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Geneva Office

Report

„Financing the Human Right to Water“

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Focus of the Panel

On the base of the background paper “Financing the Human Right to Water”[1] the participants of the panel focussed on the following main questions:

- How can sufficient and affordable clean water and sanitation – recognized as a social good and an essential public health service – be provided to the community?
- What kind of water and sanitation management is needed at the local, national, regional and international level in order to meet the Millennium Development Goals (MDGs)?
- How does globalization affect the human right to water in general and the access to water for vulnerable groups in specific?
- How is it possible to prevent that the recognition of water as a tradable commodity leads to a situation where water becomes subject to price competition and profit making business?
- How can a sufficient water and sanitation service be offered which is guided by the underlying principle of the human right to water, i. e. the right of every individual to have access to water without any discrimination?

The main purpose of the panel discussion was to disseminate information. Furthermore, the panel discussion served as a platform for an exchange of views to the above mentioned questions for selected representatives and experts. In addition, the side event intended to link the human rights approach to a sustainable water and wastewater management with issues related to financing water investments, privatizing water and sanitation services. By this, on the one hand new developments such as the trade of water services, water in the provision of developmental assistance, foreign direct investment and private sector participation were addressed and on the other challenges to human rights as such were explored.

The human right to water, the MDGs and the lack of resources

A background of the overall topic was given by the moderator of the event, **Nils Rosemann**. Quoting the MDGs, he highlighted the aim to “*reduce by half, by 2015, the proportion of people without sustainable access to safe drinking water.”* This international objective was restated in

[1] http://www.fes-geneva.org/reports/Right to Water/Background paper FES-side event Water 22 MarchFormated.pdf

the Plan of Action of the World Summit on Sustainable Development (2002) where governments agreed "*to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.*" With reference to the *World Water Report "Water for All" (WHO and UNICEF)* Rosemann stated that these normative objectives were far from being attained. One billion people still lack access to a sufficient water supply and some 2.4 billion people lack access to an adequate sanitation. By means of a global map and charts of water supply and sanitation coverage by world region, he pointed out that the problem of not having access to safe water and sanitation is mainly a problem of developing countries. Within these countries, rural and disadvantaged urban areas are the most concerned ones due to a low number of water accesses and bad or no sanitation services.

Having introduced the audience in the overall problem, Rosemann stated that the non-compliance with a basic need required a corresponding human right – such as the human right to water, including sanitation. The duties under the human right to water are explained in General Comment No. 15 of the Committee on Economic, Social and Cultural Rights (ESCR) which states that "*Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for living a life in human dignity.*" The human right to water aims at guaranteeing that all people have the right to non-discriminatory and fair access to safe, sufficient and affordable drinking water in order to satisfy their personal needs (such as the preparation of food, the use of water for sanitary facilities and for domestic consumption). Safe drinking water means that the water quality must not risk peoples' health. Affordable water means that the expenditure for water must not jeopardise the fulfilment of other basic needs that are guaranteed by human rights – such as the right to education and food.

Rosemann pointed out that different actors bear obligations under the human right to water. Both states, international organisations and companies as well as individuals had to respect the human right to water and to support its implementation within their own scope of action. He ascertained that between 1990 and 2000 a total of only 6% of households without water service worldwide got access to a water supply system. In sanitation, the figure amounted to only 4%. Until now only 12 % of multilateral and bilateral development assistance flew into projects in regions where 60% of the people have access to water. But 40% of multilateral and bilateral development assistance was directed into projects where 70% have access to water. This shows that development assistance mainly goes into areas and sectors where infrastructure already exists - instead addressing the very poor and needed. Furthermore, bilateral development aid dropped by 12% since 1996, whereas the share of water and wastewater projects in national development budgets kept stable at 4-5 %. With regard to the latter, investment in water and sewerage services by means of bilateral development assistance should rather increase than decrease.

It is obvious that in order to meet the MDGs, the national and international efforts have to be increased. Given the current trend in the rise of the world population, an additional 100 Mio people/p.a. (app. 280,000 per day) have to be provided with safe water and another 125 Mio people/p.a. (384,000 per day) with access to sanitation services. In their report "*Water for all*" the UN agencies WHO and UNESCO calculated an additional required investment of 12.6 Bn. USD/p.a. in order to meet the MDGs. The *World Panel on Financing Water Infrastructure* (Camdessus-Report) estimated an additional 10 Bn. USD/p.a. for basic water services and an additional 17 Bn. USD/p.a. for urban standards in water access alone. Moreover, an urban standard in sanitation would even require an additional investment of 32 Bn. USD/p.a.

Rosemann outlined that only 5% of all investments in the water and sanitation sector were made by the private sector. Nevertheless, this little share is the most contested one. Rosemann illustrated the impact of private sector investment, especially foreign direct investment (FDI), by presenting the findings of his case study on benefits and failures of the privatisation of water services in Manila. True, the privatisation of public water supply and sanitation service connected almost 1 Mio. people to the water supply out of at least 4 Mio. without water access. But on the other hand the water price increased by 560% in Peso in the five years of private supply. Since the investment was calculated in USD, Rosemann suggested calculating the water price in USD likewise. Calculating on a USD basis, the water price rose to a more modest extent by 310%. He concluded that an inflow of FDI would in any case require a sort of privatisation and since investment as a rule is not made in local currency the customer has to bear the risk of the devaluation of the national currency. This might threaten other human rights and it is in this logic that privatisation might become a threat to the human right to water.

Financing the human right to water is a question of cross subsidizing

After this introduction the first question was addressed to **Henri Smets**, member of the French Water Academy. Being asked whether the definition of the basic need of water as a human right would collide with the assumption of water being a tradable good, he answered by highlighting the fact that the poorest of the poor had mainly only access to expensive water and that they could not afford it. Although he had no doubt that portable water as well as any drinking water was a commodity he questioned whether this would mean that it has to be seen as a tradable good. His main critique focussed on the lacking link between the MDGs and the definition of an adequate and sufficient access to safe water as a human right. In his presentation Smets concentrated on the question of how the MDG can be achieved best. Trying to give an answer to this question by taking Africa as an example, Smets stated that an increased investment of 5-8% was needed although the estimated economic growth rate laid at 1,3%. To illustrate that difference, he referred to the need of investment in Sub-Saharan Africa where he suggested that the poor users themselves could – in addition to the running costs – provide 1% of their low income in order to finance 18% of the needed investment. Other citizens who were already connected to the water system should agree to pay an additional 30% of the cost of the water they consume in order to subsidize water for the poor. Additional grants from abroad would serve to subsidize 35% of the investment for the poor but as a matter of fact he stated that the lacking 17% of investment would not come from private investors, banks and multinational corporations. The latter already refused to invest in water access for the very poor because they need to recover their initial investment with interest and profit.

Smets therefore concluded by asking whether investment for water supply and sanitation in Africa would have to be doubled (from 3 Bn. USD p.a. to 6 Bn. USD p.a.) to meet the MDG and who would pay for such an investment in the end? He suggested that users who are already connected have to provide additional 57% by cross subsidizing (from 2.3 Bn. USD to 3.6 Bn. USD). In addition foreign support has to be increased by 200 % (from 0.6 Bn. USD to 1.8 Bn. USD) and the revenue by newly connected users has to be enlarged by 500 % (from 0.1 Bn. USD to 0.6 Bn. USD). Instead of considering private investors, banks and multinational corporations as a source for investment he suggested to enhance grants from foreign governments, multinational bodies, gifts from charitable bodies, NGOs, municipalities and the money which is sent home by migrant workers in industrialized countries.

Smets finished his statement with the suggestion that customers in Western countries should pay for additional water access in developing countries. Referring again to Africa he calculated that if the lacking investment would be shouldered by the citizens in 15 Western European countries any person would spent 4.8 USD per year only. This contribution was comparable with 3 Cent per cubic meter of water or by saving 4.4 litres of water per day – which was less than one water toilet flush.

FDI has to be attracted by deregulation but needs regulation in order to fulfil the objectives of water as a human right

The role of the International Investment Agreement (IIA) and of Foreign Direct Investment (FDI) was taken up by **Elisabeth Tuerk** who serves as a legal expert at the UNCTAD Division on Investment, Technology and Enterprise Developments. According to her personal view, the private-public partnership (PPP)-model can work well or not for water provision, day-to-day management, extension of pipelines, monitoring of the water quality and the run of the administration. She stressed the fact that beside other means of financing like domestic investment and development assistance FDI clearly could play an important role. This depended on how FDI was able to substitute public investment. Thereby the role that FDI could play depended on the individual country's level of economic development, social needs and particularities, which means there won't be "one-size-fits-all solution". Tuerk suggested that as a precondition for involving FDI this decision should be taken in an open and transparent way with the involvement of affected stakeholders.

On the other hand Tuerk referred to structural difficulties within the very specific water sector such as that water supply was a traditional public monopoly. But increasing FDI in tantamount with private sector involvement could also lead to the other extreme in the long run a private monopoly might be the outcome of a privatisation process. In order to avoid this, she suggested a partial privatisation of public companies and other options which range from full privatization of services to PPPs, concession contracts, build operate transfer contracts, outsourcing, etc. Nevertheless, she pointed out that private sector involvement required careful regulation. Among various reasons such as the natural monopoly of water as a precondition for life as such Tuerk stated that the character of a human right should be incorporated in any International Investment Agreement (IIA). In effect, during the last years countries have more and more concluded IIAs whether they are bilateral, regional or covered by investment aspects in Foreign Trade Agreements. Many of these also cover service and by this FDI, because such services are run by private investors.

But when considering IIAs as a tool to meet the challenge of lack of finances, the outcome might not be the demanded FDI. Following Tuerk, IIAs were, firstly, only one determinant in an investor's decision to make an investment. Others were economic and local determinants such as infrastructure, human resources, market, export market, political stability and also a country's attitude towards FDI. By this, opening up markets and signing IIAs could have an important signaling effect for an investor decision but, in itself, would not always bring about FDI. Second, the overall goal of an IIA was not uniquely to only attract (or to attract more) FDI but rather also to benefit from it and address concerns. *UNCTADs World Investment Report 2003* addressed these concerns by referring to the need of government regulation to benefit from investment. This was particularly important in the light of the human right to water where governments have the obligation to put in place the necessary domestic policy framework and a regulatory framework that ensures that the human right to water is progressively fulfilled. Tuerk thereby noted that the human rights framework did not give specific policy suggestions, but more overall recommendations.

She concluded by stating that the challenge was to use the signalling effect of IIAs in terms of attracting investment, but keep the regulatory freedom to put in place the necessary policy measures at the national level that allows to ensure that a country and, most important, its citizens, benefit from FDI and that related concerns may be addressed.

The public sector has to be strengthened instead of weakened

Mr. **Silvano Silvério da Costa**, President of ASSEMAE – a Brazilian National Association of Municipal Water Supply and Sanitation Services – reiterated the point with Brazilian lessons of public water services. First of all he stated that the provision of an adequate and sufficient access to safe water and sanitation service needed a different basic concept than the one of regarding water as a commodity. ASSEMAE therefore introduced the concept of *Environmental Sanitation* into their water management which includes issues of environment, health and urban development. Since da Costa represents an association of municipality owned water services he questioned privatisation. In Brazil, in the sanitation sector only 44 private concession contracts were in effect - out of a total of 5561 municipalities. Only 3% of the population was served by the private services. But nevertheless, public owned services could sell the water at half the price than the private sector. He therefore criticized the role of the IMF which had requested the Argentinean Government to further privatize the water sector in order to get IMF-loans. Since it were the municipalities being responsible for a sufficient service, the decision making processes and means of accountability should be introduced at this level. Neither a national water policy from a top down approach nor any Transnational Corporation could meet these requirements.

Therefore, da Costa concluded by requesting Public-Public-Partnerships as well as Customer-Service-Partnerships in order to meet further investment requirements. An overall goal had to be the service of 100% of the population with water and sanitation, which he called "Universalisation of Water". The first step in this direction had to be an improvement of services, improvement of quality and reduction of non-revenue water.

International Financial Institutions should not require privatisation as a condition to development assistance

The role of the World Bank was criticized by **David Boys** from Public Services International (PSI). Since PSI is representing more than 20 Mio. workers in 150 countries he took a labour perspective of the issues raised by the aforementioned speakers. His main critique was towards the World Bank which still would make private sector participation as a condition for development assistance. He said that this was in contradiction to the Water Forum in Bonn where agreement had been reached that Private Sector Participation should not be imposed on developing countries as conditionality for funding. The overall picture of privatisation of water services was that there was a lack of competition although competition would be a key ingredient to render privatization beneficial. Boys stated that privatisation transferred the risk of currency devaluation and safety standards from the public to the private sector. Investment by a private company was generally made on the basis of a loan taken by the company and therefore the latter would need to meet not only this financial engagement but also to enter in a profit zone in order to get a return on its investment. Boys criticized that these risks and needs are often passed on from the investor to the customer. This risk transfer was not feasible within the privatisation process, nor was it compensated with additional accountability of investors. Boys then outlined the role of the World Bank in this environment: The World Bank was encouraging NGOs, municipalities and the private sector to become the guarantors for getting back the dividends.

It was good if people became aware of the human right to water as well as their right to define their own water policy. Regarding water as a human right balanced the capacity of water as a commodity which had to serve private profit. He quoted the example of Maharashtra in India in the sector of electrical energy. The government had to buy all the electricity that the private company “ENRON” would generate for the next 25 years and with double the price. With regard to the question of financing the human right to water Boys stressed that although the *Camdessus Report* had a few right points of departure it failed in its conclusions. There was a need to cover the risk of FDI and currency devaluation. But what the *Camdessus Report* was suggesting was just how to bring big money for big business.

According to his view, in the developing countries in fact no regulation could be possible at all because of World Bank policies of deregulation. But regulation, an independent regulatory office as well as monitoring was the key for a safe and sufficient access to water. The human right to water was a global issue with local solutions. PSI therefore calls for local cooperatives as well as for public sector investment instead of public sector guarantees for private investment.

Water as a local, national and international matter of concern needs binding commitments

After the statements from the panel, **Rosmarie Baer** from the Swiss Coalition of Development NGOs opened the discussion with a statement which stresses the need for innovative steps in order to meet the MDG as well as to fulfil the human right to water. She therefore introduced the concept of an *International Water Convention* because water as a local recourse needed the protection of international law. The Swiss Coalition of Development Organisations therefore had started a dialogue about how a legally binding instrument should be elaborated, implemented and applied. Baer took as a point of departure the Rio Earth Summit in 1992, where agreement had been reached that sustainable development should be approached in a global partnership, and should entail binding commitments. This decision was the starting point for the Convention on Climate Change and the Convention to combat desertification.

Yet, water, the basis of all life, still doesn’t benefit from any comprehensive international legal protection, beside the existing General Comment on the Right to water by the Committee on ESCR. This authoritative interpretation of Article 11 ICESCR is a landmark for the right to water and should form the cornerstone of a future water convention. Since some crucial building blocks still were missing for a comprehensive protection of water only an actual convention could merge the three main streams of water, namely social development, environment and human rights into one mighty river. And only a convention could make sure that water remained a public good and did not become a simple commodity, an economic resource managed by multinational water-companies.

Conclusions and main concerns

Among the panellists and the participants the following conclusions and main concerns with regard to financing the human right to water were identified:

- In order to determine the required resources the necessary standard of water supply and sanitation service has to be defined in a bottom-up process instead of a top-down approach.
- Information, participation and empowerment of concerned individuals and groups has to be the key of any decision in order to meet the objectives of the human right to water as well as the MDGs.
- In order to identify financial resources a multidimensional approach is required that takes into account local, national, regional and international as well as private and public resources.
- Attracting private capital the national government has to keep in mind the need of regulation, avoidance of a monopoly as well as the risk of currency devaluation.
- Different funds have to be considered differently. By this, public funding has to serve public interests rather than private guarantees. Private funding has to serve objectives of the underlying investment agreement as well as the recovery of investment.
- In order to meet the objectives of the human right to water, private sector involvement should differ from – among others – concession contracts, build operate transfer contracts, and outsourcing.

Questions for further consideration

The following questions with the need of further discussion were identified:

- How to balance the request for deregulation in order to attract FDI with the need for regulation of private sector participation?
- How to cover the risk of currency devaluation?
- How can the human right to water and the MDGs become solid foundations for bilateral and multilateral development assistance as well as an objective for FDI?
- Does the international community need a legally binding “Water Convention” as a consequence of the ineffectiveness of the merely politically declared MDGs and the result that the normative approach of the human right to water obviously is not sufficient?
- Which possibilities of cross subsidizing the water price are practicable at a local, national and international level?
- How to define Public-Public-Partnerships, Customer-Service-Partnerships and Customer-Non-Customer-Partnerships and how to make them practicable at a local, national, regional and international level?

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