. If called on to implement a sound and practical policy that is aimed at increasing access to water and sanitation, they can deliver. It is their job to supply water to people.

However, they can only succeed if the country government and the responsible public authority provide their own contributions. In particular, both public and private water operators need public authorities to:

- provide adequate and sustained political support
- remove administrative and legal obstacles, in particular about land and habitat ownership
- determine targets and the appropriate tariff, revenue and subsidy mechanisms.

⁶ "Droit à l'accès à l'eau potable. Aspects économiques, institutionnels, et pratiques" - Presentation by Gérard Payen at IDEF: Institut International de Droit d'Expression et d'Inspiration Françaises - IDEF Congress, Lausanne, September 29, 2005: <http://www.institut-idef.org/> - Available on http://www.astee.org/communication/cal/fichiers/33_1.pdf or at info@aquafed.org

2.4 “Access to water” policies

Delivering water for all is a very complex issue in many places in the world. The responsible local authorities and their operators, public or private, have a better chance to succeed if their efforts are consistent with a well-designed national policy.

At the Johannesburg World Summit on Sustainable Development in 2002, the delegates decided to require countries to prepare national integrated water resources management and water efficiency plans by 2005⁷. It is clear that to succeed in implementing the Right to Water these plans should have detailed “access to drinking water and sanitation” components.

These detailed “access to drinking water and sanitation” components should include monitoring mechanisms. According to the UN Secretary General’s Advisory Board on Water and Sanitation: “National governments are urged to measure and report on an annual basis the number of people obtaining access to water/sanitation by access category in their countries”.⁸ This means that for operational purposes national policies should identify the various levels of service in a more detailed way than the United Nations can do.

Each country should clearly define the obligations of its various water authorities. If water services are decentralised, i.e. if they are not under the direct responsibility of the country government, the national policy should decide which authority is in charge of implementing the Right to Water and check that this authority has the necessary means and powers.

All this is true in both developed and developing countries even though the immediate challenges may be different.

3 The needs are so great that all available public and private energies must be mobilised

As indicated above, the unsatisfied need for water and sanitation are very great. Meeting these needs requires adequate legislative structures that are designed to enable and support the delivery of the right in a tangible form on the ground by operators of all kinds.

There is an implication in question b)⁹ of the call for submissions that the private sector should be viewed as a special case by States Parties when they convert the Right to Water into the various legal instruments and structures of their own countries. It is of course important that they do this. However, in so doing they need to take account of the realities and avoid being influenced by misconceptions about the nature and role of the private sector. The vast majority of the practical issues are the same irrespective of the nature of the operator. Governments also need to recognise that there are many questions that need to be raised about public, mixed public and private, as well as community operations that provide water and sanitation services.

This official OCHCR study is charged with examining the Right to drinking water and sanitation, a basic human right for which billions of people are still waiting effective delivery. Public or private delivery is not the issue. Both public and private operators contribute to make the Right to Water effective (see chapter 6). The needs are so great that all available energies and abilities must be mobilised and no viable solution should be discarded on dogmatic grounds. It is important to note the increasing recognition among those with practical experience and motivation to meet the challenge of the fact that the “public versus private debate” is unhelpful and not constructive.

3.1 Public or private operation is not the issue

The specific mention of private sector provision in the OHCHR questionnaire leads us to restate that public or private provision of water services is not the issue. This has been recognised publicly in many official documents. To substantiate this, we quote below public institutions since their statements are more convincing than a pro-domo plea.

⁷ Johannesburg Plan of Implementation, para 26
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

⁸ Hashimoto Action Plan United Nations Secretary-General’s Advisory Board on Water and Sanitation:
http://www.unsgab.org/Compendium_of_Actions_en.pdf

⁹ Second question by OHCHR: “National legislation or draft legislation related to equitable access to safe drinking water and sanitation (constitution, specific law, regulation, etc.), including with regard to private sector provision of related services.”

3.1.1 The public-versus private debate is detrimental to the poor.

This debate is not helpful to solve the Right to Water challenge.

"And the public-versus-private debate on water is not helping the poor" (HDR2006 main press release)

"The criterion for assessing policy should not be public or private but performance or non-performance for the poor." (HDR2006 p. 10)

"Too often, the debate over public or private provision of water has diverted attention away from the fact that the poor remain under-served, irrespective of who owns the utility." – (Source: Speech by Kernal DAVIS, UNDP Administrator, November 9th. 2006, Cape Town launch of the UNDP HDR2006¹⁰)

3.1.2 Individuals who are entitled to the Right to Water and governments who have the duty to implement it have no general preference

- Making the Right to Water effective is expected by individuals who are not in the least concerned about the status of the operator; their first need and objective is to be able to have safe water.

From the perspective of poor households, the debate over the relative merits of public and private sector performance has been a distraction from a more fundamental concern: the inadequate performance of both public and private water providers in overcoming the global water deficit. (HDR2006 p.77)

- Making the Right to Water effective is the duty of governments who should use all available options to deliver water services to their population as soon as possible. Public and private operators are instruments that they can use to implement their water policies. Governments should not restrict themselves from using the most appropriate instrument on a case-by-case basis.

"Local authorities must be able to freely choose among various management models." (Declaration by Mayors and Local Elected representatives at the World Water Forum, Mexico, March 21, 2006¹¹)

3.1.3 Many people in need have no other choice than obtaining water from a private provider

For urban dwellers in developing countries, the need for implementing their right to drinking water is where public utilities have not been able to supply water to the whole population. In these places, tens of thousands of private local entrepreneurs are currently filling the gap.¹²

"The debate on water privatization has tended to overlook the fact that the vast majority of the poor are already purchasing their water in private markets". (HDR2006 p.10)

"The debate on privatization has sometimes diverted attention from the pressing issue of public utility reform. Public providers dominate water provision, accounting for more than 90% of the water delivered through networks in developing countries. Many publicly owned utilities are failing the poor, combining inefficiency and unaccountability in management with inequity in financing and pricing". (HDR2006 p.10)

3.1.4 Implementing the Right to Water duties of public authorities requires clear instructions to operators, public or private

As the Right to Water implies obligations of public authorities, some of these obligations and the appropriate means should be clearly transferred to the operator, public or private.

The obligations of private operators are detailed in formal contracts or licence agreements, while many public utilities have no detailed obligation to serve everybody or to expand the public network to include currently unserved populations.

¹⁰ <http://content.undp.org/go/newsroom/november-2006/kemal-speech--hdr-20061109.en?q11n.enc=ISO-8859-1>

¹¹ Local Governments' Declaration at the 4th World Water Forum - http://www.worldwatercouncil.org/fileadmin/www/World_Water_Forum/WWF4/declarations/Local_Authorities_Declaration_english.pdf

¹² Mukami Kariuki & Jordan Schwartz - Small-Scale Private Service Providers of Water Supply and Electricity - WPS3727 – World Bank

“Set clear goals and hold providers to account. Contract arrangements under public-private management agreements should set clear goals for expanding access for poor households living in slums, stipulating the numbers to be reached, investment levels and pricing arrangements. Non-performance should result in financial penalties. The same rules should apply to public providers, with non-performance penalized through incentive systems.” (HDR2006 p.107)

How should the Right to Water be delivered? That question is another source of heated debates about public versus private provision – debates which we argue generate more heat than light. What is important is that all water providers are governed by regulatory systems that set out clear rules of the game. Those rules cannot be based on the simple application of commercial market principles. “Delivering water where the money is” is not an option. All providers should be governed by well defined targets for increasing water and sanitation provision among the poor, for ensuring affordability, overseeing quality. And the rules should operate through institutional structures that empower the poor, enabling people to hold providers and government to account. (Source: Kevin Watkins, November 9, 2006 Speech at the launch of the HDR 2006)¹³

3.1.5 Most international documents count on both public and private operators

The main international policies about access to water and the Right to Water count on both public and private operators to play a role. Some key documents include:

- a) Plan of Implementation of the World Summit on Sustainable Development (Johannesburg 2002)
“25.(g) Facilitate the establishment of public-private partnerships and other forms of partnership that give priority to the needs of the poor, within stable and transparent national regulatory frameworks provided by Governments, while respecting local conditions, involving all concerned stakeholders, and monitoring the performance and improving accountability of public institutions and private companies.”
- b) “Right to Water” General comment 15 to the International Covenant on E.S.C; Rights.
*“50. States parties may find it advantageous to adopt framework legislation to operationalize their Right to Water strategy. Such legislation should include:
(a) targets or goals to be attained and the time-frame for their achievement;
(b) the means by which the purpose could be achieved;
(c) the intended collaboration with civil society, private sector and international organizations;
(d) etc”*
- c) Right to Water guidelines (Gui2006):
*“2.3 States should at all levels of government:
(e) Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation”*

3.2 Vested interests should not interfere with the implementation of a basic human right.

It is of deep concern to observe that some groups that are very vocal about the Right to Water and that request additional international declarations and treaties are interest groups whose priority is to eradicate private water operators even if the result would be a reduction of action in favour of people needing water.

The needs are enormous. More than half the population of developing countries does not have a tap water supply and therefore has to carry water every day. To meet the challenge of providing water services to all men, women and children requires that all the available energies, expertise and abilities are mobilised. Ideologies and vested interests should not interfere with the implementation of a basic human right.

Many arguments that are used by these vocal groups are very far from the reality in the field. For example they make false allegations of service deterioration or rate increases caused by private operation. In practice:

¹³ http://hdr.undp.org/hdr2006/press/kw_launch_speech.doc

- when private operators are requested by public authorities to take charge of the public water service, they are usually able to increase the level and quality of service.
- water rates are always decided by public authorities. If these authorities decide to increase the water rates to finance new investments and simultaneously to hire a private operator to limit the price increase, blaming the private operator for rate increases is targeting an easy scapegoat.

“The financing, delivery and regulation of water and sanitation services pose tough public policy challenges that cannot be resolved simply by claiming that water is a human right or by debating over public and private operators” (HDR2006 p. 66)

3.3 Private operators are motivated to continue to help governments to implement the Right to Water

The job of private water operators is to supply water and sanitation services to populations. They have contributed to expanding and improving access to water and sanitation in many countries, both in developed and developing countries (see chapter 6). They have developed practical experience in overcoming the real difficulties in many different situations in both urban and rural areas. This experience should continue to be used by governments to implement the Right to Water.

“Ultimately, it is the responsibility of national governments to secure the progressive realization of the Right to Water through a legislative and regulatory framework that applies to all service providers, public and private. (HDR2006 p.77)

While private providers have a role to play in water delivery, extending the human Right to Water is an obligation of governments”. (HDR2006 p.8)

4 Advancing the Right to Sanitation

There is no doubt that the Right to Sanitation is included in the Right to Water. This has been clearly recognised in General Comment 15 (articles 29 & 37) as well as in other official documents.

It appears to practitioners that far more thought has been given to the Right to Drinking Water than to the Right to Sanitation, which still lacks clarity. To-day, while most official documents about the Right to Water include sanitation and use the expression “water and sanitation” repeatedly, very few of them provide clear operational guidance to assist public authorities in charge of sanitation services to understand their obligations.

4.1 Imprecise language around Sanitation

There is manifest ambiguity in the understanding that members of the international community have of the meaning of “sanitation” and the various types of sanitation. The language they use about sanitation is unclear and imprecise.

4.1.1 Misunderstandings about “sanitation” and its components

It is far from certain that all state officials share the same understanding of the word “sanitation”.

Mr Guissé mentions these ambiguities in his 2004 report (Gui2004):

§ 55. The terms of the Dublin Statement are not particularly precise and certainly lend themselves to interpretation. There are indeed many shades of meaning applicable to terms such as “drinking water” and “clean water” and between adequate sanitation and safe sanitation.

As water professionals, our understanding is that the accurate definition of “sanitation” is the one used in article 2 of the Water & Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992¹⁴ that says:

“Sanitation” means the collection, transport, treatment and disposal or reuse of human excreta or domestic waste water, whether through collective systems or by installations serving a single household or undertaking.

¹⁴ Convention on the Protection and Use of Transboundary Watercourses and International Lakes – 1992 http://www.unece.org/env/water/text/text_protocol.htm

Following this definition, sanitation encompasses management of both human excreta and domestic waste water through both private and public facilities.

4.1.2 Ambiguities about the various types of “sanitation”

The language about the various qualities of sanitation services is not standardised. This is illustrated by the Guidelines for implementation that are proposed by the Sub-Commission on the Protection and the Promotion of Human Rights (Gui2006). These guidelines use the following 5 expressions: *adequate, basic, safe, acceptable, and appropriate sanitation* without explaining what they each mean or the differences between them. This is not surprising since these various concepts are not clearly defined and differentiated in official international documents.

The wording used in the Johannesburg Plan of Implementation is “*basic sanitation*”, but its meaning and content is unclear to many. It probably includes both safe toilets and waste water removal from the household. However, progress towards its implementation is measured through another concept, that of “*improved sanitation*”. Improved sanitation is well-defined in WHO-UNICEF publications.

The consequence of the Johannesburg Plan of Implementation is that more and more government officials tend to use the word “sanitation” instead of “basic sanitation”. This adds ambiguity to their declarations and leads them to forget components of sanitation that are essential to mankind even if they are not “basic”.

The term “adequate sanitation” is defined in principle but without precise details in the Water & Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. In article 4 this says: “(b) Adequate sanitation of a standard which sufficiently protects human health and the environment. This shall in particular be done through the establishment, improvement and maintenance of collective systems.”

4.2 What is the content of the Right to Sanitation?

Beyond the problems caused by this unclear language, the content of the Right to Sanitation needs to be clarified to avoid misunderstandings and give clear guidance for implementation.

The fundamental reference document is General Comment 15. This provides detailed normative content for the Right to Drinking Water in chapter III but does not provide any content for the Right to Sanitation.

This has been highlighted by Mr Guissé in his 2004 final report to the Sub-Commission on the Protection and the Promotion of Human Rights (Gui2004):

“§ 44 ...The more difficult question remains the scope of the content of this right. Sanitation has both an individual and a collective dimension. The individual aspect would entail affordable access of each person to sanitation services, facilities and installations that are adequate for the promotion and protection of human dignity and the health of individuals. However, it is also important to recognize that the full protection of the health of the individual requires protection of the environment from human waste and this can only be done if everyone has, and utilizes, adequate sanitation.”

The international community is therefore in an ambiguous and unsatisfactory situation. It has recognised the Right to Sanitation. It has clarified many general characteristics of this Right such as availability, equity, affordability, etc... but, in the absence of a defined operational content, responsible governments and authorities have no practical guidance about their obligations.

A government that wants to implement the Right to Sanitation is faced with a number of questions including:

- Should it finance and build public latrines? This might meet the obligation, however shared sanitation facilities are “not improved sanitation facilities” and therefore do not seem to comply with the Johannesburg Plan of Implementation.
- In a case like this, who is supposed to carry out the daily cleaning of the facilities (everybody knows that unclean toilets very quickly fall into disuse)?
- How does it differentiate the public service obligations from the individual obligations?
- Should it subsidise private toilets, i.e. toilets inside the households? If yes, that would mean that most people in developed countries have already been denied their Right to Sanitation!
- Should it forbid private latrines that are not isolated from the ground to prevent contamination of soil and water tables? Should it organise a public sludge removal service?

- Should it subsidise domestic pipes to collect domestic wastewater and convey it out of the household or should it make such investment compulsory to the inhabitants as is usually the case in most developed countries?
- Should it build sewers to collect waste water and drains to collect rainwater in order to protect the health of the inhabitants? Almost certainly, however, this does not seem obvious to everybody.
- Should it remove pollution from domestic waste water and the other waste waters (waste water treatment) in order to protect the environment and water resources and the Right to Water of the people who live downstream? The current guidelines (Gui2006) could be said to justify this since they mention the right to “*safe sanitation that is conducive to the protection of public health and the environment*”.
- What is the basis on which it should recover the costs of providing sanitation and sanitation services?

This list is almost certainly incomplete.

As far as we know, existing international documents do not answer these questions. This illustrates the fact that the members of the international community have spent far more energy on drinking water than on sanitation. It also shows that providing sanitation on the ground is a much more complicated process and politically less attractive than drinking water. The dangers that arise from the lack of sanitation are too often ignored, especially when authorities are providing more people with water that automatically increases the need for proper collection, treatment and disposal.

4.3 Important work remains to be done

Our feeling is that as long as these practical questions remain unanswered, the Right to Sanitation will continue to be a concept without material content. To date the Right to Sanitation has been appended to the Right to Water in a way that is both vague and tends to assume that it is a similar problem to water distribution.

Therefore, we take the opportunity of the present enquiry to alert the international community to the current imbalance between the two components of the Right to Water, i.e. the Right to Water and the Right to Sanitation. Balancing all official documents by systematically using the term “water & sanitation” is unsatisfactory because it does not give coherent meaning to the content of the sanitation component.

Worse, it gives the illusion that both Rights are of similar nature when, in practice, they exhibit several essential differences. For example:

- It is far easier for an individual to damage the Right to Sanitation of others than their Right to Drinking Water. For this reason, the Right to Sanitation should probably contain more individual obligations than the Right to Drinking Water.
- Sanitation and sanitation services are fundamentally different from water supply in that they are a "downstream" problem. That is to say the service flows away from the user.
- Individual privacy and decency are essential in the Right to Sanitation, whereas public authorities can ensure the Right to Water through providing shared public standpipes.
- The notion of a lifeline volume has no meaning for sanitation.
- Ensuring the Right to Drinking Water immediately increases the need for sanitation since the additional water has to be evacuated after use in order avoid degrading sanitary conditions.
- Individuals have a clear perception of the benefit of a drinking water service and accept to pay for it. In contrast they have a less clear understanding of the content and the value of public sanitation services.
- In general the costs of both installing and operating sanitation systems are greater than those for water supply systems.
- Implementing the Right to Sanitation in practice is far more dependant on conditions and density of habitation that implementing the Right to Drinking Water.

For all these reasons we believe that far more thinking is necessary to give clear meaning to the Right to Sanitation and to permit the practical realisation of this right.

4.4 Fundamental questions

The International Year for Sanitation (2008) will be an opportunity to promote the content of sanitation throughout the international community. The components of sanitation as they are defined in the Water and Health Protocol should be better understood by responsible public authorities.

In order to allow progress in the development of the Right to Sanitation a number of questions still need clear answers. These key questions include:

- What is the content of the Right to Sanitation and the content of the related public service?
- How should the Right to Sanitation be distinguished from the Right to Drinking Water?
- What are the public authorities' obligations under the Right to Sanitation?
- What are the individual parties' obligations under the Right to Sanitation?
- How is a satisfactory execution of the Right to Sanitation recognised?
- How is an equitable execution of the Right to Sanitation recognised?

Again this list is almost certainly incomplete and requires further development.

5 Comments and proposals about the content of the Right to Water

In this section we outline a number of practical operational issues. These need to be taken into account when implementing action on the ground. Such action is essential to convert the intellectual construct of the Right to Water into the tangible form of real access to water and sanitation for people.

5.1 Diversity of the challenge

At the practical level of delivering the Right to Water to people on the ground there is a wide degree of diversity. This diversity stems from a range of factors including geography, social conditions, customs and practice, legal questions and so forth. This diversity also varies over time as communities develop and as external influences on them change. Recognising this diversity is necessary at both the "policy" and "implementation" stages of the realisation process.

5.1.1 *Policy formulation and review*

Public authorities need to set up appropriate "access to water" policies that take account of the "specificities" of their location in the realistic and practical way. They should recognise the need to take steps that lead to a progressive realisation of the right. They should also take account of the requirement for these to be reviewed regularly to ensure that the enactment of the policies is achieving the desired result and that they are not suffering from unforeseen consequences that reduce their effectiveness.

5.1.2 *Some "typical" situations*

Implementation policies need to be developed for a range of different realities, which include the following:

- a). In developing countries, all those who do not benefit from a public (or suitable alternative) water supply in **rural** areas (either because such systems do not exist or because they cannot afford the connection charges)
- b). In developing countries, all those who do not benefit from public (or suitable alternative) water supply in **urban** (including peri-urban) areas (either because such systems do not exist or because they cannot afford the connection charges)
- c). In developing countries, all those who benefit from public networks but who have access to a very **limited amount of water** (because they share a public standpipe with many other families, or because they have a tap but the supply in the pipes is irregular),
- d). In developing countries, all those who benefit from public networks but the water they get is **unsafe** for drinking.
- e). In developed countries, those few individuals who have **no access to tap water** (homeless, squatters, isolated dwellings).
- f). In developed countries those individuals who have access to tap water but are **unable to pay** for it.
- g). In all countries, **emergencies and disasters** that require short-term "first aid" water supply for drinking, usually followed by a longer-term post-disaster recovery situation that is required to deliver more water per person until systems can be fully restored.

5.2 Determining the volume of water under the Right to Water.

Beyond the essential volumes of water needed for survival, individuals need water to live. The volume of water they actually need varies from place to place and between lifestyles and cultures.

If, as we believe it is, the Right to Water is more than a right to survive, the minimum volume of water should be enough to assure life with dignity, good health, standard of living and cultural attributes (GC 15 paras 2, 6,11). The role of water in contributing to such a life varies according to the geography, climate, habitat, religious practices etc. of each country. Having access to water is a precondition to having education and employment. The realisation of the Right to Water opens the right to earn a living through work (GC 15 para 6 & Guissé 4.3).

For example the right to have sufficient water to present oneself in a clean condition and with clean clothes is often a precondition for access to the formal job market in most cities.

Another example is the availability of additional small quantities of water that can open the way to economic activity at the "cottage industry" level. For example the ability to prepare small quantities of surplus food and beverages for resale, or the provision of laundry services, are typical "economic entry" activities for women in peri-urban slums.

It is appropriate therefore that each individual State should define the minimum quantity of water to be supplied locally in order to comply with the Right to Water.

5.3 Equity

The Right to Water implies the "private" access and enjoyment of a part of the public or common assets. The concept of equity means that this right should be available in equal measure to all members of the community. It also implies that individuals must exercise their individual rights with equity and responsibility towards other individuals and also the organisations that represent the common or collective interest. This means that the Right to Water provides individuals with a right to obtain a fair share of the available water resources and infrastructure and services that are set up to make water and sanitation available and accessible. But it also means that they must exercise their use and access in ways that are not detrimental to others.

Right to Water policies and procedures should include monitoring and remedy procedures that are designed to protect the public good and the public interest against abuse by individuals.

5.4 Economic realities

The processes and equipment needed to ensure the enjoyment of the Right to Water and Sanitation incur real and unavoidable costs. As the complexity of the situation increases, or the pressures on the available resources grow, these costs tend to increase. It is incumbent on governments to recognise these costs, set in place policies that enable them to be managed and shared in an equitable way throughout the community. Such policies should take account of all elements of costs including capital, operating (including labour), renewal and replacement, and financing costs. They should also take account of the quantum of repayment to be shared between users and taxpayers and also the contributions of past, current and future generations.

Both General Comment 15 and the Guissé recommendations refer to the need for water and sanitation policies to be designed with sustainability as an objective. With a few exceptions, notably the World Water Council's "The Right to Water – from concept to implementation" discussions on the realisation of the Right to Water are virtually silent on the need to take a realistic view of the economic challenges. In particular they make no reference to the crucial issues of tariffs, charging mechanisms and sustainable cost recovery. Evidence suggests that when these issues are faced realistically progress is made, and when they are ignored ground is lost in the realisation of the Right to Water. This is because without sustainable economics and realistic and sustainable cost recovery, water operations cannot be extended to provide and sustain services to new consumers.

5.4.1 *Tariff and pricing*

Determining realistic and sustainable pricing and tariff policies for water and sanitation is a critical government action. Such policies should be set in the first instance with regard to the sustainability of the infrastructure and services cited in the previous paragraphs. In addition, the criterion of sustainability includes the obligation and need for the authority in charge to monitor and review the tariff schemes on a regular basis to ensure that they reflect the constantly changing environment and demands. Additional criteria such as incentives to conserve water or to extend coverage should also be built into such policies.

5.4.2 *Design and allocation of subsidies*

In the interests of extending access and delivering water and sanitation to poor populations that are most in need, the mechanisms of subsidy should be considered carefully. Subsidies are a useful and legitimate political device. However they need to be employed with care as there is always a danger that they will do more harm than good or deliver benefits to the wrong target.¹⁵

¹⁵ A key reference on these questions is "Water, Electricity and the Poor – Who benefits from utility subsidies?" Kristin Komives, Vivien Foster, Jonathan Halpern & Quintin Wodon – World Bank 2005

Current professional wisdom suggests that the most effective forms of subsidy are those that support connections rather than those that cover consumption charges. Connection charges involve high capital costs, often for both the supplier and the consumer. Poor consumers rarely have the necessary savings or capacity to borrow to enable them to pay such charges. In contrast, particularly in urban areas, they can usually afford to pay consumption charges, especially as these normally represent a considerable saving compared to what they actually paid before they were connected. There are many studies available that show that water delivered through a network is many times cheaper than the prices consumers have to pay when they do not have a connection¹⁶. Subsidising connections (Gui2006, para. 6.2) is therefore a potentially beneficial exercise that should be considered seriously. It not only fulfils the Right to Water and the Right to Sanitation, but also unlocks externality benefits in terms of improved health, education and economic activity.

It is however important to ensure that the subsidies really do flow into additional connections and are not diverted to reduce the financial deficit of the local water utility. If this happens the people who benefit are those who are already connected and not the unserved poor.

5.4.3 Cross subsidies

The concept of cross subsidies between users is attractive. (Guissé 6.1: "*States should ensure that they have ... cross-subsidies from high-income users to low-income users*".)

Field practice and current literature indicates that cross subsidy policies are much more difficult to enact than is generally imagined. The real results achieved are often very different from those intended. This means that the design, implementation and monitoring of cross subsidy policies requires very close and continual attention by public authorities.

As indicated above, cross subsidies that support connections may be more effective to the objective of implementing the Right to Water than those that support consumption charges. In many cases cross subsidies designed to support consumption charges of poor populations result in the opposite effect. They deliver benefits to the rich consumers who do not need support and deliver nothing to the poor who receive no water supply in a form that can carry the subsidy benefit to them.

A typical example is where the tariff structure is designed with a surcharge to be paid by rich consumers to balance under-recovery from the low-cost tariffs for poor people. This benefit may be negated by the fact that rich consumers have access to private wells and therefore do not pay the public tariff because they do not consume water from the public system.

In some circumstances this is further aggravated by the fact that some rich consumers only install connections to the public system for the sole purposes of additional personal security. They do not normally draw water from the public system because they utilise their own water source. The consequence is that these connections incur capital and maintenance costs for the water operator but generate no revenue that can pay the cross subsidy. In ways like this, the contributive capacity of the "rich" disappears and becomes a net burden on the system.

The most commonly proposed tariff policy is that of the rising block or incremental block tariff (RBT or IBT) system. This supposedly charges higher use consumers higher rates than the low use consumers. Theoretically this is an inducement to reduce excessive consumption and to provide a means of additional revenue that can be transferred from one set of users to another. In practice the results are often different as pointed out for example in the Human Development Report 2006 (p. 85), which states: "*Block tariffs can create structural disadvantages for the poor. This is because the private operators and intermediaries that supply households without private connections typically purchase water in bulk at the top price tiers*".

HDR 2006 has shown that such rising block tariff or incremental block tariff policies often result in subsidising rich people while they never benefit to the people who are not connected to the public networks and who need their Right to Water to be implemented.

Cross subsidies are very useful to convey solidarity mechanisms and facilitate developments but pro-poor policy should aim at directly targeting poor people as in Chile. The use of low consumption as a proxy for poor consumers is frequently misguided.

¹⁶ For example IIED 2006 - Human Settlements Discussion Paper, Theme: Water-3; Informal Water Vendors and the Urban Poor, by Marianne Kjellen & Gordon Mcgranahan

5.4.4 Non-payment and cut-offs

The challenge of non-payment and the sanctions that may include cutting of the water supply needs to be looked at from a point of view of equity and solidarity.

Two very different aspects of non-payment need to be identified. There is a significant difference between those people who don't pay because they can't pay and those people who could pay but won't pay.

In the case of people in genuine difficulty, who really are too poor to pay their water charges, appropriate "lifeline" support systems are necessary (Gui2006, para 6.4). Providing such support is a normal and equitable element of communal solidarity and pro-poor policies. The individual needs for support should be identified with the appropriate public authority. The solidarity measures can be executed by the authority's operator.

In contrast, permitting consumers who can pay for their water and sanitation services to escape payment is effectively increasing the cost for all other consumers in an unreasonable and inequitable fashion. It is incumbent on the public authorities to make action to militate against this kind of anti-social behaviour.

The proposed guidelines (Gui2006, para 6.4) envisage water cut-offs as a last resort after appropriate precautions have been taken. *"States should ensure, before a person's access to water and sanitation services is reduced owing to non-payment, that account is taken of that person's ability to pay"* Such procedures have already been established and are operated in some countries. Their design and implementation require careful and precise processes to be effective.

Pro-poor policies should aim at making this difference by helping those who cannot pay and ensuring equity between the other water-users.

5.5 Land tenure

There is a difficult and inescapable link in many cases between land tenure and the realisation of the Right to Water. In practical terms a user needs "security of place" to be able to have a physical connection to a water or sanitation network. For both good and bad reasons, the inhabitants of informal settlements, both in rural and more significantly in urban and peri-urban situations, do not have this security. Sometimes these people are occupying the land illegally and sometimes they are simply unable to show they have legal tenure. Public authorities are often unwilling to allow physical connections to services for people in these kinds of situations, being concerned that connections contribute to "legitimising" illegal land occupation. In fast-growing towns in the developing world a significant proportion of the population may find itself in this kind of situation. The problem that this poses for the realisation of the Right to Water is considerable and cannot be treated lightly. In other terms, there are multiple conflicts between the Right to Water and land or building ownership rights.

6 Private operators contribute to implementing the Right to Water

6.1 The diversity of private water operators

AquaFed is the International Federation of Private Water Operators. The Federation represents operators delivering water or sanitation services that range from very small local businesses, through mid-size companies to some of the largest international operators. A high proportion of the companies that are members of AquaFed are operating in the developing world. AquaFed's members operate through contracts or licenses with local authorities. Membership of the Federation is open to companies of all sizes and from all countries. The Federation aims to contribute to solving water challenges by making Private Sector know-how and experience available to the international community. It brings together more than 200 water companies that serve people in 38 countries. The current list of our members is available on our web site (www.aquafed.org), which also provides further information regarding our constituency and activities.

The membership of the Federation reflects the diversity of Private Water operators that operate in the fields across the different continents in developing and in developed countries. This industry covers a wide range of sizes, services, activities and business models.

From the point of view of public policies, there are two main groups of private water operators: the formal and the informal ones. Basically, the "formal" providers deliver water services to the populations under the guidance and the control of a public authority (or a public utility) through agreements, contracts or licenses; -they are suppliers of "public services" - while "informal" operators deliver services on a private initiative. This distinction is progressively disappearing in countries where the public authorities develop public regulation of "informal" providers.

6.1.1 *The formal sector*

Water companies are generally formally registered within the countries where they operate, and fully comply with the local standards and legal framework. They always operate water distribution and sewerage public services under formal guidance of public authorities that decide the main features of the service (levels and conditions of service, water tariffs, development targets, pro-poor provisions, etc.).

Private Sector Participation (PSP) in the implementation of public services can have multiple forms which fall in two main categories:

- agreements, usually named Public-Private Partnership (PPP) contracts, with state governments, local governments or municipalities, water authorities or public utilities.

These arrangements can have many diverse forms ranging from a simple contract providing a partial service in relation with water supply or sewerage (contract to maintain the pumps, to operate water treatment plants, to find and repair leaks, to bill the customers, etc..) to management contracts, BOTs, leases and concession contracts where the whole day to day management of the services and the implementation of the investment plan is entrusted to the operator. In PPP contracts, the ownership of the water infrastructure remains with the public entity even when it is funded by the private company.

- privatisation (full divestiture model, like in Chile, England & Wales) by which the companies own the assets (treatments plants and networks,..) and operate the system through a licence strictly monitored and controlled by a regulatory body which monitors all main aspects of the delivery of water and sewerage services and has price setting powers.

In both categories the strategic issues and choices regarding investment priorities, tariff policies (cost recovery level of the tariff scheme, cross-subsidies, etc..), expected levels of services, operational targets, socially sensitive issues like pro-poor policies, risks sharing between the public authorities and the private partner are determined and decided by the public authorities. In addition, the operators do not own the water resources in any of these models.

The total world-wide "footprint" of this formal private sector through all forms of PSP is not known precisely. It is estimated to be between 5% to maximum of 10% of the world population may receive their water or sanitation services from the formal private sector.

6.1.2 The informal sector

The informal sector encompasses many different forms of services: private water kiosks and stand pipes, private networks created by private initiative, water tanker trucks delivering water to households, street vendors, point source vendors, etc...

Nearly 3 billion people¹⁷ (more than half of the population of developing countries) have no access to a tap either in the household or in the immediate vicinity. Many of them have no other solution to survive than to obtain the water they need from an informal private vendor. The World Bank has estimated that there are more than 10,000 (small-scale) private water operators in 49 countries.¹⁸ Other commentators place the figure very much higher.¹⁹

6.2 Contribution to the implementation of the Right to Drinking Water

All the various situations that are listed in chapter 2 have been experienced by private operators. In each case they have endeavoured to use their professionalism to implement appropriate solutions.

6.2.1 Providing access to water to millions of people in developing countries

Millions of people in developing countries have had their lives changed thanks to combined efforts of public authorities and private operators. The majority of these are poor people.

These achievements clearly increase the “physical accessibility” and the “availability” of water as required by the Right to Water (General Comment 15, para 12).

With the support of public authorities, many private operators have already secured the achievement of the drinking water Millennium Development Goal in the operational areas where they have been entrusted with the operational responsibility²⁰.

Examples.

The following table highlights some of the striking achievements of private water operators working in partnership with public authorities to provide a public water service to people who previously had no access to safe drinking water. The numbers measure “improved access to drinking water”, i.e. actual connections to the public water distribution network of people not previously connected and those provided with access to new public standpipes.

Examples of contributions from Private Water Operators to providing access to drinking water in developing countries			
Country	City / Area	Number of people having gained access to the public water supply	Private operator
Argentina	Buenos Aires	2.1 million	Aguas Argentinas Concession contract from 1993 to 2006
Philippines	Manila : West and East parts of the capital city	3.4 million	Maynilad and Manila Water. 2 concession contracts still active
Gabon	Whole country	200,000 people connected to drinking water services	Société d'Eau et d'Electricité du Gabon
Indonesia	Western & Eastern parts of Jakarta	1.7 million people gained access to water	PALYJA & TPJ
Senegal	The whole country	Over 1.6 million people have been connected to drinking water networks	Sénégalaise des Eaux

¹⁷ WHO-UNICEF Joint Monitoring Program – 2006 assessment

¹⁸ Mukami Kariuki & Jordan Schwartz -Small-Scale Private Service Providers of Water Supply and Electricity - WPS3727 – World Bank

¹⁹ Local Water Companies and The Urban Poor”, Human Settlements Discussions Paper Series, Gordon McGranahan and David Lloyd Owen – 2006 <http://www.iied.org/pubs/pdf/full/10530IIED.pdf>

²⁰ See for example the contribution of the Suez group in http://www.suez-environnement.com/evénements/mexico/mexico_en/suez_environnement_et_le_forum/le_point_sur_les_objectifs_du_millenaire

6.2.2 Improving continuity of water supply

According to General Comment 15, para 12, “The water supply for each person must be sufficient and continuous” where “continuous” means a “sufficient regularity”.

In many cities of developing countries, water from the public distribution network is only actually available on an intermittent basis, sometime, only a couple of hours a day, or a couple of days a week. In the worst cases interruptions of the service may last for weeks or even months. In dry countries this situation may be due to the shortage of water resources. It is often also due to insufficient maintenance of the infrastructure leading to high leakage rates. As the table below indicates private operators have made significant improvements.

Access to and hours of water supply before and after the contract ²¹				
Contract	Households with piped water connections (percent)		Hours of supply per day	
	Before	After	Before	After
Amman	90	100	4	9
Antalya	93	95	19	23
Barranquilla	60	89	19	23
Cartagena	74	95	17	24
Gaza	58	56	—	8
Gdansk	100	100	24	24
Senegal	59	73	16	22
Zambia	100	100	13	18

— Not available. Source: Survey data from service providers.

Reversing the leakage trend requires a considerable commitment, professionalism, good methodological approach and a longer period of time to achieve and deliver results, but often turns out to be the most sustainable and economical (least cost option) over the long term.

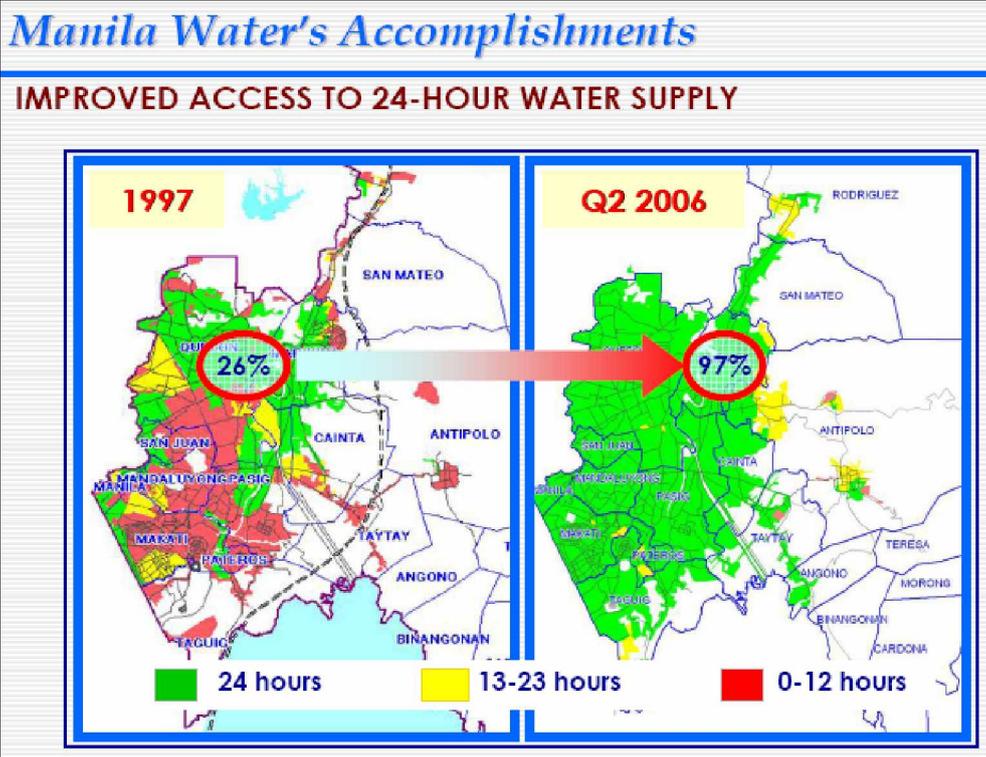
Private water operators (national and international) have a good track record in rehabilitating leaky networks and restoring the serviceability of distribution networks to give good quality and reliable services.

Examples

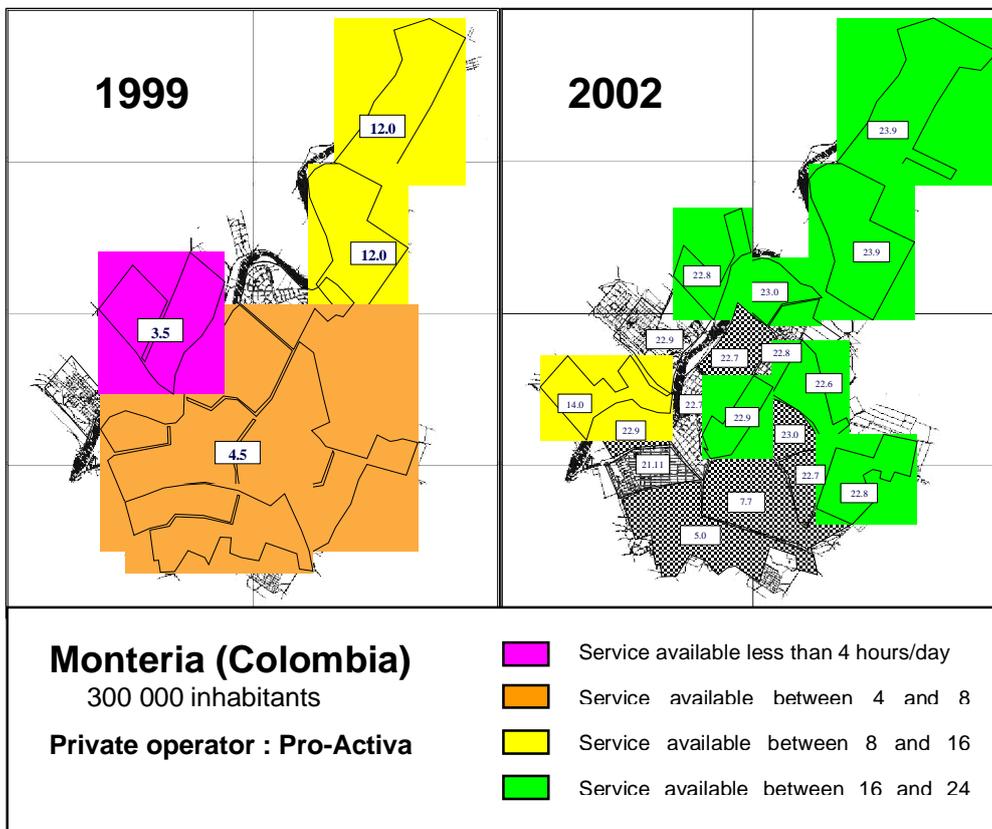
The diagrams on the next page show the improvements in continuity of water supply that have been achieved by Manila Water in the Eastern part of Manila (Philippines) and by Pro-Activa in Monteria (Colombia).

As leaky and depressurised water networks can be a major cause of contamination of supplied water (by infiltration of waste and polluted water), improvement of continuity of service described in the precedent paragraph are other important contributions to increasing the safety of tap water.

²¹ Gridlines February 2007, No.3– PPIAF - Using Management and Lease-affermage Contracts for Water Supply: How Effective are They in Improving Service Delivery? <http://www.ppiaf.org/Gridlines/12-Leaseaffermage.pdf>



Diagrams indicating the areas of West Manila with continuous water supply and showing how those areas with a twenty four hours supply had increased to 97% of the supply area in mid-2006 from a level of only 26% when the private operator took over operations in 1997.



Improvements to service availability in Monteria between 1999 & 2002 (Hours available).

6.2.3 Improving quality of water supplied

According to the “quality” requirement of General Comment 15, para 12, “*The water required for each personal or domestic use must be safe*”.

Private operators are used to increase the quality of the water in order to meet the safety regulations.

Formal operators invariably have quality obligations in their contracts or licences, which are enforced by the public authorities.

Example 1

Water quality compliance in Buenos Aires improved significantly between 1993 and 2002 while the operations were under private management. Compliance for turbidity rose from only 50% to 98% and bacteriological compliance improved from 92% to 100%.²²

Example 2

In Johannesburg, the number of drinking water quality analyses conducted before the management contract with the private sector was only 150 per month. This was increased to 500 by the end of the contract, with a compliance rate of 99% (i.e. significantly better than the country standard (SABS 241) that requires 95% compliance).

6.2.4 Improving economic accessibility of water supply

The previous outcomes have been reached thanks to appropriate tariff and subsidy policies. These are decided by the public authorities then implemented by operators.

6.2.5 Reducing the cost of new connections

In many places, unconnected people can afford to pay for consuming water but are too poor to invest in the cost of a new connection. Several types of connection subsidies that permit a reduction of the price of a connection for people have been successfully implemented by private operators. In many cases, the economic cost of connections has been reduced further through the participation of the local community in the design and the implementation of the network expansion and installing customer connections.

Examples: “social connections” in Moroccan cities (funded by all users), fully subsidised connections throughout Senegal, new connections subsidised by all users in Buenos Aires, etc.

6.2.6 Reducing the cost of water consumption to poor people

Water operators, both public and private, are instruments of public policies. If requested, they can implement pro-poor policies.

Example 1: In Moroccan cities, the formal private operators implement the Increasing Block Tariffs defined by the public authorities. As a result, they charge the cubic meters that are used by the low volume consumers at a price that is inferior to the cost that they must pay to purchase the water in bulk from the state owned water provider.

Example 2: In Chile, poor people benefit from consumption subsidies that are funded by the state and operated by local governments. This allows the maintenance of the investment capacity of the private water operators while reducing the cost of water to poor people.^{23 24}

6.2.7 Supplying water in emergency situations

In many cases private operators send appropriate emergency water-treatment equipment and appropriately trained water experts to locations that are impacted by a disaster.

²² Annual report No. 9 by Aguas Argentinas,

²³ Subsidies in Chilean Public Utilities: Pablo Serra - The World Bank, World Bank Institute, Governance, Regulation, and Finance Division – Policy Research Paper No. 2445 September 2000 http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2000/11/17/000094946_00110305370939/Rendered/PDF/multi_page.pdf

²⁴ **Making water affordable** - Output-based consumption subsidies in Chile - Andrés Gómez-Lobo - <http://rru.worldbank.org/Documents/Other/07ch2.pdf>

6.2.8 Filing the gap where there is no public service

Informal providers - whatever category they belong to - are instrumental in providing basic water services for populations that are out of reach of the local water utility, particularly in peri-urban, rural and remote regions. In countries where the coverage levels by the formal public water utilities are low they are sometimes the only source of water.

Different sources and academic studies have estimated that up to a quarter of the urban population in Latin America and nearly half of urban dwellers in Africa rely on informal providers for at least a portion of their water supply.²⁵

6.3 Contribution to the Right to Sanitation

Private operators have been requested by public authorities to improve the access of their populations to sanitation services:

- by taking charge of a component of the sanitation chain such as sludge removal, waste water treatment, wastewater collection
- by creating new facilities (public toilets):
- by connecting households to wastewater networks

Example 1:

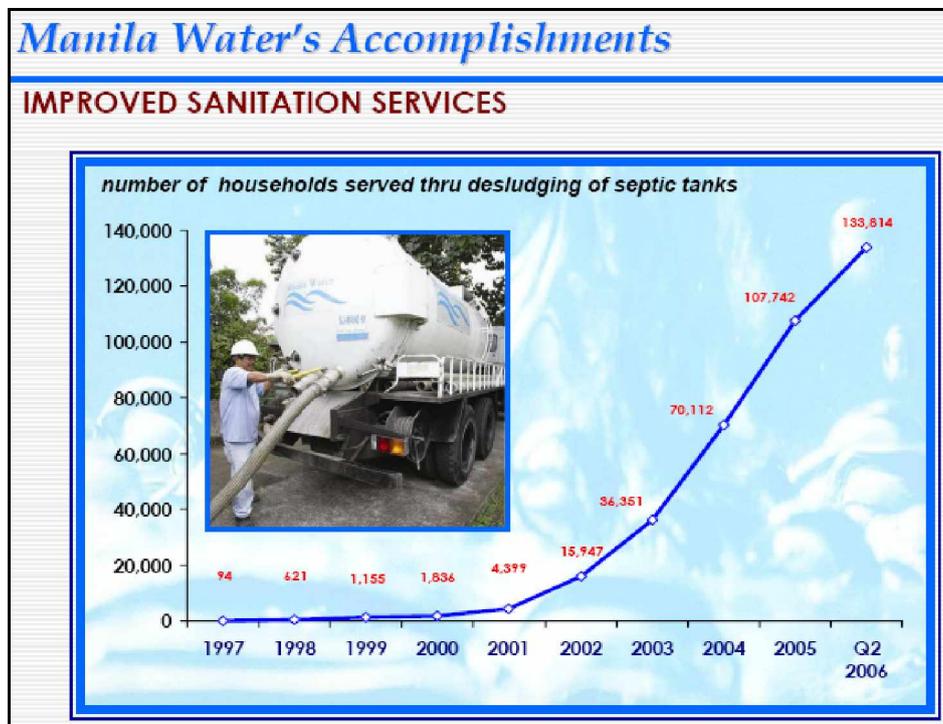
In Buenos Aires, more than 1 million people have been connected to waste water networks by Aguas Argentinas between 1993 and 2004.

Example 2:

Amanz'Abantu in South Africa creates and manages new toilets facilities on a regular basis.

Example 3:

In Manila (Philippines), Manila Water has greatly increased de-sludging of private latrines and septic tanks thereby preventing much potential contamination.



²⁵ Mukami Kariuki & Jordan Schwartz -Small-Scale Private Service Providers of Water Supply and Electricity - WPS3727 – World Bank

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