

Side event to the 60th session of the  
UN-Commission on Human Rights: Panel Discussion  
March 22, 1 – 3 p.m., Palais des Nations, Room XXVII (Door 40)

## **“Financing the Human Right to Water”**

Background paper by Nils Rosemann

“Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity.”<sup>1</sup> Yet, the implementation of the Human Right to Water and the fulfilment of internationally agreed targets aiming at the improvement of drinking water and wastewater infrastructures require considerable financial funds.

With a growing world population and the already existing lack of access to water and sanitation services to everyone on the one side and ever shrinking public budgets on the other, there is need for alternative solutions in how to cover the required investment. Can privatization, public-private-partnership and foreign direct investment in the water sector deliver the solution? Or does the Human Right to Water run the risk to be commercialized in a way that it becomes a luxury product, affordable just to those who can pay for an adequate water and sanitation service?

### **Financing Water and Sanitation Service**

From a historical perspective, central governments and local authorities have been playing the major role in financing the water and sanitation system. In developing countries – with the major need for investment in this sector – 90% of water and wastewater treatment infrastructure is in hands of public ownership. Investment derives to 65-70% from public funding, to 10-15% from each development assistance and transnational corporations and 5% from local business.<sup>2</sup>

It has been calculated that additional expenditure of about 20 Bn. USD/p.a. are necessary to achieve the Agenda 21 objective of integrated international water policy. But in reality international development assistance in water and wastewater projects stagnated at 3 Bn. USD/p.a. in the 1990s. Although this amount rose to 3.5 Bn. USD/p.a. between 1996-1998, it dropped again to 3.1 Bn. USD/p.a. between 1999 and 2001. Compared to the overall amount of development assistance – whether or not water was an international priority – the share of water and wastewater projects in national development budgets kept stable at 4 - 5%.

These observations are in contrast to the Millenium Development Goals (MDG)-commitments and the need for sufficient financing of the Human Right to Water.

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<sup>1</sup> Committee on ESCR, General Comment No. 15, E/C.12/2002/11 (26 November 2002)

<sup>2</sup> UNDP, World Development Report 2003

Adopting the Millennium Declaration, the international community committed itself to halve the number of people without sufficient access to safe water and to wastewater treatment by 2015<sup>3</sup>. Given the current trend in the rise of the world population, an additional 100 Mio people/p.a. have to be provided with safe water and another 125 Mio people/p.a. with sanitation services.<sup>4</sup>

The conclusions out of these calculations towards investment in infrastructure and water supply differ. In order to achieve the entire MDGs, UN agencies have calculated an additional need of 50 Bn. USD/p.a., of which 12.6 Bn. USD would be needed for water and sanitation.<sup>5</sup> The *World Panel on Financing Water Infrastructure* submitted its final report at the 3<sup>rd</sup> *World Water Forum* in Kyoto (2003): the so called *Camdessus-Report* deemed necessary an additional investment of 10 Bn. USD/p.a. for lower standards and 17 Bn. USD/p.a. for urban standards in water access. Furthermore, an urban standard in sanitation infrastructure would require an additional investment of 32 Bn. USD/p.a.<sup>6</sup>

Apparently, there is a huge gap between *required* and *allocated* resources. But how can the Human Right to Water be financed? What possibilities do exist to acquire the necessary funds?

Different approaches have been developed to face this challenge. One possibility is to acquire further national funds via cross-subsidising the water sector with tax-payers contributions. Another possibility to acquire additional resources is to raise the water price. A third possibility is given by (partial) privatisation of water and sanitation services at the local (cooperatives) or national level (private business). Decisions towards one of these different possibilities have to be determined by socio-economic priorities and integrated into a national water strategy that is guided by the human right to water.

However, the financial resources required are often not available in the country itself: either states are highly indebted or their GDP is that low that socio-economic priorities cannot be served without foreign (financial) assistance. The latter either stems from bilateral or multilateral development assistance or the Private Sector. The preconditions for attracting international funds are (at least partial) privatisation of public suppliers, a save investment climate, minimised investment risks for private companies and an economic approach that considers water a commodity. Accepting these preconditions, governments become subject to international credit terms, investment treaties and private sector agreements which all reduce the national socio-economic scope of action.

### **Foreign Direct Investment and Private Sector Participation**

Due to the ongoing lack of sufficient financial funds required to meet the MDG, private capital flows, particularly foreign direct investment (FDI), are regarded as a vital complement to national and international development efforts.

The two main concepts of private sector participation are privatization or Public-Private-Partnerships (PPP). Within the latter the state (or another public body) still remains a stakeholder with a certain degree of control. The involvement of the private sector ranges from management, over concessions to build, operate or transfer a certain infrastructure to long lasting concession agreements. In the water and sanitation sector, concession agreements to private businesses are the usual PPP-form. Within these contracts the level

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<sup>3</sup> U.N. Doc. E/C.12/2002/11

<sup>4</sup> UN World Water Report 2003

<sup>5</sup> Ibid.; UNDP-World Development Report 2003

<sup>6</sup> World Panel on Financing Water Infrastructure: "Financing Water for All", Kyoto 2003

of influence by the state or a regulatory office will decide about the fulfilment of the human rights obligations. But since PPP focuses on the micro-level it is contested whether it is the appropriate form to meet the objectives of development cooperation which necessarily needs to focus both the macro- and meso-level.

In addition to the conceptual and structural arguments on PPP, FDI is seen as an obstacle to the fulfilment of the Human Right to Water. FDI ought to contribute toward financing sustained economic growth. In order to attract and enhance inflows of productive capital a transparent, stable and predictable investment climate, including proper contract enforcement and respect for property rights are required.<sup>7</sup> By this means, companies' seek for profit shall produce the "side" effect of sustainable development and poverty reduction. In the water sector, private investment – often conditioned to an at least partial privatisation of public services – has to bring sufficient revenue as well as better water and sewerage services. This concept is highly disputed and critiques say that profit is made out of basic human needs.

UNCTAD has indicated that the overall stock of FDI increased from \$1.7 trillion in 1990 to \$6.6 trillion in 2001. The example of Africa, however, demonstrates clearly that FDI does not reach the poor, who are most in need of a sufficient water and sewerage infrastructure. Africa remains a marginal recipient of FDI. True, FDI-inflows to Africa recently experienced a noticeably increase from \$9 billion (2000) to more than \$17 billion (2001), but the major stake of this increase concentrates in large projects in just two countries: Morocco and South Africa. Similarly, FDI in the 49 least developed countries (LDCs) was small in absolute terms. While FDI-inflow rose to \$3.8 billion in 2002 despite an overall economic slowdown, LDCs remain marginal recipients of FDI accounting for only 2 per cent of all FDI to developing countries or 0.5 per cent of the global total amount.<sup>8</sup>

These figures raise the question whether private sector participation and FDI are an adequate approach for financing water infrastructure and wastewater treatment. In 2025 about 3 Bn. people (out of an estimated total of 8,5 Bn.) on earth will suffer water shortages. 83% of them will live in developing countries where nowadays about 80% of the population is without sustainable and sufficient access to safe water.<sup>9</sup>

Another factor is that private sector participation via FDI requires certain property rights and investment guarantees for private investors. Via privatisation, the possibilities of governments to meet their human rights duties are being narrowed since they lose control and influence on strategic public services (like water, electricity and telecommunication). However, governments are still the main bearer of human rights obligations and have to take care for the respect, protection and fulfilment of human rights.

Furthermore, privatisation causes a shift of burden for investment. The responsibility for investment is passed on from the public sector to private business and can therefore easily be transferred from the (water service) company to the customer. Since FDI is done in foreign currency the customer holds the risk of the currency exchange rate, which might cause considerable tariff increases like in the water sector in Manila.<sup>10</sup>

<sup>7</sup> See: Monterrey Consensus, A/ CONF/189/11

<sup>8</sup> Ibid.

<sup>9</sup> Special Rapporteur on Right to Water, U.N. Doc. E/CN.4/Sub.2/2002/10

<sup>10</sup> Rosemann, Nils: The Human Right to Water Under the Conditions of Trade Liberalisation and Privatisation – A Study on the Privatisation of Water Supply and Wastewater Disposal in Manila, Friedrich Ebert Stiftung Berlin 2003

## **Defining development standards as precondition for investment**

Beside the underlying problem of financing sufficient and efficient water and sanitation services based on the Human Right to Water, an additional problem is the question of who is defining development goals and investment objectives. Unfortunately, it is common that within bilateral and multilateral development assistance there is less participation of concerned people and local communities. It is very seldom that policies are defined on a *bottom-up basis*. Usually, development goals and standards are agreed among governments or between governments and corporations (*top-down approach*) and often consider neither local communities' interest nor the traditional knowledge regarding a sustainable water management.

## **General background of the Human Right to Water**

The normative demand for the Human Right to Water is derived from the "Right of everyone to an adequate standard of living for himself and his family", expressed in article 11 of the International Covenant on Economic, Social and Cultural Rights. In previous comments by the UN Committee on ESC Rights<sup>11</sup> as well as in various human rights protection mechanisms the Human Right to Water is recognized as precondition for other human rights – such as the human right to live, to appropriate nutrition and sufficient medical care.

Apart from being the precondition for other human rights, the Human Right to Water has its own contents and protective duty. As outlined in General Comment Number 15 by the UN Committee on ESC Rights, 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 jeopardise 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.

The benefit of defining the human need for sufficient water as a human right is that general obligations and particular duties ensue from such a qualification. These duties comprise among others:

- the duty of a state to respect, protect and implement the Human Right to Water;
- the duty of a state to respect the Human Right to Water in other countries, i.e. not to interfere with the fulfilment of other governments' duties to respect the right to water;
- the duty of a state to contribute to the fulfilment of the Human Right to Water in other countries by means of international cooperation;
- the duty of a state to prevent and stop violations of the Human Right to Water and to make no decisions that jeopardise the fulfilment of the Human Right to Water in one's own country or in other countries. This can be done within the framework of affiliation in international organisations;
- the duty of international organisations to respect the Human Right to Water and to contribute to its fulfilment by means of international cooperation;
- the duty of non-state actors, such as companies or individual persons, to respect the Human Right to Water and to support its implementation within their own scope of action.

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<sup>11</sup> U.N. Doc. E/C.12/2002/11

These duties should all be stipulated in a national water strategy. This strategy ought to be based on human rights in general and on the Human Right to Water in particular. It should assign governmental and institutional responsibilities to the duties mentioned above.

With respect to governments' fundamental freedom of choice when to take steps or to develop political approaches, the Human Right to Water has core obligations which are not subject to this principle of free choice. These core obligations must be ensured even in times of scarce resources or in a state of emergency. Core obligations include the most basic forms of the Human Right to Water such as:

- non-discriminatory and regular access to a minimum of safe drinking water for personal and domestic use and
- access to simple – yet hygienically acceptable – wastewater disposal and sanitary infrastructure.

### **Overall objective of the side event**

The side event aims at facilitating an expert discussion on issues related to the Human Right to Water, such as financing water investment, privatisation of water and sanitation services as well as new developments in the trade of water services (such as the EU's water initiative and the request by the EU to incorporate water services under GATS). The invitees, participants of the 60<sup>th</sup> session of the UN-Commission on Human Rights as well as NGOs, will have the possibility to deepen their knowledge about the distinct possibilities of financing the Human Right to Water and generally gather more information about the repercussions of liberalization, trade and globalization on a fundamental human right.

### **Agenda and key questions**

**Mr. Nils Rosemann** will introduce the audience to the side event's topic. The point of departure will be the results of his study on benefits and failures of the privatisation of water services in Manila.<sup>12</sup>

The study concludes that a human rights approach was lacking during the privatisation process that began in 1997. The conceptual failure to establish a regulatory office as a dependent body of both concessionaires has caused main problems and has led, inter alia, to higher water prices and less quality. Furthermore, the study shows that a human rights approach would call for larger and formalized participation of consumers as well as for non-discrimination in water and service distribution. Another key conclusion is that it is a fallacy to believe that privatisation of this investment-intensive sector would acquire sufficient FDI. Rosemann will outline the impact of FDI with regard to considerable price increases and to a poorer water quality.

Proceeding from these results, the panellists will discuss, inter alia, the following questions relevant to the issue of "Financing the Human Right to Water":

- Can privatisation, the public-private-partnership model and foreign direct investment in the water sector deliver the required amount of financial funds? Which alternatives of financing the Human Right to Water are given and what are their pros and cons?

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<sup>12</sup> Rosemann, Nils: The Human Right to Water Under the Conditions of Trade Liberalisation and Privatisation

- Who should define the necessary standard in water services and wastewater treatment in order to determine the required investment? Which strategies and processes of participation are needed in the definition of the standard?
- How to define the amount of resources to meet the Human Right to Water for all? What role do the Millennium Development Goals (MDG) play?
- Is water a mere commodity, a commercial product like any other and as such tradable without limits? Is the Human Right to Water conditional on available resources? Do international agreements on economic cooperation, development assistance or debt relief take precedence over the duties resulting from the Human Right to Water?
- Is private sector participation a substitution or a supplement to national and international efforts to meet the MDG? What is the motivation for private companies to invest in local water environment?
- What are the recent figures of international investment in the water sector? Would the incorporation of water services into the GATS-agreement be a solution for the financial crisis in the water sector?

Each of the panellists shall be given approximately 8 minutes to make a short statement to the above-mentioned questions. In a second round each participant will have the possibility to discuss the statements given by the other members of the panel.

In a further step, the floor will be open to brief statements and questions by the audience. Comments by **Rosmarie Bär** (Swiss Coalition of Development Agencies) and **Antonio Miranda Neto** (Head of Municipal Water and Sanitation Services of Recife/Brazil) will bridge from the panel discussion to the open discussion.