

# Water: Both a public good and a human right?

*«Water for all!» This target dominates the international debate around the global water supply challenge – all the more so in the wake of the United Nation's freshwater decade in the 1980s. Water is a public good, or so say some. Indeed, in their opinion, a human right to water should ensure free access to this resource. But, others ask who will provide it and who is going to pay for it? In their mind, water should be recognized as a scarce, economic commodity.*

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Photo: KfW

Clean water is undoubtedly a basic need – but can it also be defined as a human right?

A human right to water as a public good almost directly implies that it should be supplied free of charge. However, with a resource as scarce as water, this could lead to overexploitation. The supply of water is a service, and it generates costs. What bearing does this have on interpreting water as a human right, and where do the problems lie in operational terms? Is it indeed feasible to enforce a legal right to a resource that is becoming ever scarcer?

## Why should water be a «public good» and what is a human right?

The United Nations (UN) define water as a «public good» although, according to the economic definition, this scarce resource does not meet all of the economic criteria of a public good (in which case no one

could be excluded from its consumption). In the human rights discussion, the term «public good» is of importance in that a resource of this kind must be made accessible to everyone in sufficient quantity and quality (basic supply), since it is essential to human life and health. Since a human right is an «inalienable right of each individual person to be free of (arbitrary) state interference», water, as a public resource, could be understood as a human right without any further protective provisions; this is the only way in which an individual can find justification to lodge a legal claim against the state.

## A brief history

A brief look back in time shows that, following the failure of the supply-oriented and technology-intensive approach to water delivery (UN water decade, «Water

for All!)), new, sustainable means of supplying water have to be sought. The water decade did not succeed in assuring reliable supplies to poor population groups, an obligation traditionally devolving to the public sector. State-run water supply and wastewater disposal were highly inefficient in various places, especially in developing countries. The response was to emphasize the status of water as an economic commodity; in other words, water supply should come at a cost, but at one that was not distorted by subsidies, thus reflecting the scarcity and the outlay incurred in extracting, processing and distributing it. This approach was linked with the demand to open up the water supply market to private and foreign investment so as to attract more capital. This definition of water as an economic commodity is laid down in the 1992 Dublin Principles and influenced the formulation of the water chapter in Agenda 21 in that same year (Rio Conference 1992): «Water is an economic and social good.» However, it was not long before a broad-scale protest front developed in the face of this «trend towards privatization». Thanks to the Millennium Development Goals (MDGs), which were ratified at the UN General Assembly meeting in New York in the summer of 2000, the debate was given a stronger poverty orientation. The 2001 Freshwater Conference in Bonn was an

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attempt to reconcile the two approaches. As things now stand, the state is not able to ensure the supply of drinking water on its own. However, it could guarantee access to drinking water at socially acceptable conditions by introducing appropriate legal framework conditions and providing the required budget funding.

### The risk of overuse

The definition of guaranteed rights is central to the debate on the human right to water. A *narrow* interpretation restricts access to drinking water to personal or household use. This would mean that, in addition to accessing vital drinking water supplies, the human right would also include access to sufficient water for cooking and personal hygiene (cf. UN

comment no. 15). In contrast, a *broad* interpretation encompasses the satisfaction of basic needs.

There is no doubt that water is a basic need. Hence, would it be possible to infer a right to sufficient water for irrigated agriculture to ensure «food security»? If that were the case, irrigated farming and human settlements would surely fight even more bitterly than they have done traditionally in the past, with the risk of yet more overexploitation of this already limited resource.

### Ever scarcer, yet free of charge

Experience has shown that the public sector is often unable to deliver water and provide for appropriate sanitation on a reliable and sustainable basis. Frequently, dilapidated and poorly operated supply

## Yemen: Users resolve conflicts

The Sadah Basin is one of the driest areas in Yemen. Annual precipitation rarely exceeds 200 millimetres and the groundwater table is becoming lower. Conditions for agriculture have steadily worsened, forcing people to abandon their farms.

The example of the Sadah Basin Co-operation Committee (SBCC) in Yemen shows how structures ensuring the controlled use of scarce water resources can operate. The National Water Resources Authority (NWRA) has been responsible for the water resources policy since 1995. The establishment of SBCC in 2001 marked the arrival of an organizational unit to manage the water catchment area.

The state has a monitoring and regulatory function (through the NWRA). The volunteer members of the SBCC come from the local population (participatory approach), thus ensuring a key precondition for the controlled use of the valuable resource, water. The objective is that the main consumers themselves restrict the quantities of water they use and thus pre-empt the inter-generational conflict over water availability that is looming on the horizon.

Photo: KfW





In the past ten years, it has been possible to substantially increase the number of drinking water connections in Tanzania, even in rural areas.

systems, tight public budgets and poorly paid and underqualified workers have a harmful effect on the quality and quantity of water supplied. Under these conditions, it is expedient to involve commercial structures. However, to be managed commercially, an operator does not necessarily have to belong to the private sector. The key to success is that the company be run efficiently. To ensure sustainability the overall system of water supply and sanitation has to be socially acceptable, which also means supplying the poor and being able to cover costs.

### What could the «Model of the Future» look like?

Although the «legal approach» and the «commercial approach» broach this subject differently, a certain dialectic does

exist between the two. The two approaches are interlinked. The dynamic synergy of these approaches must be harnessed to explore new ways of resolving the global challenge of water supply. A feasible approach might be as follows.

Establish a human right to water strictly limited to access to drinking water and basic sanitation for private and household use. The state, as the direct enforcer of the human right to water, would be responsible for the socially acceptable and efficient provision of water supplies and sanitation facilities. In borderline cases, subsidies would be feasible, so as to meet the water supply objective. In principle, how-

ever, processing, distribution and disposal activities in this state-determined framework should be conducted along commercial lines. Experience teaches that this calls for commercially oriented utilities or user organisations that need to be as decentralised and consumer-oriented as possible and also must be capable of managing all technical and business aspects independently. This would make the requisite level of commercialisation feasible.

The state has the potential and indeed the duty to monitor and regulate utilities and so to ensure access to water supplies and basic sanitation, especially for the poor. This approach honours the fact that, in normative terms, water, as a raw material and foodstuff, is a public good, whilst the processing and distribution of water will always remain a service, and will therefore generate costs.

Organising this service efficiently and passing on the costs to the users in a socially acceptable manner is an essential task of the future, one that requires systematic regulation. The overriding objective has to be that of supplying more people with water and securing the sustainability of delivery.

### Participation as the key to success

Since 1991, German financial cooperation has been actively involved in several projects targeting drinking water supplies for small towns. Activities were preceded by socio-demographic and socio-economic studies to determine the level of social cohesion, the inhabitants' ability to pay for such services, as well as traditional land laws and rights of use. With this information, it was possible to devise a cost-covering, tariff-based system aligned to the population's financial means. A users' committee made up of voluntary members is responsible for operations. This African example of sustainable drinking water supplies via commercial structures is regarded as a «best practice», especially since participation by the local population is a pivotal component.