

**Report Expert meeting Right to water and sanitation at the World Bank  
Organised by Both ENDS in cooperation with COHRE and FAN  
17 September 2008**

## **INTRODUCTION**

### **Aims of the meeting**

1. To strengthen the working paper "Testing the waters: How the application of the right to water and sanitation can enhance the World Bank's achievement of the MDGs.", based on participants' comments, suggestions and the discussion.
2. To formulate specific recommendations for the World Bank that come out of the discussion.

### **Definition of terms**

We will not discuss water as an economic, political or cultural good but access to water and sanitation as a social good for basic human needs; this means we will focus on a small bandwidth of issues.

### **Why focus on the right to water and sanitation (RTWS)?**

Water and sanitation should become a legal entitlement, not something that's provided out of charity nor an economic good sold for profit. When rights are enshrined in a legal format this will enable persons and communities to challenge institutional and political neglect. The RTWS is based on the principle of non-discrimination; rights help to focus on the least-served. This diverts us away from concentrating on the low-hanging fruits and will lead to reaching out to those who are not served.

Moreover, the RTWS provides a platform for deepening democracy; not restricting it to formal elections taking place every 4 years.

The importance of looking into this subject at this point in time can be illustrated by three basic trends which are coming together now:

#### **1. At the national level, an increased recognition of the of RTWS by states:**

South Africa was one of the first states to enshrine the RTW in its constitution in 1996. Since that time, close to twenty states have taken steps to include the RTW in their national legislation. It needs to be noted here that the right to water is taken up more easily than the right to sanitation.

#### **2. An increasing recognition of the RTWS in international law:**

The 1977 Mar del Plata declaration represented the first push forward on acknowledging the need to work on this issue. In 2002 definite steps forward were taken in the UN Committee on Economic, Social and Cultural Rights with the adoption of General Comment nr.15 on the right to water. In 2007 the convention had been ratified by 157 states.

#### **3. A general move toward a rights-based approach to development-thinking in the World Bank:**

For a very long time, a myth dominated within the World Bank saying the institution's Articles of Agreement restricted its mandate to the application of economic principles. But since the 1990s the agenda has changed and social and environmental considerations are now included in the Bank's work. There has been an extension of work on legal frameworks, mostly in the context of good governance. In his maiden speech as President of the World Bank, Robert Zoellick identified new strategic directions for the World Bank. Among these inclusiveness and sustainability featured as overarching principles. This points in the same direction as the principles of non-discrimination, inclusion and a rights-based approach.

The Millennium Development Goals (MDGs) also feature as a key element of the Bank's strategic focus. As it can be shown that the RTWS improves progress on MDGs, there is a good reason to adopt a rights-based approach, especially in the water and sanitation sector, where the attainment of MDGs is lagging behind. Another strategic focus is on fragile states, recognizing that the world's most vulnerable live in these states. Here again, the rule of law and vulnerability are central points of attention in the World Bank's work.

Moreover, World Bank writings on rights issues dating from 1998 illustrate that the importance of human rights principles for the Bank's work is being debated internally. In 2006 there was explicit recognition that rights have an important role to play in the Bank's approaches.

## **PRESENTATIONS**

### **Meike van Ginniken, Water and Sanitation specialist, World Bank:**

A rights-based approach to water is new to many working in the water sector at the Bank. On the one hand many World Bank staff get nervous when the term is mentioned out of fear that this will force them to go into certain directions. On the other hand, inclusiveness, sustainability, etc. is what they do every day.

For the World Bank, it is important to bring the discussion from the level of academic debate to how to operationalise it in countries. The World Bank welcomes the UN CESCR comment nr.15 and thinks the work it does is in accordance. An important caveat to be made here that comment nr. 15 does not mean that water should be made available for free. There is a need to move toward charging the rich and subsidizing the poor, to move from consumption subsidies to connection subsidies.

About 50% of the Bank's water and sanitation budget (of over 2 billion US\$ a year) is taken up for water supply; the remaining 50% goes to sanitation. Within the water supply programme, the focus is on access, whereas for sanitation the accent is more on sewerage and waste water treatment. There is now a recognition that for sanitation more emphasis needs to be placed on access, but this means action is needed at the micro-level (households), and that is not what the Bank is good at or has the right systems in place for. The bigger part of the water and sanitation budget is spent on urban areas.

In the World Bank, a huge tension is experienced between the need to respect nation states' sovereignty and the Bank's own ideas and approaches and how to push for these. One thing that is clear, is that there should be no conditionality within the water sector. The World Bank would be happy to support nations in operationalising the RTWS. The MDGS form the basis for the Bank's work. Within this context access to water and sanitation are indicators that the Bank needs to report on.

A struggle exists opposing the concepts of few services for all and all services for few. In some countries, there is a tension between what governments want and what the World Bank advises. Most governments are interested in services for few, even when they've signed on to the MDGs. The Bank would be happy to work with governments to balance this more. But there is a moral dilemma regarding what the World Bank can force onto countries.

### **Peter de Vries, Ministry of Foreign Affairs**

With the Ministry currently putting a big accent on rights-based approaches and after a process of interdepartmental coordination, the Dutch government recognized the RTWS in March 2008. The Dutch Ministry of Foreign Affairs is now starting up two pilot projects (in Benin and Indonesia) where they try to integrate the RTWS into political dialogues with these countries' governments. Through a consortium of national and international NGOs (lead by Both ENDS) these projects will contribute to building the capacity of local

civil society in bringing in the RTWS in policy and political discussion with their governments.

The Ministry also recognizes that it is important to cooperate on this with the multilateral channel. A need is felt to work with IFIs to see to which degree they can recognise the RTWS and operationalise it. The current expert meeting and the upcoming political café in Washington D.C. are a way to concretize this aim.

The Ministry feels there is a need for a cultural change and in order to get there, there is a need for **concrete entry points** and to get away from ideologising. The Dutch Ministry has a strong cooperation with the World Bank in many developing countries such as Yemen and Indonesia), but has not yet operationalised working on the RTWS with the World Bank yet. At this moment, the Dutch government does not (yet) have many co-financing programmes with the Bank and it feels a need to accelerate joint work on MDG 7, especially on sanitation. Co-financing would be a possible entry point for the Dutch government to work on this together with the Bank. The Netherlands-World Bank Water Partnership could play a role here.

Fragile states are another interesting area of possible cooperation. This area is still quite unexplored, but counts as an important focus for both the Netherlands as the World Bank.

#### **Hameda Deedat, Umbalazo We Jubilee, South Africa**

South Africa is a case in point because here the RTWS is enshrined in the constitution. It can serve to illustrate how it is struggling to actually realise these rights. It was expected that by now the rights to water and sanitation would be realised, but this is not the case. Over the course of time, the word "basic" in "basic free water" took on a new definition. Extra definitions were introduced: these were "intermediate" and "advanced". Intermediate meaning that people need to pay for having septic tank drained and advanced meaning that there is a tap in the house.

Hameda argued that the neo-liberal approach is undermining the attainment of the MDGs and its underlying objectives. South Africa is internationally appraised for reaching the MDGs, but these are only the external ones and not those internally defined. Among the later is the eradication of bucket system in 2008, but this is far from being reached.

How come South Africa did not meet the latter MDGs? This is because there are two different understandings of free basic water. The Piri case illustrates that although there is a policy, there is a lack of legislation for free basic water. Municipalities or service providers need to be economically viable (the World Bank and the IMF pressurized the South African government for this). This has led to a situation where households have a free-paying meter with 6 kilolitres. If households have no access to money, they get cut off when they need more than this quantity. According to the books, a household should comprise 8 persons, but in reality this can be up to 22 persons. Whereas under Apartheid there was access to 20 kiloliter for free and 20 were paid for, while 20 leaded away in the system.

The current situation leads to serious sanitation problems. Technologies are being introduced that undermine a real right to water and sanitation such as the drip system (where the pressure of the system gets reduced and only one tap can work at the same time in each house). In the context of cost recovery and privatisation it is clear that South Africa is not going to get there. It is worrying that there are many such negative examples to be found in South Africa; and this country is known to be the most advanced.

Water and sanitation have no substitutes. It is important that the World Bank and the IMF help states to achieve the MDGs without conditionalities.

### **Jorge, FANCA, Costa Rica**

FANCA has been doing strong policy work on access to water as a human right since 2002, both at the national level (in four Central American countries) and at the regional level (contributing to Central America's water resources management strategy by Environment ministers and by participating in the Central American Water Convention). The focus is not recognition of the RTW, but access to water as a human right. Results at the national level are that all water law projects incorporate the RTW as a human rights principle. In Nicaragua this has already been approved, so there is now a new water law that recognises RTW as a human right. In Central America there is a strong consensus and the World Bank supported the multi-stakeholder approach.

At this point, the discussion goes beyond the issue of recognition of the RTW as a human right; the discussion is now about the reality of implementation. In Costa Rica many social conflicts arise because communities are defending their own systems of water supply. There are for example conflicts between communal boards and tourist companies. The FANCA network is now looking into the issue of whether water should always be a public service or not; can private service be in line with RTW? This discussion in Costa Rica and Central America asks the question of whether civil society participation is a prerequisite, also in the management of water (is that an implication of the RTW?). A next step will be to work on sanitation as a human right.

### **Jamillah, ANEW, Kenya**

The RTWS promotes three important principles, which are: accountability, equity & non-discrimination and affordability

1. Accountability; legal frameworks are important in the empowerment of local communities. The Piri-case in South Africa shows that when the RTWS is enshrined in the constitution government can be taken to court by communities who demand their right.
2. In terms of equity and non-discrimination, the current situation in the water and sanitation sector is that poor people are forced to pay more, whereas the rich pay less while having access in their own homes. The rights-based approach can provide a basis for equity. For example, in Kibera district in Kenya, access has now been realised in that area. The RTWS offers a framework for communities to be able to demand to be served.
3. Affordability; the rights-based approach does not promote free water, but it plays a role in remedying the situation in which the price can be 5 times as much for some households as compared to others. Everyone should pay for the services they get; access in one's own house should cost more than a situation where people have to walk for 5 hours.

The World Bank should take a more pro-active role in encouraging African governments to take the rights-based approach more seriously and at the same time start actions at the community-level (capacity building) and gather case studies.

In reaction to this presentation, Meike from the World Bank indicated that she liked the framework Jamillah sketched regarding accountability, equity and affordability and stated:

1. The World Bank is making progress on accountability. The problems South Africa is experiencing in implementing its own legislation will be felt even more strongly in low-income countries. There certainly is a need to work also at community-level and with lower government levels. The water and sanitation sector is often decentralized, but the World Bank missed this decentralization wave that went over the whole world, especially Africa.
2. As regards equity, the World Bank is trying to learn, but is certainly not there yet. There is a concern about those groups that are not being reached, where the Bank is trying, but not achieving its goals. A difficult question is how to do this through lending instruments through governments. Can the Bank go to that level of intervention?

3. There is potential for joint lobby between civil society and the World Bank on affordability since the main obstacle here are governments. "Charge the rich and subsidise the poor" should become a serious slogan. And moving from consumption to connection subsidies is something the WB would like to go for.

## **DISCUSSION: MAIN ISSUES DISCUSSED**

### **The need to clarify our exact goal**

It is important to identify what it is you want the World Bank to do and then decide how to get there. There are several options:

1. Get the Bank to recognise the RTWS or a human rights approach to water and sanitation. Here the legal aspect won't be most important, but it is about politics. The Bank will raise its constitution if it wants to block something.
2. What do you want on the operational side? There are many parts to it; privatisation etc. The Bank does not have so many operational policies involving human rights (one is on involuntary resettlement and there are some others.). The Board is there to set strategy and it should demand more policies with a human rights side to it as so many EU governments are actually asking for it.
3. Making the Bank accountable.

### **Which divisions to target at the World Bank?**

A comparison was made between the World Bank and the catholic church, which on some issues can be the ally of civil society, but at other times stands opposed to what civil society thinks is necessary. The WB is also divided into many orders: the Research & legal department which is very progressive. The Loans department, with the primary goal to give out loans. And Regional departments/country coordinators having to deal with a diversity of contexts (in Latin America privatisation is a definite no-go, whereas in Ghana in 2005 the price of water was linked to the exchange rate).

### ***Need to identify barriers***

The key is how to make sure people have access to water. Do we want the World Bank to accept the RTWS as a helpful tool to realise the MDGs and if the Bank is indeed a church, then which part of the institution is against this? It is important to identify the barriers. This is not about separate people in the Bank, but about the system: which parts do we address to get change? And what arguments will be listened to?

The importance to identify what is blocking progress when pressing for the RTWS was further illustrated by a the following experience: a recent GTZ human rights evaluation of water policy in Kenya pointed out that the opposition came from GTZ staff in Kenya and not the Kenyan government as expected.

The point was made by the Ministry of Foreign Affairs that the real bottle neck is the legal argument, not a group of people opposing the rights-based approach. It is strongly felt within the World Bank that the Bank has no right to interfere in legal policies of nation states. All publication on MDGs never mention human rights, whereas good governance has been recognised. It is not right to simply say that using the principles of accountability, etc. is good enough. There is indeed a need to use human rights in a legal way, otherwise you lose the bite. The arguments should be based on the fact that human rights standards are crucial; this is what nation states ratified, now the World Bank should be involved in their implementation. To tackle the RTWS in the core we need to go through the Executive Board. In the Netherlands we should work on this. Country directors don't like difficult dialogues, their priority is to issue loans. The suggestion was to begin here, where the easiest entry point is.

In support of the legal argument, it was mentioned that there is a step in between rights and enforcement we need to focus on: every human rights entails an obligation on the side of national governments, but also the international community like the WB.

Moreover, formally speaking, an international actor with legal personality under international law, such as the WB, is *bound* by international customary law. Many human rights, although enshrined in a treaty, at the same time have customary law status. It could be argued that this goes for the norms in articles 11 and 12 ICESCR – from which the RTWS is derived according to received interpretation – as well. We should build on this. The World Bank is held by international law, if you want to play it legally you would have a sound and clear discourse.

### **Entry points**

Meike indicated that the World Bank is a club of countries with voting power. Therefore the entry point should be the Bank's board. Northern civil society has been successful in lobbying for environmental and social standards in the past. It needs to be clear what you mean when you say you want the WB to recognise the RTWS. If it is indeed a board decision you are aiming for, how do you expect this will trickle down to the operation levels. Give clear recommendation on this.

Within the World Bank there is resistance to give into "small" initiatives like this (the education and health sectors will certainly follow), especially at the loans department. The question is therefore what do you really want (change of culture) → be specific about the objective and then define the entry point.

In reaction to this, two views were expressed:

1. If the Bank doesn't like small bits and pieces coming to them, then it becomes important to identify what kind of initiatives are approaching the WB on a rights-based approach and to find out whether there is common ground to get to a broader approach. The RTWS is one of the human rights, but in the end there is a demand for the WB to take on board human rights at a global level.
2. The Dutch government is engaged internationally on the RTWS and could take leadership on this. It could cooperate with Spain and Germany who are most active in the Human rights council. It would be wiser to focus on the RTWS in the first place and provide relevant guidelines just to this sector. It is easier to focus on one concrete thing, other sectors can learn from it.

At the operational level the World Bank gets nervous when civil society says it needs to do better. It is crucial to be very clear on what you mean: should the Bank do different things, more water and sanitation, do things differently)? A suggestion is to look at case examples; evaluations on the World Bank website. Civil society needs to dig into that and be specific.

### **Lessons from past World Bank – civil society dialogue**

FAN and Both ENDS are involved in an ongoing dialogue with the World Bank water and sanitation division to engage with civil society on urban water reform originally. These were fairly technical issues; such as pricing and subsidies, with which CSOs struggled. With this dialogue, the aim is to bridge this gap between civil society and the World Bank and to identify where there are entry points for reform. An evaluation identified the most important bottlenecks and these appear to be mostly functional in the WB (the way they work, limited resources) and in civil society (how they work, capacity limits, funding limits). The evaluation paper can be accessed through the FAN website:

[http://www.freshwateraction.net/web/w/www\\_105\\_en.aspx](http://www.freshwateraction.net/web/w/www_105_en.aspx)

Among civil society, there is a frustration that we often do not agree with the World Bank's decision making and implementation approaches. In general, civil society does not get involved in this enough by the World Bank. With the rights-based approach, we expect to get more involved. These concerns are about the process and the actors which are implied in this process. This concern is broader than the water and sanitation sector; it is a major concern of our Southern partners.

## **Privatisation**

The question was raised how the World Bank is engaging with the concerns around privatisation. Is the World Bank looking at concerns of people who do not have access to water services at all in this respect?

Privatisation and full-cost recovery were strong elements of WB policy at the end of the 1990s. To the credit of the WB in 2002/2003 it came close to saying it was wrong in this respect. If the private sector can provide accountable, equitable and affordable services, then it is welcome to do so. But there should be no conditionalities of that order. The IMF who puts broader conditionalities might do that, but the World Bank should not.

## **Affordability**

In relation to pricing, the World Bank is not actually saying "charge the rich, subsidise the poor" everywhere. Conflicts arise as a result on how the tariffs are set. In South Africa most of the debate focuses on making sure the poor do not consume too much. What is needed are progressive tariff structures. There is a need to accept some level of basic free water. In South Africa, what they try to do is targeting, but this doesn't work because lists are not complete. What is the World Bank's stance on prepaid meters? And on disconnections?

A possible pricing system that could be suggested to the World Bank consist of three parts: the part that consumers can afford, which will differ per country. A second tranche would come to fall under the system of full cost recovery. And a third element would be the fining of unsustainable use (to discourage things such as golfing in the Sahara).

## **Rights and duties approach**

When taking a human rights approach there is a danger of window dressing. Redefinitions will be introduced as was the case in South Africa. The quantities are at their very lowest already (20 to 25 liters a day). This already represents a compromise on reaching what the goals were meant to. We should be very careful not to compromise even this; as this is not leading to adequate levels of living right now. What needs to come together with a human rights approach, is a system of monitoring by an independent commission that knows what it talks about. Yes, a rights-based approach has the above-mentioned advantages, but it should not be only about rights. Communities should become involved with their duties as well (pollution etc.). So a rights and duties approach.

Fundamentally the question is what the World Bank understands by rights. If it is seen as a taboo, the struggle will be harder. It is indeed good to indicate that this gives people a right, but also responsibilities. If you see a leaking tap, you need to report or repair this. Rights and responsibilities may be a useful way to engage the Bank.

## **Economic arguments**

It is important to illustrate that implementing rights is more cost-effective than not doing so, especially in the water and sanitation sector as it has direct effects on health and access to education among other things. It costs more money to undo the harm of not providing access to water.

It would be best to look at how to improve policies and to look at examples that work. With the World Bank's bias to the private sector, this should (partly) focus on how to successfully involve the private sector.

## **Need for case studies**

In terms of learning from other areas where a rights-based approach has been used successfully, FAN has partners in India working on the right to information. We then need to gather evidence also from other sectors, to be more coherent. Civil society needs to document its findings more clearly.

Actually, it was observed, many of the organizations present here have access to case studies through their partners. Both ENDS would very much welcome if you could send the cases to us.

The problems with case study material is that it generally does not focus on the role of the Bank. What is actual the role of the World Bank in South Africa? There is a miscommunication at that level. Of course the business the World Bank is in is very political. There is also an information overflow. Meike could point to some cases, but the World Bank portfolio is huge. At this moment, a water evaluation has started (on dams, etc.) A first draft is expected next spring; there will be consultations internally and externally. It would be good to look for the project documents on the website when they get published. This could be an entry point for further dialogue.

### **Suggestions to refine the working paper**

The paper on the RTWS at the World Bank has done two things (see 1 and 2 below), but needs to do a third one (see 3):

1. Legal approach
2. Human rights based approach
3. Take what's concretely happening on the ground (positive and negative). MDGs are problematic for middle-income countries; targets are too easy for them, especially regarding water and sanitation, they are not focused on access for the poor. World Bank aspects that were suggested should be highlighted: what's happening with privatisation on the ground? There is a need for empirical research.

There was a suggestion that arguments the World Bank are most likely to listen to are economic ones and therefore economic argument should get a more central place in the paper.

Based on the dialogue FAN and Both ENDS are engaged in with the World Bank, there was a suggestion that the working paper should be used as an opener and asking the right question may be better than the formulation of recommendations to continue the dialogue. This won't end after a political café and it is important to maintain the common ground and make use of the lessons learnt. At the national level, it is even harder (as governments will have their own positions regarding the RTWS), but we need to get there eventually. The working paper should be framed along this path. On the other hand, there was a clear call for concrete recommendations from different participants.



## List of participants

	<b>Name</b>	<b>Organisation</b>
1	Peter de Vries	Ministry of Foreign Affairs
2	Margriet Kuster	Ministry of Foreign Affairs
3	Jan-Willem Legrand	Ministry of Foreign Affairs
4	Meike van Ginniken	World Bank
5	Danielle Morley	FAN
6	Virginia Roaf	COHRE
7	Malcolm Langford	NCHR, Norway
8	Bouwe-Jan Smeding	Simavi
9	Jorge Mora Portuguez	FANCA, Costa Rica
10	Jamillah Mwanjisi	ANEW, Kenya
11	Hameda Deedat	Eco-care Trust Umzabalaso We Jubilee, South Africa
12	Vanessa Dubois	Fuden/FANCA
13	Simpfiwe Nojiyeza	ANEW, South Africa
14	Hester Foppen	ICCO
15	Martijn van de Groep	Ministry Verkeer en Waterstaat
16	Mascha Singeling	Netherlands Water Partnership
17	Elbrich Spijksma	Aqua for All
18	Kiki Brolmann	University of Amsterdam
19	Antoinette Hildering	Universiteit Utrecht
20	Meghna Abraham (audio link)	Amnesty International
21	Annelieke Douma	Both ENDS
22	Danielle Hirsch	Both ENDS
23	Tobias Schmitz	Both ENDS
24	Tamara Mohr	Both ENDS
25	Remi Kempers	Both ENDS
26	Anouk Franck	Both ENDS