



Dialogue on Globalization

FES GENEVA

Private Sector Participation in Water Services Provision

PHILIPP TURRI

Introductory remarks¹

Well over a third of the world's population today lack sanitation and more than one billion people has no access to safe water. From a normative human rights (HR) approach, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 15 (GC 15), derives a possible right to water from Article 11 of the International Covenant on Economic, Social and Cultural Rights, mentioning the "right to an adequate standard of living 'including adequate food, clothing and housing'." Also, the International Bill of Human Rights which postulates the right to life and human dignity might be cited in this context. As States as the primary duty-bearers have apparently failed in too many cases to promote and facilitate people's access to this ba-

sic human right, the question arises to what extent the private sector (PS) can fill this vacuum.

All around the world countless models of service provision have been established and tested, ranging from partly integrating small independent providers (SIPs) into the national system to corporatizing the national network provider to fully privatizing water and sanitation services. States have experienced success as well as failure in doing so, regardless of their geographic, political, and economic situation or the supply model they chose. Therefore, a central premise to mention here is that from a HR perspective there is no specific model of service provision to be favored and that in any case providing a legal framework or regulation mechanisms remain State responsibilities.

The challenge in this context is weighing the benefits and risks of private sector participation (PSP); a non-exhaustive set of major issues includes the decision-making and contract-negotiating processes; the problems of

¹ Some arguments and ideas depicted in this paper have been inspired by a conference held by the FES on the subject in February 2010 in Geneva. However, they have been taken out of their original context and may not represent their authors' views in the way they are used here.

accountability and enforcement; regulation and standards; service extension to marginalized groups; and the issue of subsidizing water provision. These factors need to be examined in order to create a possible set of preconditions or else “enabling” conditions for States to comply with their obligation to progressively provide their population with a sufficient water supply.

Decision-making and contract-negotiation

The first step towards PSP consists of deciding whether to involve private, and possibly foreign, companies into the domestic water supply system. As this decision is generally considered a serious one, given that a State shares or gives up a vital part of its infrastructure, there are quite a number of factors that need to be taken into account.

As for the decision-making process itself, the inclusion of all stakeholders remains a point of disagreement. There is on the one hand strong advocacy for going as far as to holding a referendum on this issue as the initial stage is crucial in determining the general frame which will be in place for a long period of time; on the other hand a typical PS position is that the government has been elected to deal with these complex issues and should have the mandate to work out the best solutions. At any rate, the supposed right to take part in the decision-making process may not be mistaken to be an end in itself.

Contract-negotiations are closely linked to the issue of transparency which is why PSP supporters argue that hiring a company is an actual step towards improving transparency because State operators often work without any formal mandate. However, particularly small municipalities complain about power differentials in the negotiations with big corporations since in many cases they not only lack expertise and adequate legal support but also bar-

gaining capacity to stand up to big enterprises that gain political influence via their promising investments – the water sector may be reduced to a trade-in for acquiring fresh capital.

The financial constraints experienced by many countries concerned with the question of privatization do not only influence the decision IF a company gets hired but also HOW: It is more than likely that administrations make concessions regarding the applicable HR policy in order not to lose the direly required infrastructural investments that should accompany the privatization. Therefore, another prominent demand is that HR should always have primacy over contractual obligations.

Accountability and transparency

Before evaluating mechanisms to improve accountability, it is vital to illustrate the source of the conflicting interests: allegedly, in a large Asian country more than 50% of the population admit to have bribed a provider employee. Regardless of whether the client or the employee initiated the bribery, the problem is obviously that the wages are too low to give an incentive to abstain from earning “a little extra”.

It is but a commonplace that transparency is the most effective means to fight corruption; a means that is best achieved by establishing a regulatory framework, or rather, to be in line with GC 15 demands, “an effective regulatory system”. Beyond any doubt, regulation is necessary both in public as in private provision models to address the several problems connected with this issue in a holistic way. First and foremost, a tool most stakeholders demand is a sound and clear legal framework pointing out all actors’ rights and obligations and ensuring that all stakeholders can access any information at any time. This framework should include e.g. concrete standards by which to measure, monitor and publicly

benchmark service providers. To fulfill this role, the regulating body must be functionally and financially independent of the political sphere and be sure not to be removed by a new government. Particularly for the first of these criteria, it is absolutely vital that the regulator be a national or, in large countries, at least a regional institution in order not to depend on the goodwill of small groups of stakeholders.

Even if the opinions towards the concrete form of the ideal regulatory body differ, its task is quite clear: It has to ensure transparency and accountability and be empowered to monitor and enforce compliance with contracts and standards. Furthermore, effective regulation even may be regarded as a precondition for PSP in order to monitor also the pre-contract negotiations.

SIPs vs. network

The quest for the ideal model of service provision is as old as the privatization debate itself. On the one hand, SIPs do not enjoy too good a reputation due to their high prices for potentially unsafe water and often cartel-like structures. On the other hand, these prices are often at least partly justified by the SIPs' position at the end of the supply chain and the higher bulk tariffs they are usually charged. Besides, in many undersupplied areas it is the informal sector that guarantees water provision, not the network provider.

Speaking of network supply, from a HR perspective, this seems to be the most practical way to achieve the ultimate goal of ensuring the provision of safe, accessible, and affordable water. Nevertheless, network supply must not be regarded as an end in itself. Neither is it, with respect to some peoples' cultural habits, in all cases practicable, e.g. for nomadic peoples living in desert regions. Therefore, at least for medium-term considerations, the

regulation of SIPs is an often-discussed solution, which may indeed contribute to improving the situation through the implementation of core labor standards as well as some standards for service provision.

In this debate, however, one may not fail to respect the do-no-harm-principle: Today about half of the water provision on the African continent is being accomplished through unregulated services – a prohibition would cut water supplies for millions of people. So, for the time being, SIPs should be accepted as an essential part of the system of water provision and additionally be included into a multi-stakeholder dialogue in order to improve services in the long run.

Service extension

Due to political, contractual, and financial restraints, these issues are not only closely interrelated but are also of importance for the discussion about a possible human right to water. Summing up the numerous debates between stakeholders, the PS is usually being reproached for “cherry-picking”, i.e. preferably serving relatively affluent areas, and ignoring undersupplied areas unless they are subsidized. In contrast to that, a classic PS position is that private companies have, in principle, the same goals as States but are often prevented from complying by contractual, political, and legal duties or vacuums respectively. Pointing out their arguments, full network coverage would actually reduce their costs by minimizing unauthorized water use which does not only involve the loss of water itself but also possible contamination and, of course, damages to the infrastructure.

Nevertheless, network expansion is not the only way of extending services, so other suggestions include technical training and sharing technologies with SIPs to ensure the population's access to safe drinking water. This of

course implies additional costs but particularly in dealing with water, from a social democratic point of view one must weigh solidarity with the disadvantaged against mere profit. Disconnection in case of non-payment remains an issue as well that has not been addressed in GC 15 and needs yet to be clarified. Again, the question is whether to act exclusively in the immediate interest of the company or to respect the singular importance of water, especially since in poor areas often several households share one connection. Some countries have already taken this issue into account and legally prohibited disconnection in case of non-payment.

Another obstacle to service expansion becomes evident by regarding the example of Jakarta where large areas remain undersupplied even though a public provider is in charge. Whereas normally the majority of HR supporters favor this model due to the State's obligation to promote and facilitate the realization of HR, there the provider is covered by commercial law; since network expansion to slum areas is not profitable, though, the shareholders could even sue the water provider for complying with a supposed right to water.

Basic need vs. commodity

Closely related to the expansion debate is the ongoing struggle for subsidies. For example, critics depict cases when corporations allegedly maneuvered themselves into positions from which they could put immense pressure on the State administration to grant them financial support in order not to endanger the national water supply.

However, more important in the HR context is the issue of cross-subsidies, namely financing poor regions' water supply via charging higher tariffs for big water consumers or high-income

customers. In other words, this means to differentiate between water as a basic need and water as a commodity. According to leading scientists, the quantity of available water is usually not the actual problem but its quality. Therefore, a certain daily amount of free water should be assigned to every human being as his or her basic provision depending on the geographical, cultural and economic situation. This could easily be cross-subsidized by charging corresponding bulk tariffs e.g. for private swimming pools or industrial use of water.

The key to a possibly large coverage lies in a viable social policy. A working model exists e.g. in Portugal where cross-subsidies are assigned nationally according to a region-based economical index for affordability. One task of social policy, though, is to assess which part of the population must be regarded as "poor" or "needy", especially in a poor country in order not to lose track of the core problems.

A different approach to cost-calculation could be another way of addressing the problem of service extension: Some people would be very well able to pay their annual water bill but cannot afford the connection fee, in which case the provider should not charge them the installation but calculate the overall water tariff correspondingly to amortize investments through the water bill – thus, the consumers could practically subsidize themselves.

Political impact

The debate about a possible right to water is not merely a political issue but has to be put into a larger context. To name but a few, environmental policy, the industrial and agricultural use of water, and public health are closely interrelated with it and influence the debate. Therefore, it is necessary to establish different ethical levels to distinguish between water rights in the sense of customers' rights

and the HR to water in order to avoid the danger of mixing up the rights of human beings, citizens, and consumers.

The political sphere will have to deal with the question of priorities and, of course, States' obligations. As stated above, States are not required to provide water or even full network supply themselves but merely to promote and facilitate access to HR. But, as has also been pointed out, the issue of water is closely related to already existing HR such as an adequate standard of living and, of course, the right to life itself. Therefore, providing basic water supply and sanitation, e.g. via standpipes and public toilets, has to be regarded as a State' primary duty towards everybody living in its territory. Other requirements include subsidizing mechanisms, the establishment of institutions such as a regulatory framework and access to justice, education to promote hygiene-awareness, and setting high but attainable standards.

Bottom line

While the technical and procedural pros & cons of PSP are relatively easy to assess, a HR approach requires going beyond merely calculating the costs and benefits. From a legal point of view, the appropriate institutions and

mechanisms must be in place to ensure the respect for HR.

A question rarely asked in this context, however, deals with the moral dimension of the water market: Is it morally justifiable to profit from water as long as billions of people lack access to safe and affordable water? Even if this question does not touch the implementation and enforcement of a right to water itself, one should nevertheless bear it in mind.

Whatever one's attitude towards PSP may be, before deciding on whether to privatize the water sector, a number of questions must be addressed, reaching from defining the various actors' rights and responsibilities in the run-up to the negotiations to monitoring the company's compliance with the contract long after it has been signed.

Whatever a government decides on the question of PSP, it has to ensure that a minimum of preconditions is in place – a clear legal framework addressing explicitly HR issues and an independent regulatory body empowered to enforce compliance. Otherwise, it is probably more practicable to delay privatization and stick to a combination of limited public service and SIPs as an interim solution until these conditions are met.

About the author:

Philipp Turri is student of Political Sciences, History and Romance languages and literature at the University of Freiburg i. Br. / Germany and works as an intern for the Friedrich-Ebert-Stiftung, Geneva Office.

– March 2010 –

More information is available on

www.fes.de/globalization

The views expressed in this publication are not necessarily the ones of the Friedrich-Ebert-Stiftung.

Friedrich-Ebert-Stiftung, Genf
6 bis, Chemin du Point-du-Jour
1202 Geneva
Switzerland
Tel. +41 22 733 3450
Fax: +41 22 733 3545
E-mail: info@fes-geneva.org
<http://www.fes.de/globalization>