

Report

Political Café “Water right NOW! How can European member countries consolidate the human rights principle in global water supply? ”

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Panel

- Hamed Deedat, Gender, trade and water activist, Umzabalaso We Jubilee
- Hilke Molenaar, Amnesty International
- Jorge Mora Portuguese, Freshwater Action Network Central America
- Peter de Vries, Dutch Ministry of Foreign Affairs

Introduction to the debate: Tobias Schmitz (Both ENDS)

Ladies and Gentlemen, on behalf of Both ENDS, welcome to the Hague, and welcome to our 37th political café, which this time is devoted to the topic of the right to water supply and sanitation. At Both ENDS we feel strongly that development policy should not be developed in the rich North without consultation with Southern partners who have a lot of direct experience with poverty and with environmental degradation. This is one of the reasons why we organise these cafés: to enable debate between policy makers and those who are the subject of those policies.

We hope to engage you in a debate on a topic which is still very much in an embryonic phase, and which still requires a lot of intellectual and practical engagement before it ripens and becomes a mature component of development policy. At the same time, there is enormous international recognition that a rights based approach is a crucial component of modern poverty alleviation.

At the moment some 26 nations across the world have formally recognised the right to water, and in 20 cases, this has taken place in the last six years. In the case of the Netherlands, access to safe drinking water was recognised as a human right in March this year. In the meantime in at least as many countries, preparations are being made to recognise the right to water, so that very soon at least one quarter of the world will have recognised access to water as a human right. And although less countries have explicitly recognised the right to sanitation, which is a much more difficult and sensitive issue, the signs in this field are also very encouraging. So we are talking about new and exciting developments.

Now cynics might say: isn't water and sanitation just about taps and toilets? What is the use of putting a lot of time and energy into passing a law through parliament when the most important thing is that the poor get access to water and sanitation where they live and where they work? What will laws help the poor – you cannot drink a law.

These are legitimate questions, but the rights based approach has emerged precisely because there is not enough focus on the poor. In 2004, more people died from diarrhoea than from AIDS, as a result of lack of access to safe drinking water and/or living in circumstances of poor hygiene. This is unnecessary, and it is preventable for a fraction of the cost of bailing out a western bank.

In September, at the United Nations, the world evaluated progress in the global efforts to halve the number of people without access to clean drinking water and sanitation. There are still 0.9 billion people in the world without access to safe drinking water, and about 2.5 billion without access to a basic level of sanitation. A lot of progress has been made: 62% of the world now has access to basic sanitation, compared to 54% in 1990. 87% of the world now has access to safe drinking water compared to 77% in 1990.

However, if one unpacks the statistics, one finds that the majority of this progress has taken place in middle income countries and not in poor countries. In other words, richer countries like China and India are experiencing real progress and improving world statistics, while the poorer countries are still lagging behind. Six of the 10 poorest countries in the world, where more than 50% of the population live on less than one dollar a day, are receiving less than average support in the water and sanitation sector. In this sense, the poor are getting poorer.

This means that we need mechanisms to combat inequality and to focus on the poor. The battle against poverty is not about expanding the number of taps and toilets. It is about making sure that the *poor* get taps and toilets.

Now this brings me to the relationship between infrastructure on the one hand, and institutions on the other. Infrastructure is very important, but it is completely useless without people. You can build a clinic but that does not mean that you have health care. You can put a pipe in the ground but that does not mean that you have a water service. Only by investing in institutions and human resources can one provide services in a meaningful way. And yet in the water and sanitation sector, the European Union still spends 80% of its money on water and sanitation infrastructure and only 20% on the more difficult issues like targeting the poor, providing training, building institutions and so forth.

This means that we need a shift of focus. We need a better balance between the delivery of infrastructure on the one hand, and the development of mechanisms that prioritise the poor on the other hand. Now that is what the rights based approach is about. Access to water and sanitation should not be dependent on the political will of government and the donor community to deliver. It needs to be recognised as a human right that is more important than political processes. We can see in Zimbabwe that there may be plenty of infrastructure, but if the rights of citizens are not respected, then services will crumble and disease will break out, undermining an entire region's health.

Recognising the right to water and sanitation provides a framework for accountability. It enables citizens to engage with government and with donors and ask for information. It enables debates to be held on standards. Importantly, it ensures that access to water and sanitation are legal entitlements rather than services which are dependent on charity or sold for profit. Where there is neglect by delivery agents, citizens have a basis on which to challenge it. And most importantly, it uplifts the position of the poor by giving them equal rights. They are put in a position to ask why they have not been served, while they are those in whose name services are being delivered.

This is why the right to water and sanitation should be taken up and absorbed into the development policies of the EU member states. One of the founding principles of the European Union is the respect for human rights.

Article 6 of the Treaty on the European Union states that "The Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law"

Article 177 (2) of the EC Treaty states that European Union Development policy "shall contribute to the objective of developing and consolidating democracy, the rule of law and human rights".

Many European countries have recently recognised access to water as a human right. And yet, most European countries have not yet included the rights to water and sanitation as an aspect of their development policy. The Dutch government is sticking its neck out and is working together with Both ENDS to charter new waters. In January 2009, we will be going to Benin to begin discussions between the state, donors and civil society on the right to water and sanitation. But the way forward is far from clear. We are testing the water and we need to stop at intervals and debate the way forward. This is why we are here tonight. It is an important issue, we are happy that you are all here, and we look forward to a good debate. Thank you.

Introductions panellists

Jorge Mora Portuguese shed light on the Latin American context related to the right to water. Many Latin American countries have integrated the right to water in their constitutions (like Uruguay, Ecuador and soon Bolivia). In Central America, Nicaragua the RTW is integrated into the national water law and water laws are being prepared in all other countries in the region. Communal waterboards play an important role in Latin America. In Costa Rica, for example, 25.000 communities are provided with water services through their own organisations. Recognising the RTW can reinforce this kind of community-driven organisation. Jorge argued that international trade negotiations are not connected to these processes. There is a disconnection between the work being done at the level of the European Union Water Initiative (EUWI), where the economic context of developing countries is not sufficiently taken into account, and the Free Trade Agreements between the EU and Central America, where water is looked upon as a commercial good and where human rights are not integrated into the discussions. This separation of issues cannot hold.

Hilke Molenaar presented the main issues from the recently published report "Human rights based approaches in EU development policies". The report outlines five principles of a human rights based approach, which are:

1. Working according to the international legal framework;
2. Empowerment;
3. Participation (active, free and meaningful);
4. Non-discrimination (as a human rights concept); and
5. Accountability.

The main findings of the report point out that the Millennium Development Goals should be recognised as political principles and looked at in the human rights context as opposed to presenting them as "neutral" principles and goals. Next to that, fundamental human rights should not be seen as optional extras. There should be an explicit recognition of the right to water among others, which points to the obligations in this respect of the EU as a donor.

Peter de Vries stated that the Dutch government is working on several initiatives to operationalise what the RTW means on the ground. One of these is the pilot project in Benin that Tobias referred to in his introduction. He then shed light on the main problems with current attempts to encourage the implementation of the RTW in developing countries:

- Low levels of investment (both by donors and by governments in the South)
- Even these limited funds do not target the poorest. Most funds go to middle income countries. A recent survey by the EU (to be published

shortly) on aid effectiveness in the water sector in Africa shows that Tunisia and Morocco are the main destinations of funds.

- National capacity at all levels of society needs to be strengthened.

As to the question what the Netherlands can do to further the political dialogue on this issue, the following possibilities were presented:

- At the UN-level, the Dutch government proposed yearly meetings to monitor MDG nr. 7 in the Global Framework for Action and come to tougher forms of donor coordination to make sure that donor orphans get targeted.
- At the EU-level the Dutch government could make sure the RTW is taken up in dialogues between EUWI and the African Union
- Dutch embassies could be briefed to discuss the RTW in their policy dialogues with Southern governments
- Play a facilitating role within countries between civil society, local and central governments, like in the Benin pilot.
- Within the Dutch Ministry of Foreign Affairs, the RTW is largely targeted operationally by the water department, so at a technical level. Together with the Human rights and EU departments at the Ministry, it should be seen how this issue can be taken up as part of the human rights commitments which are part of the Cotonou Agreement, and thereby get a much stronger political ground.

Hameda Deedat argued that although South-Africa has a legal framework in which the RTW is enshrined, global processes interfere with its implementation, as is the case for the push for privatisation of public goods. With cost recovery as one of its principles, this economic framework can have restricting effects for access to water in South-Africa. It is important to engage different types of stakeholders in negotiations, such as economic, legal, environmental experts. It needs to be recognised that engaging technical experts or economists will lead to different outcomes than when social or human rights experts are involved. Countries with longer term perspectives should also take into account health and human costs when making economic decisions.

Plenary Discussion: Main elements of the debate

Main obstructions to the recognition of water as a human right:

- Governments are not aware of water as a separate right and are afraid of obligations that come with this recognition;
- The water sector is dominated by technocrats, who have a strong belief in technical solutions (extra pipes), making it difficult to engage the energy sector in the politics surrounding the RTW;
- Difficulty for countries to explicitly recognised non-served groups in the context of non-discrimination (sensitivity of the issue in national politics);
- Recognition of the RTWS in the EU is mostly seen in relation to internal issues in EU-countries and the obligations this creates at home.

The broader issue of integrated water resource management should inform international commerce/trade agreements.

There should be engagement with civil society and donors should listen to the voices of Southern populations and realise that most governments represent only small interests. The definition of the RTW in CESCR comment nr.15 should be broadly interpreted and focus on the aspect of participation and joint management of water services.

The issue of privatisation is often confused. Public utilities can function worse than privately owned water services. On top of that, there are many modalities for privatisation, running from complete private ownership of infrastructure and services, through 30 years concessions where ownership of the assets by municipalities to advisory services to municipalities. In the end, it is about how the system is regulated and the debate should not be confused by ideology.

For more information, please read:

Schmitz, T., Testing the water, Integrating the right to water and sanitation into the development policies of the World Bank and EU member states, Both ENDS Briefing paper, December 2008