

WATER PRIVATISATION

Position Paper



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Marco Daniel

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1. Introduction

This position paper complements the Helvetas working area strategy on water and infrastructure by positioning the organisation on the issue of water privatisation, which is highly relevant to our communication and fieldwork. The positions formulated are the result of critical discussions among selected Helvetas collaborators, a program commission and a Pamoja consultation, which have been informed by the background and analysis paper on water privatisation.

The process of finding joint position and language on the issue of water privatisation aims at having a critical discussion on these issues critical to our work. The positions should enable Helvetas collaborators to have a more differentiated view on water privatisation and to implement them in our work in the field, in advocacy and policy dialogue and to use them to enrich our communications.

In the following a general position on water privatisation is followed by four positions on specific key topics relevant to our work. Each position is introduced by a very brief summary derived from the background and analysis paper and the general position outlines the main implications this position has on Helvetas' activities. The positions are followed by a short list of references, a more comprehensive list of references can be found in the background and analysis paper.

2. General position on water privatisation

HELVETAS Swiss Intercooperation's mission is to reduce poverty in developing countries by bringing about systemic improvements in the livelihoods of poor families. Hence, the ultimate goal with regard to water is to create an environment enabling poor people the full enjoyment of their human right to water and sanitation.

The water privatisation background and analysis paper upon which the following positions are based describes two conceptually distinct processes.

The first is about **water rights allocation and integrated water resources management**. It argues that the government being in principle the legitimate representative of the public has permanent national sovereignty over its natural resources. By introducing temporary water use rights and developing integrated water resources management plans at the catchment level the government gives private entities (from local subsistence farmers to transnational companies) the right to use this water. It furthermore adopts specific measures to safeguard the human right to water for all, water quality, and to ensure ecosystem services. However, in reality governments often do not match the ideal form of the state (legitimacy, representativeness, sovereignty) and other actors (such as international organisations, civil society and private sector) might need to support the state in ensuring the human right to water and sanitation.

The second is about **introducing principles of free market into the drinking water and sanitation services sector** at different scales. Thereby private actors ranging from local entrepreneurs to transnational companies invest, provide services to build, operate, maintain or manage rural and urban water and sanitation systems and receive payments. Thereby the challenge lies in the fact that the provision of water is by default a monopolistic situation and vital to human wellbeing, whereas under adequate framework conditions the private sector participation can build up local capacities and knowhow and contribute to the sustainable cost recovery of the systems.

HELVETAS Swiss Intercooperation takes the following general positions:

- **Water should not be privatised.** Governments as the legitimate representative of its citizens have permanent national sovereignty over surface- and groundwater as one of the essential natural resources. Governments – on different levels from the local to the national level - can allocate water rights to individual water users, which are revocable if required by the public

interest¹ whilst giving due consideration to customary water use rights of the local population. Water use rights allocation should be accompanied by an integrated water resources management plan elaborated in a democratic and participatory process and the government is responsible to allocate sufficient water to the realisation of the human right to water, to prevent water pollution and to ensure ecosystem services.

- The **human right to water and sanitation** ratified by the United Nations is the basis of Helvetas' work and includes universal access to sufficient (at least 25 litres per person and day²), safe, acceptable, physically accessible and affordable water for personal and domestic uses with a special focus on social equity and gender equality. Sustainable cost recovery is a prerequisite to assure the sustainability of provision and maintenance of a water and sanitation service (technical, human resource, institutional) and should be achieved through a blend of taxes, transfers and tariffs. However, the government is responsible to put adequate subsidy mechanisms in place to grant the human right to water and sanitation to the most vulnerable and excluded.
- The functioning of water and sanitation systems is a question of **good governance**.³ This includes public participation and open consultations, accountability, information transparency, rule of law (economic and water quality regulation), efficiency and effectiveness. Power asymmetries are one of the reasons for current inequalities in access to water and sanitation and Helvetas aspires that the effective inclusion of these good governance elements reduces these inequalities.

As an organisation that is active in advocacy work, HELVETAS Swiss Intercooperation takes a **strong position** in order to create a clear profile and reputation as a promoter of the human right to water and sanitation for all. Our efforts have a special focus on social and gender equity, public ownership and integrated and environmentally sustainable management of water resources and the inclusion of good governance elements in its allocation and management.

Implications for Helvetas' role as an organisation

- Water rights privatisation: Water is vital for human wellbeing and the environment, non substitutable, owned by the government and its citizens and revocable water rights can be allocated to individual users if customary water rights are considered. Governments are responsible to develop integrated water resources management (IWRM) plans in an inclusive and participatory manner whilst safeguarding the water quality and ensuring ecosystem services. Helvetas integrates these principles in the implementation of its projects and programmes and provides advice to own projects and third parties. In addition, Helvetas actively contributes to the debate on this important issue and advocates for IWRM in our partner countries and in the global debate. Moreover, HELVETAS plays the role of convener/facilitator in the development of Integrated Water Resources Management Plans, thereby supporting disadvantaged groups to actively participate and have a voice. For example in Nepal Helvetas supports local governments in developing Water Use Master Plans that include the needs of rural communities.
- Human right to water and sanitation. Universal access to adequate water and sanitation is a core goal of our work. Whilst recognising that ultimately it is the government's responsibility to

¹For many economic activities creating benefits for the local population access to water is a crucial factor of production and a prerequisite for investments. Private water rights are therefore similar to private land rights important for local economic growth. However, these water use rights should be revocable if required by the "public interest" such as if the private water rights negatively affect the human rights of the local population. There is no universal definition of "public interest", which is often defined through national jurisdiction.

² The World Health Organisation and the South African Constitution recommend 25 litres per day and person (lpd) as the absolute necessary minimum to meet the most basic human needs. According to the WHO 50 lpd are sufficient to meet most basic consumption and hygiene needs.

³ The six elements of good governance identified correspond to the definition of good governance in the *Helvetas Governance and Peace Strategy*

realise this right to all its citizens we intervene temporarily where the government is lacking capacity or unwilling to respect, protect and fulfil the human right to water and sanitation for all. Social equity and gender equality criteria are at the heart of Helvetas' work and therefore our projects have a special focus on the vulnerable and excluded groups. By implementing locally owned and managed sustainable water and sanitation projects, Helvetas accelerates the progress towards universal access to water and sanitation. Good examples can be found in all Helvetas partner countries with water, sanitation and hygiene projects such as Nepal, Benin and Haiti.

- Good governance is fundamental for creating an enabling environment for the right to water and sanitation. Sustainable water and sanitation systems, water rights attribution and development projects impacting on existing water rights should therefore include good governance elements (public participation and open consultations, accountability, information transparency, feedback and control mechanisms and independent regulation). Helvetas has signed the Water Integrity Network Code of Conduct, the WASH Sustainability Charter and actively promotes good governance elements in its own projects and advocates for their inclusion in other water projects. In the PROGOAS project in Mozambique, for example, Helvetas supports local authorities in the management of water and sanitation systems and at the same time encourages empowerment of civil society organizations to increase their participation in the development and monitoring of government policy on water. Also in Guatemala and Nepal Helvetas has developed a water integrity strategy and actively participates in international debates on this issue. In Switzerland Helvetas is moderating a multi-sector dialogue on global water challenges by coordinating the Swiss Water Partnership.

3. Position on specific key topics

3.1. Private sector participation in the provision of water and sanitation

Background

Because large scale public urban water and sanitation systems in developing countries failed to provide universal access, in the late 1980s major international development institutions actively promoted their privatisation through concession contracts (giving the private companies full management responsibilities over the systems). This policy also failed to deliver universal and equitable access to water for all because often profitability was too low for transnational water companies, which started to “cherry pick” the most promising regions for their engagement. Today 12% of the global population (about 860 million people mostly living in urban areas of middle and high income countries) ⁴ receive their water from private actors, while civil society movements around the globe continue to criticise such private public partnerships. However, it is important to distinguish between different levels of private sector participation and corresponding responsibilities and information and power asymmetries in the provision of water and sanitation. These range from local entrepreneurs providing a specific construction, operation or maintenance service and thereby fostering local know how and capacities to transnational companies bidding for full concession contracts to operate and manage the systems. In rural areas several successful examples of community water boards exist that have delegated management responsibilities to a private individual, whilst keeping the overall control/oversight. Today most water experts agree that depending on the local context different water and sanitation management models can be appropriate and that especially because water is a naturally monopolistic system vital to human wellbeing these models must be subordinated to the principles of good governance and democracy.

⁴ Steadman, Lis. "East to West: the Future of Water?" WaterWorld. 2011.

Position

- The public is the legitimate owner of water and water rights related to the provision of drinking water should always remain public. The allocation of water rights to individual users is revocable (if required by the common interest) and should be done in due consideration of customary water rights.
- Private sector participation in drinking water provision exists at different scales: from a local entrepreneur delivering a specific service to build, operate and maintain a local water service to transnational water companies bidding for long term concession contracts to manage water services.
- The provision of water and sanitation is a public service and is vital to human wellbeing. Depending on the local context different models are appropriate to provide water and sanitation services. The state, the civil society or the private actor managing these services must be subordinated to the principles of good governance and democracy:
 - Citizens must be involved in the planning and decision-making for example through participatory budgeting or public hearings.
 - Transparency of information must be ensured and the overall management of the systems must remain under the control of an independent regulatory body appointed by the public.
 - Especially transnational private operators must engage in a human rights due diligence⁵ to respect, protect and fulfil the human right to water and sanitation for all.

3.2. Affordable drinking water and sanitation for all and funding of the water sector

Background

The human right to water and sanitation aims at giving everybody sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses and does not include the water needed for domestic food production. Several countries have endorsed the human right in their national legislation and it is currently debated whether a stronger human rights to water focus should be included in the post 2015 water development goals. However, 'affordable' does not mean that water should be free of charge. Building, operating and maintaining systems is expensive and the World Bank argues that affordability and willingness to pay is a prerequisite to achieve *full cost recovery* (World Bank), which should happen through tariffs. As many poor are unable to pay the full costs for water services the OECD promotes the concept of *sustainable cost recovery* (OECD).⁶ It suggests recovering costs by blending tariffs (paid by customers) with taxes (governmental investments) and transfers (official development assistance), or in short the "three T's". A sustainable system has to identify, organise and cover all costs related to providing and maintaining a service (technical, human resource, institutional) in a coherent manner with sources of funds whatever blending is chosen.⁷ The current debate not only discusses the mechanisms to ensure economic and environmental sustainability of drinking water supply and sanitation systems, but how to incentivise a more efficient use of the scarce resource water in general. According to the Water Resources Group 2030⁸ current human freshwater consumption is beyond the sustainable level will further increase if water is not properly valued.

⁵ According to the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (UN SRSG), human rights due diligence is "a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it." 7 April 2008, Protect, Respect and Remedy: a Framework for Business and Human Rights, at http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSG_to_HRC.pdf

⁶ Managing Water for All: An OECD perspective on Pricing and Financing, 2009

⁷ Cardone, R., Fonseca, C. Financing and Cost Recovery, Thematic Overview Paper 7, International Water and Sanitation Centre, 2003

⁸ 2030 Water Resources Group, Charting Our Water Future, Economic frameworks to inform decision-making, 2009 http://www.2030waterresourcesgroup.com/water_full/Charting_Our_Water_Future_Final.pdf

Position

- The human right to water and sanitation is a priority development objective for Helvetas and includes universal access to sufficient (at least 25 litres per person and day), safe, acceptable, physically accessible and affordable water for personal and domestic uses with a special focus on social equity and gender equality.
- Water is a scarce resource and models have to be introduced to incentivise efficient use of water and minimum environmental flows and sustainable wastewater management have to be assured.
- Water has a price. 'Affordable' does not mean 'free of charge'. Sustainable cost recovery is a prerequisite to assure financial sustainability of water and sanitation systems. This can be achieved through tariffs, taxes and transfers. The government is responsible to provide adequate subsidy mechanisms to grant the human right to water and sanitation of the most vulnerable and excluded people and groups. People must be informed about the financing of systems and the subsidy mechanisms in a transparent way, for example with annual audits, posters and leaflets, and the involvement of media. Therefore we ask for:
 - Free access to 25 litres per person and day must be granted to those who cannot afford to pay;
 - Flexible social tariffs and sound and targeted subsidy policies ensure that the disadvantaged enjoy adequate water and sanitation services while guaranteeing sustainable cost recovery.

3.3. Water Grabbing and foreign direct investment development projects

Background

Even though the term 'water grabbing' is relatively recent, the process it describes is not a new phenomenon and is closely interconnected with land grabbing and the right to food. 'Water grabbing' explicitly recognises that land and water resources are closely intertwined. Recent studies⁹ suggest that worldwide, land with access to water gets increasingly acquired by powerful actors such as national or foreign state authorities or private companies – often at the expense of the local population whose livelihoods depend upon the access to land and water resources. This process is linked to virtual water trading. Virtual water refers to the water that was required to grow/produce a specific good and virtual water trading looks at the amount of virtual water embedded in the products imported and exported by a specific country. Consequently countries importing products with a big virtual water footprint become "virtual water grabbers". Two distinct processes of water grabbing can be identified:

- 1) Physical grabbing: expropriation of land with attached water abstraction rights (for example by diverting a stream for hydropower or pumping groundwater for irrigation purposes) or the conditions to access water have been drastically changed (for example because prohibitive costs to access the water are introduced).
- 2) Quality grabbing: The quality of water is seriously altered, making its normal use not possible anymore (for example when plantation agriculture, an industrial plant or mining company pollutes the groundwater with pesticides or heavy metals).

In both cases the water grabbing affects the customary water rights of local communities and potentially affects their livelihoods. The Food and Agriculture Organisation (FAO) has developed

⁹ Mehta, Veldwisch and Franco: *Water grabbing? Focus on the (re)appropriation of finite water resources*, Water Alternatives 5(2), 2012

voluntary guidelines on the responsible governance of tenure¹⁰ in the context of food security that provide clarity on what minimum requirements have to be fulfilled to protect the local population.

Position

- The public is the legitimate owner of water and the allocation of water rights to individual users is revocable and should be done in due consideration of customary water rights.
- Water is for all: the water use rights allocation has to be accompanied with an integrated water resources management plan elaborated in a democratic and participatory process at the catchment level. This process takes all users and customary water use rights into account and the government is responsible to allocate sufficient water to the realisation of the human right to water, to prevent water pollution and to ensure ecosystem services.
- We disapprove with all types of land expropriation of farmers, perceiving it as fundamental threat to farmer livelihoods, particularly to the enjoyment of the right to water and food.¹¹
- We consider any purchase or long-term leasing of agricultural land and its related water resources through foreign governments or private companies illegitimate, unless these investments consider the corresponding FAO Guidelines¹² and the investment is realised in the context of:
 - Judicial system accessible to all citizens, guaranteeing transparency and fairness of transactions, and
 - Free, prior and informed consent: land owners have free choice to sell or keep their land and the attached water use rights, and
 - Fair and effective compensation of former land and water use rights owners to maintain or improve their living standards, and
 - The production or services of the sold/leased land and related water use rights create benefits for the local population; and
 - Environmental minimum flows and sustainable wastewater treatment is assured.

3.4. Bottled water

Background

The global bottled water sales have increased dramatically over the past decades, reaching a valuation of around \$60 billion in 2006¹³. The rate of consumption more than quadrupled between 1990 and 2005¹⁴ and the biggest number of consumers live in the USA, Mexico, China and Brazil. The Swiss based Nestlé Waters owns 64 water brands and is worldwide the biggest bottled water company with operations around the globe. Bottled water companies generally tend to abstract water for their product as close as possible to the end user to reduce transportation costs and have therefore acquired water abstraction and land use rights around the globe and built local water treatment, mineralisation and bottling plants. In some areas such as the Kerala region in India bottled water companies have been criticised for the unsustainable abstraction of water, to the detriment of communities in the area and future generations. Others have accused transnational bottled water companies to stockpile water abstraction rights, compete with public drinking water provision and to negatively influencing drinking water quality standards in countries with weak legal

¹⁰ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Food and Agriculture Organisation, Rome 2012

¹¹ For further details on land grabbing and food security please consider the *Helvetas position paper on Food Security*

¹² Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Food and Agriculture Organisation, Rome 2012

¹³ King, Mike. Bottled Water Global Industry Guide, PR-inside.com, July 7, 2008.

¹⁴ Li, Ling. Bottled Water Consumption Jumps, World Watch Institute. November 8, 2007.

frameworks and to abuse of their asymmetrical power relation. Furthermore bottled water companies have been criticised for the energy intensive processes and the burden of recycling due to the packaging material used. Finally they have been criticised because by providing expensive bottled drinking water only affordable to the political and economic elites of a developing country, the latter will not prioritise public water provision at the detriment of the poor who cannot afford bottled water. This criticism was originally raised by affected local communities and grass roots civil society organisations, but more recently also by global anti-globalisation organisations and the global water justice movement. In reaction to this criticism the largest transnational beverage companies have started in the early 2000s to identify physical, regulatory and reputational water risks throughout their production and supply chain. Some of them engage in corporate water stewardship programmes collaborating in water scarce production sites with the local government, other water users, and the local population to reduce the risks related to water.

Position

- Water is a human right and it is ultimately the government's responsibility to give every citizen access to at least 25 litres of safe, affordable, acceptable and accessible water per day. If this condition is met and consumers nevertheless decide to buy bottled water we respect the free individual choice as long as the activities of the bottled water company fulfil the following criteria:
 - The water rights (human right to water and customary water use rights) of others including the environment are not put at risk by the company's activities; and
 - The company engages in a human rights due diligence¹⁵ to respect, protect and fulfil the human right to water and sanitation for all; and
 - The water rights attributed to the bottled water company are revocable and issued in the framework of an integrated water resources management plan elaborated in a democratic and participatory approach adequately considering all water users in the area; and
 - The local authorities have an effective and enforceable legal framework assuring the accountability and transparency of the private sector; and
 - The extraction, processing, packaging and recycling of bottled water is done in an environmentally sustainable manner.

¹⁵ According to the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (UN SRSG) , human rights due diligence is "a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it." 7 April 2008, Protect, Respect and Remedy: a Framework for Business and Human Rights, at http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSG_to_HRC.pdf

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