

# Regulatory Implications of the Right to Water

## Legal Status of Small and Independent Water Providers



Rosalind Malcolm

Mulugeta Ayalew

Lorna Okotto

Steve Pedley

Jonathan Chenoweth

Yacob Mulugetta

[www.surrey.ac.uk](http://www.surrey.ac.uk)

Background to the study

SIPs in Addis Ababa and Kisumu

Price and Quality of Water

Legal Status

Right to Water and Its Regulatory Implications



# Background: SIPs UNIVERSITY OF SURREY

- SIPs play significant role
- Serve as much as 50 percent of the population
- Often
  - Unrecognised
  - Unregulated
  - critically and negatively described
- Joint research project
  - Leverhulme Trust
  - Three centres in the University of Surrey
    - Environmental Regulatory Research Group (ERRG), School of Law
    - Centre for Environmental Strategy
    - Robens Centre of Public Health

# SIPs in Addis Ababa



- Addis Ababa Water and Sewerage Authority (AAWSA)
- Low level of private connection
- Many rely on
  - Water kiosks
  - Public fountains
  - Neighbour sellers



# SIPs in Kisumu

- Lake Victoria South Water Services Board
- KIWASCO
- Low level of private connection and inadequate water production
- Many rely on
  - Standpipe operators
  - Well operators
  - Mobile water vendors



# Legal Frameworks

	<b>Addis Ababa (Ethiopia)</b>	<b>Kisumu (Kenya)</b>
<b>Owner</b>	<b>AAWSA</b>	<b>LVSWSB</b>
<b>Operator</b>	<b>AAWSA</b>	<b>KIWASCO</b>
<b>Entry</b>	<b>Permit from ministry of water (no exemption); In Addis Ababa, permit from AAWSA</b>	<b>Water service provision contract with relevant water services board Small-scale supply exempted</b>
<b>Price Control</b>	<b>Executive organ of the city government</b>	<b>WSRB (national regulatory agency)</b>
<b>Safety</b>	<b>Quality and Standards Authority; AAWSA</b>	<b>WSRB Kenya Standards Office</b>



# SIPs: Comparative synthesis



	Addis Ababa (Ethiopia)	Kisumu (Kenya)
<b>Business Models</b>	<p>Mainly <i>kebelle fountains</i>, water kiosks and neighbour sellers</p> <p>No independent sources of water</p> <p>Evenly distributed throughout the city</p> <p>Mobile vendors emerging in newly settled areas</p>	<p>Several forms:</p> <ul style="list-style-type: none"> <li>•Water kiosks</li> <li>•Well owners</li> <li>•Small-scale surface water treatment plant</li> <li>•Mobile vendors</li> <li>•Operators in delegated management model</li> </ul> <p>40 percent of the water in the city is produced by SIPs</p>
<b>Legal status</b>	<p>Only <i>kebelle</i> administered recognised and benefit from flat rate</p> <p>Others not recognised and subject to punitive rate</p>	<p>Standpipe operators and operators in delegated management model operate with permission of KIWASCO</p> <p>Others routinely exceed the no-permit threshold but do not have water supply agreement</p>
<b>Price</b>	<p>Kebelle administered are charged a flat rate by AAWSA and they also charge their customers fairly</p> <p>Water kiosks and neighbour sellers do not benefit from flat rate and hence charge the highest</p> <p>No structure for control of price</p>	<p>Standpipe operators and operators in delegated management model expected to follow suggested price</p> <p>No structure for control of price</p>
<b>Quality</b>	<p>No quality control is applicable to SIPs</p>	<p>No quality control system extends to the activities of SIPs</p> <p><a href="http://www.surrey.ac.uk">www.surrey.ac.uk</a></p>

# Price of Water



## Addis Ababa

- Price of water varies
- Between 10.2% and 15.4% of the households income (low-income households)—based on average monthly expenditure for all sources

## Kisumu (% of low-income households)

Source	Wet	Dry
<b>Average</b>	<b>12.2-16.3</b>	<b>21.4-28.5</b>
<b>Well</b>	<b>4.7-6.3</b>	<b>15.8-21.0</b>
<b>Mobile</b>	<b>50-66.7</b>	
<b>treated water</b>	<b>5.9-12.5%</b>	

## Quality (safety) of Water

- Water samples taken from wells and household storage units show high level of thermotolerant coliforms
- Water quality analysis suggests that not much contamination is involved during transportation of water



# Right to water



Express right to water:

- Article 14(2), Convention on Elimination of All Forms of Discrimination Against Women 1979
- Article 21 of the Convention on the Rights of the Child 1989

Rights which impliedly incorporate the right to water

- Right to life
- Right to health
- Right to adequate standard of living

# Right to water: Content

## General Comment 15: right to water (Committee on Economic, Social and Cultural Rights)

- Priority to be given to personal and domestic uses
- Right to maintain access to existing water supplies
- Right to be free from interference such as the right to be free from arbitrary disconnections or contamination of water supplies

## Right to water: Content

- Obligations of states
  - Duty to respect
  - Duty to protect
  - Duty to fulfil
- Duty to protect includes, according to General Comment 15, the duty to regulate the price and quality of water

## Regulatory implications

- Right to water implies the duty to regulate not only conventional water utilities but also SIPs
- States should avoid arbitrary intervention
- Putting unneeded regulatory requirements might be considered arbitrary intervention
- Failure to put such requirements when they are needed might amount to violation of the right to water

## Need to regulate price?

- Two principal reasons for regulation of conventional water utilities
  - Natural monopoly
  - Affordability concerns
- Small-scale water provision is a relatively competitive market with little or no entry barrier
- Serious issue of affordability; however, regulating them will not be a solution

## Need to regulate safety?

- Principal reasons for regulation of conventional water utilities
  - Natural monopoly leading to poor quality
  - Public health concerns
  - Information asymmetry
- All of them are applicable to small-scale water supply

# Regulatory implication of the right to water

- Failure to regulate safety of SIPs' water = violation of the right to water
- Regulation of price is not needed so might amount to violation of the right
- States should explore other ways of making water affordable

# Thank you



UNIVERSITY OF  
SURREY

