

WATER JUSTICE Toolkit



PUBLIC WATER FOR ALL

REMUNICIPALIZATION: A PRACTICAL GUIDE FOR COMMUNITIES AND POLICY MAKERS

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Over the past 15 years there has been a significant rise in the number of communities that have taken private water and sanitation services back into public hands – a phenomenon referred to as remunicipalization. This guide is designed to give local activists and decision makers a better understanding of this growing trend, and provide some strategies about how to move forward with local remunicipalization campaigns.



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WHAT IS REMUNICIPALIZATION?

Remunicipalization refers to the return of privatized water supply and sanitation services to public service delivery. More precisely, remunicipalization is the passage of water services from privatization in any of its various forms – including private ownership of assets, outsourcing of services, and public-private partnerships (PPPs) to full public ownership, management and democratic control.

Most cases of remunicipalization around the world have led to the termination of private contracts before they were due to expire. In other cases, local governments have waited until the expiry date to end water privatization.

Between March 2000 and March 2015 researchers documented:

- **235 cases** of water remunicipalization in **37 countries**, affecting **more than 100 million people**.¹
- Locations include Accra² (Ghana); Almaty³ (Kazakhstan); Antalya⁴ (Turkey); Bamako⁵ (Mali), Bogota (Colombia), Budapest⁶ (Hungary), Buenos Aires⁷ (Argentina), Conakry (Guinea), Dar es Salaam⁸ (Tanzania), Jakarta⁹ (Indonesia), Johannesburg (South Africa), Kampala (Uganda), Kuala Lumpur¹⁰ (Malaysia), La Paz¹¹ (Bolivia), Maputo¹² (Mozambique) and Rabat¹³ (Morocco).
- The number of remunicipalizations in high-income countries **doubled** between 2010 and 2015 (104 cases) compared to between 2005 and 2009 (55 cases).¹⁴
- Public water operators are joining forces within countries and across borders to facilitate the remunicipalization process.



WHY ARE CITIES REMUNICIPALIZING?

Remunicipalization is often a collective response to the failures of water privatization and PPPs, including lack of infrastructure investments, tariff hikes and environmental hazards. These failures have persuaded communities and policy makers that the public sector is better placed to provide affordable, accessible, quality services to citizens. The research found that the factors leading to water remunicipalization are similar worldwide, such as:

- Poor performance (Accra,¹⁵ Dar es Salaam,¹⁶ Jakarta¹⁷).
- Under-investment in infrastructure (Berlin,¹⁸ Buenos Aires,¹⁹ Latur²⁰).
- Poor water quality (Rennes,²¹ Cameron²²).
- Disputes over operational costs and price increases (Almaty,²³ Maputo,²⁴ Santa Fe²⁵).
- Soaring water bills (Buenos Aires,²⁶ Jakarta,²⁷ La Paz,²⁸ Kuala Lumpur²⁹).
- Environmental hazards (Hamilton³⁰).
- Monitoring difficulties (Atlanta,³¹ Berlin,³² Paris,³³ Arenys de Munt³⁴).
- Lack of financial transparency (Grenoble,³⁵ Paris,³⁶ Stuttgart³⁷).
- Workforce cuts and poor service levels (Antalya,³⁸ Atlanta³⁹).



PRIVATIZATION AND PPPs DON'T WORK

A public-private partnership (PPP) is a contract between a government and a private company under which the private company finances, builds and operates some element of a service that was traditionally considered a government's domain.⁴⁰ PPPs and water privatization are one and the same thing: both terms refer to the transfer of management control to the private sector, either in part or in whole.⁴¹

Privatization and PPPs are often introduced by (local) governments hoping to reduce public debt, increase service efficiency, and introduce new technologies and new investment for infrastructure. Yet growing evidence shows that privatization through the creation of PPPs does not help communities reach these objectives. On the contrary, many examples show how PPPs turn out to be worse for public budgets in the long term, and lead to poor services and a loss of democratic transparency.

The growing list of remunicipalized utilities from around the world demonstrates that privatization and PPPs are socially and financially unsustainable. The Portuguese Court of Auditors revealed the lack of transparency that is intrinsic in PPP contracts between municipalities and private companies makes it difficult for municipalities to monitor the quality of investments and to assess financial implications.⁴²

Empirical research based on the experiences of communities around the world within a number of different sectors and services shows PPPs offer no significant efficiency improvements over publicly delivered services.⁴³

A recent World Bank study shows that PPPs have dismal results around the world despite its staunch promotion of privatization. In 2014, the Independent Evaluation Group (IEG) of the World Bank admitted that “despite the group’s central goal of fighting poverty, little is recorded on the effects of PPPs on the poor.”⁴⁴ The World Bank funded 353 PPP projects from 2002 to 2012 and out of these, 128 projects were evaluated in the study. Only 10 projects out of 128 showed results of improved service quality, eight showed improvements in efficiency, and only one had improved fiscal results. Improved access to services for the poor could only be confirmed in about 10 per cent of cases. Furthermore, a report by the European Network on Debt and Development sharply concludes that “PPPs are, in most cases, the most expensive method of financing, significantly increasing the cost to the public purse.”⁴⁵

MESSAGES FOR POLICY MAKERS AND LOCAL AUTHORITIES

1. Do not privatize in the first place

Policy makers and public officials who are considering transferring the management of water services to the private sector should consider the risks and learn from the mistakes of other local authorities. Privatization is often more expensive due to the higher cost of private financing. According to the latest United Nations Conference on Trade and Development report, the scale of obligations and liabilities that governments have incurred through the use of PPPs has been surprisingly high.⁴⁶ The same report also says: “PPPs are generally more costly than traditional procurement or provision of services through the public sector if only because governments can borrow more cheaply than the private sector. A review by the United Kingdom’s National Audit office (2015) found that private finance deals

were charged an interest rate that was double that of all government borrowing.⁴⁷ This trend has been consistent over time. In 2010, *Infrastructure UK* estimated that the cost of capital for public funding was 3.9 per cent, compared with costs of up to 6.9 per cent for firms operating in regulated markets (e.g. privatized water or electricity utilities). States can borrow money more cheaply than the private sector because of the superior security of tax revenues. Private investors not only have to pay higher interest, but also face the risk of being unable to secure long term return on investments.⁴⁸

For all of these reasons, water privatization and PPPs are far more costly for local communities and their governments in the long run. Unfortunately, terminating unsatisfactory private contracts before their expiry date is not easy to do as states risk paying the private companies millions of dollars in compensation. It is better to avoid privatization in the first place.

In Argentina, nine of 18 concession contracts in water and sanitation services were terminated between 1997 and 2008. Six cases were brought by investors before the World Bank's International Centre for Settlement of Investment Disputes (ICSID). In April 2015, the ICSID ordered Argentina to pay \$405 million to the French company Suez for damages relating to the termination of a water and wastewater management concession contract in Buenos Aires in 2006.⁴⁹

2. Remunicipalization can fix the broken promises of water privatization and PPPs.

There is much that can be learned from other public authorities and communities about how to remunicipalize and promote quality public water services. Policy makers who are considering terminating contracts with private operators due to unsatisfactory results can learn precious lessons from more than 235 cities that have successfully remunicipalized their water services. Remunicipalization provides a chance to reinvent public water services and make them more effective and accountable to the local community. Public operators, regional

and national public water associations, as well as civic organizations are increasingly prepared to provide concrete support for remunicipalization. See the section on public-public and public-community partnerships in this toolkit to learn about how solidarity, cooperation and partnerships between public authorities can lead to more democratic, inclusive, and sustainable water services.



WHAT HAVE BEEN THE RESULTS OF REMUNICIPALIZATION?

While each case differs, there is strong evidence that remunicipalization brings immediate cost savings, operational effectiveness, increased investment in water systems, and higher levels of transparency. In many instances, remunicipalization has offered a chance to make public water services more accountable and participatory, and to build environmentally sustainable models.

Specifically, remunicipalization provides:

- **Immediate direct savings** for most of the municipalities. Remunicipalization allowed the city of Houston, Texas in the United States to save US \$2 million annually (representing a cost savings of 17 per cent). Paris, France saved €35 million in the first year of remunicipalization.
- **More competitive rates by contracting local water service providers, which contributes to the regional economy.** In comparison, multinational companies tend to use their own subsidiary companies and overcharge for ser-

vices. For example, in Arenys de Munt, Spain, the private concessionaire was charging fees nearly four times higher to expand the municipal network.

- **Increased investments in water systems.** Without the obligation of generating profits for shareholders, the public sector typically reinvests revenues to improve the system as shown in Dar es Salaam⁵⁰ (Tanzania), Berlin⁵¹ (Germany) and Medina Sidonia⁵² (Spain).
- **A long-term vision for infrastructure development.** After remunicipalization, cities were more likely to plan long-term to reduce pollution in rivers and waterways by building and upgrading wastewater plants and expanding sewer networks (in Hamilton, Canada, Santa Fe, Gladewater and Reidsville in the U.S. and in Buenos Aires, Argentina). Investment plans are often coordinated and paid for with regional government contributions.
- **Low income households have better access to water.** Social benefits accrue from restructured tariff systems to guarantee equitable access to water for low-income households. This happened in Arenys de Munt⁵³ (Spain) and Buenos Aires⁵⁴ (Argentina).
- **Greater accountability and transparency.** In Paris⁵⁵ and Grenoble⁵⁶ (France), the new public water operators introduced expanded forms of public participation.
- **Better coordination across sectors and jurisdictions.** Remunicipalization provides the ability to engage in coordination across sectors and jurisdictions, which is often essential on issues such as watershed management and climate change adaptation more generally.

WHAT ARE THE RISKS OF REMUNICIPALIZATION?

For municipalities seeking to reclaim water and sanitation services, there are some risks to consider.

Litigation: If the contract is terminated before it expires private operators can obtain compensation for the full profits granted under the contract. When municipalities claim a breach of contractual obligations private operators often contest this in court. Castres (France) was forced to pay €30 million to Suez to compensate for investments despite the fact that the contract had been illegally signed by former Mayor Jacques Limouzy without proper consultation with the town council.⁵⁷

Investor-state disputes: Investor-state dispute settlement (ISDS) provisions in trade agreements allow multinational companies to sue states over policies, laws or regulations that infringe on their profits, even if they are in the public interest. ISDS provisions are included in numerous bilateral investment treaties and are likely to be extended in the Transatlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TPP), the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and Trade in Services Agreement (TiSA). Water multinationals have already used ISDS provisions to claim significant amounts of public money in compensation for cancelled service management contracts despite failing to meet their own contractual obligations. Private concessionaires sued Tucuman and Buenos Aires (Argentina) to obtain compensation.

Degraded assets. If the remunicipalization process takes place over a long period, private operators often let assets degrade, as was the case in Buenos Aires (Argentina).⁵⁸

Poor access to information. In many cases the private companies refuse to release critical operational information to the new public utility or local government. For example, proprietary software used to manage billing, water meter data collection, and monitoring maintenance works was withheld in Paris (France).⁵⁹

CITIZEN MOBILIZATION

Many of the successful remunicipalizations achieved around the world would not have been possible without the tireless mobilization of committed citizens.

Here are some of the things they did:

Legal challenge: In Jakarta,⁶⁰ citizens studied the problems of privatization – despite for years having limited access to information – in order to challenge the private contracts in court.⁶¹

Referenda: Berliners had to organize a referendum to demand that the secret private water privatization contracts be disclosed.⁶² A referendum calling for a nation-wide end to privatization was also used in Uruguay,⁶³ eventually leading to the remunicipalization of water and sanitation services.

Public pressure on local authorities: Pressure from citizens swayed local authorities' positions on privatization in Hamilton⁶⁴ (Canada), Stuttgart⁶⁵ (Germany), Grenoble,⁶⁶ Rennes,⁶⁷ Montpellier⁶⁸ (France), Arenys de Munt⁶⁹ (Spain), Stockton (U.S.) and Buenos Aires⁷⁰ (Argentina). The role of citizens and social movements illustrates that ultimately more is at stake than just a shift from private to public ownership in remunicipalization.

Protests: In many cases, people have exerted pressure on decision makers and gained public support by taking to the streets. In 2000, the Bolivian government canceled a private contract for water services in Cochabamba with a subsidiary of Bechtel after a wave of demonstrations where tens of thousands of people took to the streets in protest.

Remunicipalization is about building better public services – more transparent, more accountable, more efficient and more focused on people's needs over the long term. If citizens are willing to fight for remunicipalization and against privatization, it is because they believe that the public sector is better equipped to meet broader social and environmental goals. They believe the public sector is in a better position to address fundamental issues such as affordability and equity, climate change adaptation, water conservation and the protection of ecosystems, as opposed to private companies, which are focused on profit.



Water activists march in San Salvador. Photo by Meera Karunanathan

LESSONS LEARNED FROM PUBLIC-PUBLIC PARTNERSHIPS

Partnerships with other local authorities and public operators can generate economies of scale. These public-public partnerships (PuPs) can strengthen operators' capacities to solve problems. National and regional public water operators' associations (e.g. France Eau Publique, German DWA and Aqua Publica Europea) are also sharing knowledge and providing peer-to-peer support to facilitate remunicipalization.

Remunicipalization is an opportunity for trade unions not only to improve working conditions, but also to push for greater worker participation in the governance of new public companies to rebuild public service values. Performance must be measured by indicators that enable the articulation of public service values, and must go beyond current benchmarking systems that are driven by financial performance evaluation and account for the "public" character of services.⁷¹

From Jakarta to Paris, from Germany to the United States, remunicipalization offers opportunities for developing socially desirable, environmentally sustainable and quality water services that will benefit present and future generations.

An example of remunicipalization – Latur, India

India has become one of the main targets of water multinationals. There are 20 known PPPs in 13 cities in India, but they are encountering significant problems and stiff public resistance.

Latur was the first Indian city to return its water service to public hands. In 2008, a 10-year management contract was awarded to the Delhi-based firm SPML. SPML took charge of Latur's water operations, metering and billing, with no substantial contract provision for infrastructure investments and network expansion even though these were identified as key problems with the water services in the city. SPML received a fixed management fee, calculated on the basis of an internal rate of return of 19.6%. Water rates were increased and heavy meter and connection fees were introduced, without any improvements in the service. This led to the widespread non-payment of water bills, protests and even riots. Late in 2011, SPML declared it would suspend its operations in Latur because of its inability to operate the service effectively. The public operator, MJP, took over in January 2012.





A CHECKLIST FOR CITIZENS AND POLICY MAKERS

As you prepare to remunicipalize water, please consider the following:

- ✓ Verify the private contract to see if there is a “termination for convenience” clause. This allows municipalities to exit the arrangement early for any reason as long as the private operator is given sufficient notice, although municipalities may have to pay termination fees.
- ✓ In the event of serious contract violations, you may need to pursue “termination for cause,” which may allow breaking the contract without compensation. However, municipalities may have to submit to legal arbitration.
- ✓ Find out if your country has signed a bilateral investment treaty with the country of origin of the private water operator. If so, extra attention will need to be paid to avoid an ISDS lawsuit before an international arbitration tribunal.
- ✓ Prepare well. It may take at least two years to examine the best way to terminate and to (re) establish the new public company. In the case of Paris, France the process to remunicipalize took close to seven years.
- ✓ Do not waste precious time renegotiating with the private company. The city of Buenos Aires spent six years trying to renegotiate and ended up remunicipalizing as a last resort. Jakarta spent four years in renegotiation without much gain. These years can be better spent on preparing a remunicipalization strategy instead.
- ✓ Information systems are essential in service provision (e.g. billing, data collection) and great care has to be given to their transfer to the public utility. Private companies may not cooperate fully in this transfer of information. Arenys de Munt (Spain) was given incomplete, encrypted and illegible information from the previous private owner.
- ✓ Political will is important for remunicipalization to succeed. Engaged city councils can greatly help by seeking information and support from other councils that have successfully remunicipalized services.
- ✓ Wherever feasible, consult and involve workers and their trade unions from the early stages of remunicipalization. Their knowledge on the day-to-day operations of the water network and service is comprehensive. Social dialogue on how to harmonize wage and conditions for all staff is needed to reach mutual agreement.
- ✓ Social dialogue can be expanded to have a broader discussion on what kind of public water company to (re)build. It is useful to explore how to better reflect the knowledge, commitment and demands of workers and users in the new public model. Public utilities can innovate by involving users and workers in strategic decision making. This process will make the new public company transparent and accountable.
- ✓ Develop indicators to measure the success of the new public model. In addition to measuring financial performance and operational efficiency, consider how to measure the quality of services through the lens of equity and sustainability.
- ✓ Search for public operator partner(s) to enhance local capacity, if needed.

MORE RESOURCES:

Remunicipalisation: Putting Water Back into Public Hands

5-minute video animation (English, Spanish, French, Italian, Portuguese, German, Turkish, Greek): http://www.youtube.com/watch?v=BISM1TPm_k8

Our Public Water Future: The global experience with remunicipalisation

(English, French, Catalan, Italian) April 2015: <https://www.tni.org/en/publication/our-public-water-future>

Global list of remunicipalisations (March 2015)

Available at: https://www.tni.org/files/download/ourpublicwaterfuture-02_global_list.pdf

Here to Stay: Remunicipalisation as a global trend

(English, French, Japanese, Portuguese, Turkish, Chinese and German) November 2014: <https://www.tni.org/en/publication/here-to-stay-water-remunicipalisation-as-a-global-trend>

<http://www.municipalservicesproject.org/publication/remunicipalisation-putting-water-back-public-hands>.

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