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**The Right to Water in the Global South:
The impacts of neo-liberalism on the
marginalised groups**

To be signed and placed at the beginning of the thesis



Thesis 2008/2009

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Contents:

Abstract.....	1
Introduction.....	1
Chapter1 International Law and the Right to Water.....	4
Water and International Humanitarian Law	9
Water and International Human Rights Law	10
a. Committee on Economic, Social and Cultural Rights.....	10
b. General Comments.....	11
c. Possible legal approaches of the right to water.....	12
d. General Comment 15- The Right to Water	15
e. General Comment 14- The Right to the Highest Attainable Standard of Health	19
f. Corporate Obligations	19
Chapter 2: The right to Water in a globalised economy	25
Water services under GATS	28
Controversial views of international private sector's involvement to the control of the water services	31
Solutions	40
Chapter 3: Democracy deficit and the need for public participation in water issues	45
Democratic question between states	45
Democratic question within a state	48
Exploitation of the Global South: urgency for alternative solutions ...	50
The human rights based approach to development: A model to diminish water inequalities	53
Chapter 4: Texaco case in Ecuador: The anti-globalisation trial of the century	59
General Conclusion	68
Bibliography	72

Abstract: Under the ruling of the global market, many economic, social and cultural rights are deprived from people. The right to water, however important for human life and human dignity does not seem to be considered as a right of prime importance by the governments of the Third World that follow an economic-orientated development process demanded by international financial institutions where western state and non-state actors dominate. The impacts are most severely felt by the marginalised groups of the Global South. As under a globalised economy as such poor people, rural communities, women, children and indigenous communities are deprived from one of their most vital rights, their right to water, the norms of global equity, justice and non-discrimination prove to be far from being met. At the same time globalisation comes also as the first responsible for the scarcity of natural water resources and the environmental degradation. Is the international legal framework adequate to guarantee a right to water for all? Is international community capable of shifting the sole economic perception of development to a sustainable one? Participation of citizens in the water issues is demanded in order for an environmentally sensitive human-centered model to be successful. But who is to take on first?

Introduction

According to the United Nations World Water Development Report of 2009, hundreds of millions of people around the world remain trapped in poverty, hunger and ill health suffering the impacts of the lack of adequate potable water. Despite Millennium Development Goal 7 callings for halving the proportion of people without sustainable access to safe drinking water and basic sanitation as well as Millennium Development Goal 1 on the eradication of extreme poverty and hunger, many poor regions in the developing world seem incapable of ensuring the vital needs of their peoples. Population growth, increasing consumption and climate change compose the factors that exacerbate the already existing problems and can lead us to a world water crisis.

Human security and sustainable development are directly linked with water scarcity. It is urgent that solutions are found to meet especially poor people's basic needs for food, water, health and livelihood who are the first to suffer most from the effects of water inefficiency and the climatic change. However, the majority of the Third World's governments are incapable –to some unwilling- to safeguard the right to

water for their populations, a right interrelated with other globally recognised human rights as the right to life and to human dignity. This is why solution must come through international norms and interstate cooperation. Furthermore, the global character of the environmental degradation urges that solutions are found on an international level.

This thesis first tries to indicate whether an appropriate legal framework able to safeguard the right to water in all its human and environmental dimensions exists and if it exists to which point it is possible to be respected by the developing states taking into consideration its weak legal character as an international law instrument as well as the economic incapacity of those states to adopt the social and environmental policies proposed. General Comment 15 adopted by the Committee on Economic, Social and Cultural Rights has been a very significant step taken by the international community to verify the existence of an independent right to water that at the same time does not lack its interdependency with a great number of other interrelated to it civil and political as well as economic, social and cultural rights. However, much criticism has been put concerning both its non-binding character and its glimpse to include environmental principles that have to be respected in order to fully accomplish the right. All those matters are to be viewed in the first chapter of the thesis.

International law does not explicitly prohibits the privatization of water services while it leaves space to private corporations to take advantage of the water resources in the developing states in order to practice their economic activities. International financial institutions as the World Bank, the International Monetary Fund and the World Trade Organisation demand that the governments of the Third World adopt privatisation contracts with western corporate water giants as a condition of loan giving for the countries to meet higher standards of development and become more competitive actors in the global market.

However, those institutions do not insert human rights standards to the bilateral contracts that they sign with the developing states. It is strongly supported that that those development plans, based on the principles of globalisation and much focused on profit making rather than meeting human rights standards, cause grave problems to the marginalised groups of populations –poor people of urban regions, whole

populations in rural areas, women, children and elderly people in vulnerable position and indigenous- and favour no one but the western already strong economies and the elite groups of the developing states. After presenting the diverse views with regard to the globalisation process in the developing world as well as the hazards that international financial organisations are said to provoke on the social and environmental nets of the developing states, it will be examined whether treating water as a commodity actually puts a barrier to vulnerable groups' enjoyment of economic, social and cultural rights.

Globalised reality seems to demand that issues traditionally belonging in the domestic political agendas of the states now become parts of international policies. Decisions concerning water in the developing states are today taken in a supra state level in international financial organisations where western state powers and corporations are said to hold a "more equal" standing compared to that of the developing states' governments. Consequently they are accused of promoting their sole economic interests without leaving space for the developing countries to stand for the rights of their citizens by putting their own terms in their agreements. The equal representation of the actors in the decision making processes of the international financial institutions is to be examined in the third chapter of the thesis.

Furthermore, it is supported that this shift of dealing with aspects from a domestic to an international level puts into question the democratic character of the decisions taken as citizens seem to be excluded from every stage of the process. Some thinkers support that unable to be informed, heard or actively involved in the decision-making process citizens retain a passive role seeing their rights being gradually deprived from them. In the case of water, a source that is of major importance for the human survival, the absence of citizens' voices in water management is of major importance and so to be discussed in the fourth chapter of the thesis.

Thereafter, an alternative model of sustainable development much involving public participation in the decision making process will be presented. Under Human Rights-Based Approach to Development economic, social and cultural rights are considered as human claims that people themselves are encouraged to fortify with their involvement. Furthermore, Rights-Based Approach also includes environmental principles that are not to be disrespected by any actor –public or private- for the sake

of the profit. It will be examined whether applying a model as such could safeguard the right to water for all people and could replace the traditional rather economic thinking of development in the Third World.

The final chapter of the thesis is about what is described by many experts as an “Amazonian Chernobyl”. This case involves Texaco’s destructive for the livelihood business activities in Ecuador, in an area of the Amazonian jungle where eight tribes of indigenous people were living. Severe environmental damage, loss of human lives and intense increases in cancers and abortions led the indigenous populations to judicially go against the corporation in the US Federal Court System. This is the first time in history that redress for environmental damage is claimed from a private corporation and under the legal framework of the country where the headquarters of the corporation is located and not where the activities of the company occurred. This case, still pending, will be presented in the last chapter of the thesis.

Chapter1: International Law and the Right to Water

In this first chapter of my thesis I will try to discuss the international legal framework concerning the right to water as well as to examine to which point the right to clean and safe water, one of the most basic necessities both for human and environmental survival, can be safeguarded under those existing international legal provisions. Water is needed not only for drinking but also for agriculture to provide food and basic hygiene, supporting health and preventing disease.² According to statistics revealed by the World Bank, a person needs one to two hundreds liters of water per day to meet his/her basic survival and health needs. Unfortunately, especially in the developing countries the lack of those amounts of clean water causes diseases and deaths. After malnutrition and unsafe sex-both linked with water directly or indirectly- lack of safe, drinking water comes as the third cause of death in the Third World.³

Poor people and communities, women, refugees and children, especially girls who in some cases do not go to school because of the lack of safe sanitation facilities compose the groups that suffer more from the lack of water. That is why experts find the human right to water totally interlinked with the civil and political human right to life and human dignity. Water is also interlinked with cultural rights especially in indigenous communities where water is often considered to be of a particular spiritual meaning. Furthermore, water, as a substantial element for agriculture and industry, is also said to be interrelated with the development of each country.

Despite the long discussions about the water issue and the crucial importance of the existence of a recognised human right to water that would raise obligations to every state to provide clean, affordable water to all, there is no legal binding international instrument, this is to say a treaty or a covenant, to guarantee this engagement of the states. According to Maude Barlow only a United Nations (UN) Covenant would

² Williams, Melina: Privatisation and the Human Right to Water: Challenges for the New Century, Michigan Journal of International Law, Vol.28:469, May 2007, pp. 469-470.

³According to a 2003 UNESCO report that attributes 2.2 million deaths to the lack of safe drinking water and sanitation in the year 2000.

“set the framework for water as a social and cultural asset, not an economic commodity” and would “establish the indispensable legal groundwork for a just system of distribution as it would serve as a common, coherent body of rules for all nations, rich and poor, and clarify that it is the role of the state to provide clean, affordable water to all of its citizens.” Such a Covenant would also “safeguard already accepted human rights and environmental principles in other instruments such as conventions”.⁴

In order to better understand the international community’s contribution to the water issue and to clarify the role of the existence of the human right to water it is important to start from the UN Charter which in 1945 first inserted the principle that the relations between states and their citizens were to be from then on a matter of international concern and no longer the exclusive duty of sovereign states.⁵ What followed the UN Charter in relation to the human rights issues was the Universal Declaration of Human Rights (UDHR) that was adopted by the General Assembly (GA) of the UN on December 10th 1948 and the two separate Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) adopted again by the GA in 1966.⁶ Even as non-binding the UDHR is the international instrument that today ensures states’ respect and compliance with universal and international human rights principles and articulates the mostly recognised moral and political standards. At least to some of its provisions the declaration is considered to consist part of international law that guarantees the existence of equal inalienable rights for all persons.

The problematic of the division of human rights in two separate covenants is an issue still discussed and accused by experts who support that this division was made to put more emphasis on the civil and political human rights and to ignore the economic, social and cultural human rights that are more collective and demand much more political action for their full enjoyment. Others support that a devaluation of the economic, social and cultural rights was never intended. It simply happened because

⁴ Barlow, Maude: *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*, Trade Paperback editions, October 2007, pg.165.

⁵ Salman, MA, McInerney-Lankford, Siobhan Alice: *The Human Right to Water: Legal and Policy Dimensions*, World Bank Publications, 2004, pg.18.

⁶ Salman, MA, McInerney-Lankford, Siobhan Alice, (2004): *op.cit.* , pp.19-22.

it was easier for the states to promote civil and political rights, the “negative and liberty orientated”⁷ rights that do not demand positive action for their realization, than to support economic, social and cultural rights, the realisation of which depends on money and time consuming positive state measures. According to Alston and Quinn “In general terms, economic, social and cultural rights are, on average, somewhat more dependant for their full realisation on positive state action than are civil and political rights.”⁸ Without the active support of the state this second category of rights tends to be meaningless.

According to the Article 2 of the ICESCR “each state party is obliged to take steps to the maximum of its available resources to achieve progressively the full realisation of the rights under the ICESCR”.⁹ This lack of emergency for state action in combination with the vague and aspirational character of the ICESCR in general were the reasons due to which many academics excluded the economic, social and cultural rights from the individual human rights list and perceived them only as “promotional and programmatic goals and objectives”¹⁰ of low legal value. In 1987 Alston criticised the ICESCR not only for the “vagueness of the normative implications of the various rights it contains” but he also judged “the failure of the international community to develop jurisprudence of any significance on many of the principal economic rights since the Covenant’s adoption in 1966”¹¹. As it will be discussed below the precision of the General Comment 15 concerning the right to water issued by the Committee on Economic, Social and Cultural Rights in 2002 was considered as an evolution of a major importance in the sphere of second generation human rights.

In order to effectively understand the power and the value of human rights one should take into consideration the linkage and the interdependency between all existing categories of rights. Paragraph 5 of the Vienna Declaration¹² explicitly

⁷ Salman, MA Salman, McLenerney-Lankford, Siobhan Alice, (2004): op.cit. ,pg.21.

⁸ Salman, MA Salman, McLenerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.21

⁹ International Covenant on Economic, Social and Cultural Rights available at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm, May 10, 2009.

¹⁰ Brownlie, Ian: Principles of Public International Law, Oxford University Press, 1998, pg.576.

¹¹ Salman, MA Salman, McLenerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.45.

¹² 1993, World Conference on Human Rights, Vienna, Austria, Vienna Declaration and Programme of Action available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument), May 12, 2009.

states that “all human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.”¹³ Many years before, in 1977 with its Resolution 32/130, the GA confirmed the indivisibility and the interdependency of all human rights and freedoms adding that “the promotion and the protection of one category can never exempt or excuse states from the promotion and the protection of the other rights”¹⁴.

When the Nobel laureate Amartya Sen was asked if guaranteeing political liberty and civil rights should precede as a state priority the removal of poverty and misery she gave the following answer: “Real issues involve taking note of extensive interconnections between political freedoms and the understanding and fulfillment of economic needs. The connections are not only instrumental (political freedoms can have a major role in providing incentives and information in the solution of acute economic need), but also constructive. Our conceptualisation of economic needs depends crucially on open public debates and discussions, the guaranteeing of which requires insistence on basic political liberty and civil rights.”¹⁵

Water is involved in both the first and the second generation human rights as well as in the new category of rights called third generation or “solidarity rights”.¹⁶ This third category of rights is different from the other two as it involves not only public but also private actors for dealing with the new challenges that have appeared. International financial institutions, multinational corporations, mobilised civil society are some of those actors that play a crucial role also to the water issue. Third generation of rights contains issues newly appeared to the global agenda such as the right to a clean environment, the rights of the communities, the right to self-determination or the right to development. This latter emphasises to the emergence of the concept of a “rights based approach to development”.¹⁷

¹³ Vienna Declaration, op.cit. ,(note11).

¹⁴ Resolution 32/130, GA, 1977, available at <http://www.un.org/documents/ga/res/32/ares32r130.pdf>, May 10, 2009.

¹⁵ Salman, MA Salman, McInerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.27.

¹⁶ The term 1st generation human rights includes the civil and political human rights while the 2nd generation human rights the economic, social and political ones. However both the categories of rights failed to address key global issues that came up throughout the years and so a new category, the 3rd generation human rights were inserted to deal with those new issues.

¹⁷ Salman, MA Salman, McInerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.23.

The Office of the High Commissioner for Human Rights described the rights-based approach to development as “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Essentially, a rights-based approach integrates the norms, standards, and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountability, empowerment, and participation. A rights-based approach to development includes the following elements: express linkage to rights, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups.”¹⁸ As it is obvious water issues related to development are to be inserted under this rights-based approach to development.

Water and International Humanitarian Law

Provisions concerning the right to water can be met in various international instruments. The 1949 third Geneva Convention relative to the treatment of prisoners of war explicitly refers to the right of prisoners to water in its articles 20, 26, 29 and 46 adequate to cover their drinking, nutritional and sanitation needs in order for them to be able to be kept in good health.¹⁹ In the same year, the fourth Geneva Convention contains three articles that ensure water to the civilian persons in time of war. Those are articles 85, 89 and 127 that include the right to water to safeguard civilians’ needs for food, hygiene and cleanliness of the environment where they live as well as their nutritional and hygiene needs during their transfer.²⁰

For the protection of the civilians 1977 Additional Protocol I to the Geneva Conventions in its article 54 paragraph 2 and 3 explicitly refers to the prohibition of destroying or removing “drinking water installations and supplies and irrigation works”, acts that can cause starvation or force the movement of the civilians due to

¹⁸Information available at www.unhcr.ch/development/approaches-04.html, May 10, 2009.

¹⁹ All articles of the third Geneva Convention available at <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=375&t=art>, July 7, 2009.

²⁰ All articles of the fourth Geneva Convention available at <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=380&t=art>, July 7, 2009

having been left with inadequate food or water.²¹ Article 55 paragraph 1 refers to water as a means of the preservation of the natural environment for the civilians.²² All the above provisions are also predicted for the protection of victims of non-international armed conflicts in Article 5 paragraph b and in article 14 of the 1977 Additional Protocol II to the Geneva Conventions.²³

Water and International Human Rights Law

Committee on Economic, Social and Cultural Rights

From 1992 the international community recognised as a “commonly agreed premise” the basic right of all human beings to have access to clean water and sanitation.²⁴ However, it was only in 2002 that the Committee on Economic, Social and Cultural Rights with its General Comment (GC) 15 acknowledged a direct relationship between human rights and water and explicitly recognised the human right to water itself.²⁵

The Committee was established in 1985 by the Economic and Social Council (ECOSOC) of the UN and was consisted by a group of experts that at that time worked more as a part of ECOSOC rather than as a body with independent identity.²⁶ Gradually the Committee raised the number of its members with experts who were now more competent in human rights fields and worked in a more autonomous way. Its members were no longer designated by state parties but they were elected by ECOSOC, a change that contributed to the depoliticisation of the body.

²¹All articles of Protocol I of the Geneva Convention available at <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=470&t=art>, July 7, 2009.

²² Article 55, paragraph 1, op.cit. ,(note 10)

²³All articles of Protocol II of the Geneva Convention available at <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=475&t=art>, July 7, 2009.

²⁴ This was in the Dublin Conference on “Water and Development” as well as at the Rio Summit on “Environment and Development”. Both the Dublin Statement on Sustainable Development and the Rio Declaration on Environment and Development can be found on the following link: <http://www.unesco.org/water/wwap/milestones/index.shtml>, May 10, 2009.

²⁵General Comment 15 available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf), May 29, 2009.

²⁶ Salman, MA Salman, McInerney- Lanford, Siobhan Alice, (2004): op.cit. , pg.35.

Today in its formalized form the Committee constitutes a more judicial and less political central entity of the ECOSOC for the implementation of the ICESCR. The increased responsibility of the Committee in the investigation and fact finding processes gave to its members the capacity to judge and issue definite and authoritative statements on the clarification of the rights set forth in the ICESCR that contributed to their more effective realisation by the state parties.²⁷

All those developments noted above bestow the instruments issued by the Committee –concluding observations, General Comments- with such a level of legitimacy that according to some legal experts allow us to consider them as “law”.²⁸

General Comments

In 1987 ECOSOC authorised the Committee to insert the General Comments (GCs) to assist states’ more complete implementation of the ICESCR. GCs’ role is to point the insufficiencies in states’ reports, to suggest improvements in the reporting procedures and to stimulate the measures of the states as well as the activities of the international organisations and the specialised agencies that can progressively lead to the full realisation of the provisions of the Covenant.²⁹ GCs exist to explicitly refer to all the aspects of a right and to analyse a state party’s obligations with respect to this right.

The exact role and purpose of the GCs was clarified in 1999 when the Committee adopted an Outline with the title “Implementation of the ICESCR”. After an analysis of this Outline, Salman and McInerney conclude that “the role of the GCs is historic, descriptive and normative. They are intended to set forth in comprehensive and indepth terms the genesis of the right, grounding this in its basic premises and principles, in its travaux preparatoires or drafting history. The analysis is also

²⁷ By a resolution established in 1976 by ECOSOC for the implementation of the ICESCR, the state parties are expected to submit reports to the Secretary General on the measures they adopted in regard to the implementation of the ICESCR as well as on the factors that may put obstacles to the fulfillment of their obligations under the Covenant. The Committee has the capacity to comment to those reports with a summary of its considerations that it submits to ECOSOC. In the concluding observations it can also indicate issues that require a specific follow-up. Committee is also authorized to make suggestions and recommendations on those states’ reports as well as on reports submitted by various UN specialised agencies.

²⁸ Salman, MA Salman, McInerney- Lanford, Siobhan Alice, (2004): op.cit. , pg.43.

²⁹ General Comments are included in the Committee’s annual report attributed to ECOSOC and then they are transmitted to member states of the ICESCR through the General Assembly. Thereafter, state parties or specialised agencies can respond to the GC.

descriptive and comparative, looking at the right in the broader international law context, against the backdrop of provisions in global or regional human rights instruments, other GCs and the relevant documents of the Committee on Economic, Social and Cultural Rights. Also they put the “normative contents of the right” in which the core content, elements of the right other than the core content, and justiciable aspects of the right are explored.”³⁰

The Outline stipulates that the General Comments will categorise the different types of obligations of the state parties and pinpoint the violations of commission or omission in case where a member state fails to respond to the minimum content of the right. In that case, according to the Outline, the Committee may issue recommendations for the states concerning their legal, administrative and judicial framework or use indicators and benchmarks as a means of monitoring.

As it is obvious the character of the GCs is exclusively to interpret the rights already existing in the ICESCR and cannot create new obligations for the state parties to the Covenant. Furthermore they are non-binding instruments as the Committee on Economic, Social and Cultural Rights lacks the competence to create law. Its limited capacity as a “non treaty based” body in combination with the absence of any provision of an individual petition or interstate complaint mechanism is said to deprive GCs from a significant role in the safeguarding of human rights.

Possible legal approaches of the right to water

Water was not mentioned at all either in the two 1966 UN Covenants on human rights or in the UDHR. It is argued that this was because water, like air, was seen as such fundamental for the preservation of human life that the UDHR drafters did not consider it necessary to explicitly refer to it.³¹ However, several international instruments recognise a human right to water starting with the 1999 London Protocol on Water and Health³² and continuing with international human rights treaties as the

³⁰ Salman, MA Salman, McInerney- Lanford, Siobhan Alice, (2004): op.cit. , pg.48.

³¹ Filmer-Wilson, Emilie, The Human Rights-Based Approach to Development: The Right to Water, Netherland Institute of Human Rights, 2005, pg.15.

³² Economic and Social Council, Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, London, 17 of June 1999, Article 4 available at <http://www.unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>, May 10, 2009.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

The CRC treaty text's reference to the state's obligation to "combat disease and malnutrition... through the provision of adequate nutritious foods and clean drinking water"³³ puts significant emphasis to the accessibility of water to marginalised and disadvantaged families as a means of ensuring an adequate standard of living for all children. Accordingly CEDAW treaty engages the states to ensure a right to "water supply" so that rural women "enjoy adequate living conditions... in relation to housing, sanitation, electricity, and water supply, transport and communications."³⁴ This particular focus on rural women was criticised for not guaranteeing access to clean water as a universal human right also because CEDAW Committee –unlike CRC Committee- did not put any affirmative obligations to the states to ensure women's access to water and sanitation.³⁵

There is much of controversy whether there is any linkage between the human right to water and the ICCPR. In Article 6, paragraph (1) of the Covenant it is stated that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".³⁶ In a broader interpretation of the right to life under the ICCPR and taking into consideration the necessity of water for human life some academics argue that the Covenant "includes a socioeconomic component and demands positive actions by states".³⁷ This rationale was also supported by Human Rights Committee's General Comment 6 which reads as such: "The Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures. In this connection, the Committee considers that it would be desirable for state parties to take all possible measures to reduce infant mortality and

³³ Convention on the Rights of the Child, Article 24, Paragraph (c) available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>, May 10, 2009.

³⁴ Convention on the Elimination of All Forms of Discrimination against Women, Part 3, Article 14, Paragraph (h) available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article14>, May 10 2009.

³⁵ Williams, Melina, Privatisation and the Human Right to Water: Challenges for the New Century, Michigan Journal of International Law, 22 May 2007, pp.484-485.

³⁶ International Covenant on Civil and Political Rights, Article 6, Paragraph (1) available at <http://www2.ohchr.org/English/law/ccpr.htm>, May 16, 2009.

³⁷ Williams, Melina, (2007): op.cit. , pg.474.

to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”³⁸ As it comes clear water is the first source needed to fight death causes like epidemical diseases or lack of food and states are to take positive action to ensure its access to all.

According to Melina Williams inserting the right to water under the ICCPR brings up two advantages of great significance. “First is that “the text of the ICCPR includes a strong statement of states’ obligation to respect the rights delineated in the Covenant because ICCPR protections are immediately binding under Article 2(1)”³⁹ ... Second ICCPR rights are protected by an enforcement mechanism that includes a process of international adjudication under the First Optional Protocol.”⁴⁰ This is to say that in case one state has ratified this Optional Protocol every individual can bring a complaint against this state before the Human Rights Committee for a violation of ICCPR rights.

To some, this absence of an adjudicative mechanism seems to put the ICESCR hierarchically lower than the ICCPR and to pose the gravest barrier for the fulfillment of the right to water. The guarantees of the ICESCR were characterised as “normatively and jurisprudentially underdeveloped”⁴¹ compared to those of the ICCPR. Others argued that even if such a mechanism existed to protect the right to water it would be practically incapable of ensuring access of clean water and sanitation as it would be impossible for the remedies predicted to be enforced by the states.⁴²

In practice ICCPR seems to be narrowly interpreted considering right to life only as a civil right that does not demand any affirmative action to be taken from the part of the state. Right to water is mostly considered as an economic, social and cultural right guaranteed by the ICESCR together with the right to health, food and an adequate standard of living. With its General Comment 15 which does not impose

³⁸Office of the High Commissioner for Human Rights, General Comment No.6: The Right to Life (art.6), Article 5 available at <http://www.unhcr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>, May 16, 2009.

³⁹In Article 2, Paragraph 1 of the ICCPR it is stated that each state party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant” ICCPR, Article 2, Paragraph (1), op.cit. (note 30).

⁴⁰Williams, Melina, (2007): op.cit. , pg.475.

⁴¹Williams, Melina, (2007): op.cit. , pg.477.

⁴²Williams, Melina, (2007): pp.477-478.

binding legal obligations to the states, the Committee on Economic, Social and Cultural Rights explicitly recognised the human right to water.⁴³

General Comment 15 – The Right to Water

The General Comment 15 was issued by the Committee on Economic Social and Cultural Rights during the Twenty-ninth session that was held in Geneva from the 11th till the 29th of November in 2002.⁴⁴ From the introduction of the document water is clarified as a “limited, natural resource and a public good fundamental for life and health” and as a “prerequisite for the realisation of other human rights”.

In GC 15 it is argued that the right to water derives from Articles 11 and 12 of the ICESCR.⁴⁵ According to Article 11, Paragraph (1) the realisation of the right to an adequate standard of living “includes” rights as “adequate food, clothing and housing. As the word “include” has not an exhaustive meaning GC 15 clarifies and confirms the implied existence of the right to water in the Covenant as “one of the most fundamental conditions for survival”⁴⁶. Human right to water is “indispensable” and “prerequisite” for the realization of other human rights⁴⁷ such as the right to the highest attainable standard of health and the rights to adequate housing and food mentioned in the Covenant.⁴⁸

It is very important that the Comment explicitly refers to the linkage between the right to water both with economic, social and cultural and with civil and political rights stating that the right should be “seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity”⁴⁹. As it is obvious the necessity of water for the preservation of human life is of such importance that without a right to water the documents that

⁴³ Right to water is also recognized in previous GCs of the Committee such as GC 6 (1995) on the economic, social and cultural rights of older persons and GC 12 (1999) on the sustainable access to water resources for agriculture to realise the right to adequate food. See Salman, MA Salman, McInerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.64.

⁴⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf), May 14, 2009.

⁴⁵ International Covenant on Economic, Social and Cultural Rights available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm, May 16, 2009.

⁴⁶ GC 15, Article 3, op.cit. (note 43).

⁴⁷ GC 15, Article 1, op.cit. (note 43).

⁴⁸ ICESCR, Article 12, Paragraph (1) and Article 11, Paragraph (1), op.cit. (note 44).

⁴⁹ GC 15, Article 3, op.cit. (note 43).

protect other rights would be meaningless. Finally the Comment bases the existence of the right to water on other already mentioned international legal instruments that have previously recognised the right to water⁵⁰.

In the second paragraph the requirements that stem from the right to water are defined. “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water related diseases and to provide for consumption, cooking, personal and domestic hygienic requirements”. In this paragraph the Committee puts three factors that indicate the fulfillment of the right to water. Those are the availability, the quality and the accessibility of the water sources. Availability refers to a “sufficient and continuous water supply per person for personal and domestic uses”, quality to the safety of water which must be “safe, free from microorganisms, chemical substances and radiological hazards that constitute a threat to the person’s health while accessibility is defined as the “physical, economic, non-discrimination and information accessibility”.⁵¹

Under the GC 15 the member states are to take every positive action needed to ensure accessible, affordable and adequate safe drinking water for all without discrimination as well as to safeguard water for environmental hygiene, health and food production. State measures are demanded to protect the water sources against contamination by harmful substances and to combat already polluted ecosystems that consist a menace to human health.

The positive action not only of the states but also of non-state actors comes up from Article 10 of the GC where it is stated that “The right to water involves not only freedoms but also entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference... By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water”. Those obligations have to be systematically continuous in order to

⁵⁰ GC 15, Article 4, op.cit. (note 43) refers to related to water provisions of the CRC and the CEDAW as well as to environmental declarations. Another international instruments that refers to the right to water is the following: the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (1997) and other declarations and resolutions.

⁵¹ Salman MA Salman, McInerney- Lankford, Siobhan Alice, (2004): op.cit. , pp.54-55.

progressively lead to a full enjoyment of the right to water by all people and cannot be ignored by states unless in a case of absolute need.

According to Article 19: “If any deliberately retrogressive measures are taken the state party has the burden of providing that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for under the Covenant in the context of the full use of the state party’s maximum available resources.” This article points out the major significance of the maintenance of states’ obligations for the fulfillment of the right. The categories of those obligations are divided in three categories in the articles 20-29 of the Comment. States have the negative obligation to respect and the positive obligations to protect and to fulfill the right to water. “Respect” means the obligation required by the state parties to refrain from any direct or indirect action that can frustrate the enjoyment of the right to water.⁵² The article explicitly prohibits limiting equal access to water or destroying water services and infrastructures as a punitive measure.

Under the obligation to “protect” states are engaged to adopt or the appropriate legal and other measures needed to secure that third parties do not deny the enjoyment of the right to the people.⁵³ In case of third parties’ operating water services it is the state that has to safeguard the “equal, affordable and physical access to sufficient, safe and acceptable water”.⁵⁴ This means that the existence of monitoring mechanisms and of a proper regulatory system by the part of the state is to be put in action to control other actors and impose sanctions in cases where the provisions of the Comment are not respected.

Third in the list comes the obligation to “fulfill” which means to “facilitate, promote and provide”.⁵⁵ Under these three engagements member states are expected to take positive measures not only to ensure the right to all people, individuals and communities but also to promote methods that can protect the water sources and

⁵² According Article 21 of GC 15 states have to refrain from “engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water...”, op.cit. ,(note 43).

⁵³ According to Article 23 of GC 15 “third parties include individuals, groups, corporations and other entities as well as agents acting under their –the state parties’- entity, op.cit. , (note 43).

⁵⁴ GC 15, Article 24, op.cit. (note 43).

⁵⁵ GC 15, Article 25, op.cit. (note 43).

minimize the water wastage. State parties are again demanded to respond to their obligations through effective national political and legal systems and appropriate national water strategies that will boost the accessibility and the affordability of water to all without discrimination, the adequacy of sanitation for all as well as the conservation of water for next generations.⁵⁶

In an international level member states must refrain from actions that in a direct or an indirect way can negatively affect the right to water for example from imposing embargoes or other measures that prevent the supply of water itself and of other goods and services essential for securing the right.⁵⁷ As far as it concerns the contribution of one state to the water needs of another state if there is availability of water the first state must contribute to the realisation of the right in the other state.⁵⁸ In an analysis of the Comment's provisions in relation to state parties' obligations in an international level Mc Caffrey argues that: "On the international level, it seems equally clear that one state cannot deny a co-riparian state water necessary for the survival of the latter's population on the ground that the water is needed for economic development of the former."⁵⁹ His argumentation is also based on the Article 10 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses.⁶⁰ According to it, in a case where need of water for drinking purposes of one riparian state collides with the need of water for agriculture or hydropower generation of another state priority must be given to the first country.

Under Article 33 states have the legal duty under the Covenant to take measures to prevent their third parties –their citizens and domestic companies- from taking action that infringes the right in other states. GC 15 explicitly refers that in case of privatisation arrangements with corporations, state parties are expected to retain their obligation to protect the fulfillment of the right to water: "Where water services... are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be

⁵⁶ In Articles 26-29 of GC 15 those national strategies needed are mentioned in detail.

⁵⁷ GC 15, Articles 30-36, op.cit. (note 43).

⁵⁸ GC 15, Article 34, op.cit. (note 43).

⁵⁹ Salman, MA Salman, McInerney- Lankford, Siobhan Alice, (2004): op.cit. , pg77.

⁶⁰ The UN Watercourses Convention was adopted by the GA in May 1997 and can be found in the following webpage:

http://www.internationalwaterlaw.org/documents/intldocs/watercourse_conv.html, May 16, 2009

established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation, and imposition penalties for non-compliance.”⁶¹ From this paragraph it comes clear that according to GC 15 the privatisation process does not violate the human right to water and that in cases of private water arrangements it is the states and not the corporations that have to take the measures needed to protect the right for all citizens.

General Comment 14-The Right to the Highest Attainable Standard of Health

Before adopting GC15 but under the same rational Committee on Economic, Social and Cultural Rights adopted in 2000 the General Comment 14 which is more than related to the right to water. As Article 4 reads: “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water, and adequate sanitation, safe and healthy working conditions, and a healthy environment”.⁶²

GC 14 specifically refers to the principle of non-discrimination and equal treatment that has to be respected by the states in order for the right to health to be accomplished for vulnerable groups as women, children and adolescents, older persons, persons with disabilities and indigenous populations.⁶³ As it comes clear the marginalised groups in relation to the right to health are the same with them related with the right to water.

GC14 clarifies the obligations of the state and non-state actors in a very similar way as with GC15, already discussed above.

Corporate obligations

Given the fact that especially the developing countries do not function effectively in the fulfillment of their duties, the role of the business sector, today clearly involved in water issues, becomes directly relevant and important as far as it concerns the right to water. Through their behavior in water management private actors can

⁶¹ GC 15, Article 24, op.cit. (note 43).

⁶² General Comment 14 available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En), July 7, 2009.

⁶³ GC 14, Articles 20-27, op.cit. , (note 61).

influence water reality in a positive way and limit the factors that are expected to worsen the water stress in many parts of the world.

Business can be involved in water as a user or a consumer, as an enabler of access to water or as a provider or distributor of water.⁶⁴ Even in the absence of an appropriate domestic legal framework in developing states it is important that companies identify the barriers beyond which access to water is not being respected. Economic and social rights are not to be viewed only from a cost benefit perspective and trade-offs and financial considerations have to be taken in compliance with human rights law.

It is a matter of fact that the human rights framework does not establish a pricing policy and does not define one particular wished ownership model of water services. In any case states have to regulate and monitor any water provider –public or private- to secure that priority is given to citizens’ enjoyment of water for personal and domestic uses. Business does not have the legal obligation to protect and to fulfill the right to water although under the framework put forward by the UN Special Representative for Business and Human Rights and endorsed by the UN Human Rights Council, it has the responsibility to respect which is to say to “do not harm” the right to water.⁶⁵

According to the third paragraph of Article 5 of the 1997 Declaration on the Responsibilities of the Present Generations Towards Future Generations adopted by the General Conference of UNESCO in 1997: “The present generations should preserve for future generations natural resources necessary for sustaining human life and for its development.”⁶⁶ The Declaration induces the states to formulate “behavioural guidelines for the present generations within a broad, future-orientated perspective”.⁶⁷ This provision makes it clear that states are expected to apply domestic legislations able to prohibit corporations’ disrespectful acting that can put human and natural life at risk.

⁶⁴ Draft Business, Human Rights and the Right to Water, Challenges, Dilemmas and Opportunities, Roundtable Consultative Report, Institute for Human Rights and Business, January 2009, pg.3.

⁶⁵Information available at

<http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>, May 16, 2009.

⁶⁶ Articles 4, 5 and 6 of the Declaration of the Rights of the Present Generations Towards Future Generations refer to the preservation of the natural environment for future generations and can be considered as totally interlinked with water issues as water composes a precondition for all living species’ and environmental existence. Declaration available at

<http://www.unesco.org/cpp/uk/declarations/generations.pdf>, July 7, 2009.

⁶⁷ Declaration of the Rights of the Present Generations Towards Future Generations, op.cit. , (note65).

Where states lack to introduce and enforce the appropriate legislation, private sector is expected to function in accordance with human rights principles as set in the international legal framework. The implications that stem from business water users' responsibility to respect the right to water differ from the private water providers' ones. Industries of the first group should ensure that their activities remain compatible with populations' access to sufficient, clean water, care about the protection of the environment, ensure that communities are informed and able to participate in the decision making process before the setting up of a facility, give particular importance to vulnerable groups' ability to access to clean water and cooperate with national, regional, local governments and civil society to ensure that business use of water does not put aside people from enjoying clean and sufficient water. From the other side the private water providers should comply with the domestic regulatory framework, extend their services to vulnerable groups and do not put unaffordable prices to the poor or proceed to disconnections as a means of a cost recovery of the corporation. Information and participation of the public to the decision making process is also a key factor for ensuring everyone's accessibility to water.⁶⁸ To put it shortly under their responsibility to respect the right to water, the corporations are to undertake due diligence to monitor the human rights impacts of their action and to take the measures needed to eliminate those impacts.

So far, the character of this type of corporations' engagements is sole voluntary, lack an oversight mechanism and do not specifically refer to the right to water.⁶⁹ The absence of a formal codification of the exact responsibilities that corporations have to abide to in relation to water puts into question the enterprises' contribution to the right. The most significant international documents that refer to the corporations' role in human rights issues is the Global Compact where it is stated that companies should comply with international human rights norms⁷⁰ and the Norms on the

⁶⁸ Draft, Business, Human Rights and the Right to Water, Challenges, Dilemmas and Opportunities, Roundtable Consultative Report, Institute for Human Rights and Business, January 2009, pp.18-20.

⁶⁹ Williams, Melina, (2007): op.cit. , pg.489.

⁷⁰ The Global Compact is available at

<http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>, May 16, 2009.

In the ten principles of the Global Compact there is no explicit reference to water However, on 5-6 July 2007 at the Global Compact Leaders Summit in Geneva, the UN Secretary General and a group of committed business leaders officially launched the CEO Water Mandate through which they promised to take voluntary actions with respect to water issues and take steps in the following six areas: direct operations, supply chain and watershed management, collective action, public policy, community

Responsibilities of Transnational Corporations and Other Business Entities with regard to Human Rights (UN Draft Norms).⁷¹

The importance of the UN Draft Norms is that they are trying to create both positive and negative binding legal obligations for transnational corporations to fully contribute to the protection and the promotion of the right to water.⁷² This is not to say that the states' responsibilities are to be replaced by the corporate ones but to exist in parallel in order to fortify the protection of the right. Even if the provisions they include may seem progressive and inspired, Draft Norms can be seen only as a hope of holding corporations responsible for the enforcement of the right to water since Draft Norms are of no legal standing in the international law framework.⁷³

Private companies' commitments need a legal backing to become concrete in order to ensure that they respect the principles of transparency, accountability, inclusion, dignity, fundamental freedoms and non-discrimination in water management and use.⁷⁴ There are many controversial views concerning other actors' involvement in taking on responsibility in relation to water together with the state. In any case the need of an accountability mechanism able to settle water related disputes raises again in order to seek for effective redress and remedies for individuals and communities who are deprived of their rights either due to states' or corporations' actions.

As it was already mentioned above GCs form an interpretation of ICESCR and do not create new obligations to state and non-state actors. With the confirmation of the existence of the right to water GC 15 in its article 60 calls on international organisations and institutions to cooperate with state actors with respect to the

engagement and transparency. CEO Water Mandate available at http://www.unglobalcompact.org/docs/news_events/8.1/Ceo_water_mandate.pdf, May 16, 2009.

⁷¹ The UN Draft Norms were approved by the UN's Subcommission on the Promotion and the Protection of Human Rights in 2003 and are available at

<http://www1.umn.edu/humanrts/links/NormsApril2003.html>, May 16, 2009.

⁷² Article A, Paragraph 1 of UN Draft Norms states that: Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of, and protect human rights recognized in international as well as national law. Available at

<http://www1.umn.edu/humanrts/links/NormsApril2003.html>, May 18, 2009.

⁷³ Williams, Melina (2007): op.cit. , pp.488-491.

⁷⁴ Draft Business, Human Rights and the Right to Water, Challenges, Dilemmas and Opportunities, Roundtable Consultative Report, January 2009, Institute for Human Rights and Business, pg.19.

provisions of the Comment and to coordinate their actions and policies related with the right to water.⁷⁵ The same article also refers to the significant contribution of Non-Governmental Organisations (NGOs) and other international or domestic institutions to a full realisation of the right to water as envisaged in the Comment. The importance of the role that NGOs could play in the implementation of the ICESCR especially by increasing public awareness was firstly reaffirmed in 1987.⁷⁶ By its resolution the Committee on Economic, Social and Cultural Rights recognised the competence of the NGOs to submit to the Committee written statements that could contribute to the complete and universal recognition and fulfillment of the rights existing in the Covenant.

The failure of the member states to comply with their obligations- to respect, to protect and to fulfill- is to be considered as a violation to the right to water under GC15. The different cases of these violations are clarified in paragraphs 44(a), 44(b) and 44(c) of Article 44 of the Comment.⁷⁷ It is important to note that in Article 41 the Comment distinguishes between a state's inability and unwillingness to take the appropriate measures according to its obligations. According to the Article, "A state which is unwilling to use the maximum of its available resources for the realisation of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a state party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above."⁷⁸

⁷⁵ Article 60 of GC 15 lists the names of the international organisations and the international financial institutions -the World Bank and International Monetary Fund- that are notably involved with the right to water.

⁷⁶ Committee on Economic, Social and Cultural Rights, Resolution 1987/5, Salman, MA Salman, McInerney-Lankford, Siobhan Alice, (2004): op.cit. , pg39.

⁷⁷ Arbitrary or unjustified disconnections, discriminatory or unaffordable increases in water tariffs, pollution and diminution of water sources affecting human health constitute failure of the state's obligation to respect. Violation of the obligation to protect is the failure of the state to take measures to protect persons within its jurisdiction from third parties. Selectively some are the failure to enact or enforce laws to prevent the contamination and the inequitable extraction of water, the failure to effectively regulate and control water services providers etc. Lastly, the failure to adopt or implement a national water policy that respects the provisions of the right to water, the failure to take steps to cease the inequalities in water distribution and the failure to meet its obligations in regard to water in the international level are the violations of the obligation of the state to fulfill the right.

⁷⁸ GC 15, Article 41, op.cit. (note 43).

In the next two articles the violations are distinguished in “acts of commission” and “acts of omission”.⁷⁹ The first category includes the adoption of retrogressive measures which are incompatible with states’ obligations, the suppression of legislation appropriate for the realisation of the right to water or adoption of new legislation which is incompatible with the already existing international and national legal obligations in relation to the right to water. As far as it concerns the “acts of omission” they include the state’s failure to take the appropriate legal measures to ensure everyone’s right to water or its failure to enforce a proper policy that ensures the realisation of the right in case it exists.

GC 15 was not left without criticism as it was accused of not taking that much into consideration the protection of the environment. The experts of the Comment did not combine the right to water with environmental links even if a linkage between water and the environment already existed in previous legal instruments. According to the Stockholm Declaration “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”.⁸⁰ The critics of the interpretation of the right to water in GC 15 focused on an absence of a recognition that would emphasise the importance of preserving the nature for nature’s sake, a provision that would directly link a right to environment to the right to water. According to them the Comment skips to focus on states’ obligations to properly use the natural resources.⁸¹

Furthermore, it was said not to clarify whether the right to water consists in an independent or a subordinate to others right, a glimpse that makes it difficult to clearly define the particular state obligations.⁸² A recognition of water as an

⁷⁹ GC 15, Articles 42-43, op.cit. (note 43).

⁸⁰ Declaration of the United Nations Conference on the Human Environment, June 1972, Principle 1, Declaration available at <http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=97&ArticleID=1503>, May 29, 2009.

⁸¹ Salman, MA Salman, McInerney-Lankford, Siobhan Alice, (2004): op.cit. , pg.58.

⁸² If the right to water is a subordinate right then the states’ obligations are to occur by the right from which the right to water stems. For example, to sustain life the quantity of clean water needed is smaller than this needed to prevent a water-borne disease. This is to say that to derive the right to water from the right to life demands lesser state obligations than to derive it from the right to health. See Williams, Melina, (2007): op.cit. ,pg.477.

independent right would put greater pressure to the states to comply with their obligations, would ensure a better enforcement and safeguarding of the right and would make more effective the demand for remedies in case of violation. In practice, only few countries –and even fewer from the developing world that face the most severe problems in relation to water- have recognised an independent right to water, a reality that literally poses to the right a subordinate character.⁸³

In response to this the OHCHR put a double role to the right stating that “the right to drinking water and sanitation is both a human right in itself and a basic requirement for the implementation of other rights including food and health” and “should be seen as a crucial component of reducing poverty and promoting sustainable development”.⁸⁴ This exists only in a theoretical framework as there is strong argumentation that the recognition of a linkage of the human right to water with evolving rights like the right to development is still far from being achieved.⁸⁵

⁸³ Williams, Melina, (2007): op.cit. , pg.478.

⁸⁴ ECOSOC, Preliminary Report of the Special Rapporteur Mr. El Hadji Guisse, Relationship Between the Enjoyment of Economic, Social and Cultural Rights and the Promotion of the Realisation of the Right to Drinking Water Supply and Sanitation, Article 32, UN Doc. E/CN.4/Sub.2/2002/10 (June 25, 2002).

⁸⁵ Williams, Melina, (2007): op.cit. , pg.479.

Chapter 2: The right to Water in a globalised economy

The liberalisation process of the developing World -strongly supported by financial international organisations as well as the EU- resulted in some cases to the complete or partial transfer of management of traditionally public owned services to private hands. The involvement of the market to such a unique resource as water was said to put at risk equality and was strongly attacked by activists and locals. At the same time liberal thinkers accused governments of being incapable to manage social and environmental water issues and saw that the solution could come from the market. In this chapter the privatisation of the water services will be seen through the lens of the right to water. After examining to which extend the international financial instruments can halt the right to water I will try to present the controversial views on the private sector's ability to ensure equality to vulnerable groups such as poor and finally to refer to a model that could be seen as a solution.

The problem in water distribution is inaccessibility and not inadequacy. This means that it is a matter of political will in both international and national levels to maximize the resources available to address the water issue. In a very ambitious scenario, by 2015 the proportion of people without access to safe, drinking water will be halved, the unsustainable exploitation of water resources will cease and through developing water management strategies, efforts for equitable access and adequate supplies of water for all people will be fostered.⁸⁶ At least those were some of the World Development Goals⁸⁷ that the governments agreed at the Millennium Summit.

In parallel, under the auspices of economic international organizations such as the World Trade Organisation, the World Bank and the International Monetary Fund but also by signing thousands of bilateral investment treaties, governments now codify corporate rights into the international law. Those international law instruments are criticized to ignore the UN human rights principles and rule the entire world only under the principles of economic globalisation.

⁸⁶ Filmer-Wilson, Emilie, *The Human Rights-Based Approach to Development: The Right to Water*, Netherlands Institute of Human Rights, 2005, pg.18.

⁸⁷ The World Development Goals is the official international development targets for the donor organisations and the UN.

Five World Water Forums have been organized by the Water Council till today; in Marrakech (1997), Hague (2000), Mexico City (2003), Kyoto (2006) and Istanbul (2009). There, representatives from governments, non-governmental organisations, business and other organisations met to discuss various development issues linked with water. However as it will be discussed in the next chapter the composition of the Council raised some questions concerning the equality in representation. 41% of the World Water Council came from the business sector, 27% from academic institutions, 17% are governmental representatives and only 10% from civil society and 5% from intergovernmental institutions.⁸⁸

In the first two World Water Forums the commodification of water and the privatization of water services in the developing countries were pretty much supported by both developed and developing governments while the recognition of water as a human right fell on deaf ears. It was only at the Fourth Water Forum in Mexico City in 2006 that representatives of private water companies recognised the right to water and recalled that the private sector had officially endorsed the right to water at the 13th Session of the UN's Commission on Sustainable Development in 2005.⁸⁹ In the Ministerial Declaration of this Fourth Forum in Mexico City private companies came to a consensus with civil society and governments about the "right to water" and led to cancellations of their contracts with many governments of their developing world as Jakarta, Manila, La Paz.⁹⁰

But the recognition of the right to water alone neither consist a clear promise for water democracy nor does it reject the private sector as socioeconomically and environmentally destructive. In 2003 the Committee on Economic, Social and Cultural Rights defined water as a social, economic, cultural good as well as a commodity.⁹¹ As it comes clear the status of the human right is ambiguous when it comes to a resource like water. Private sector is compatible with human rights and companies support that after the recognition of the right to water they are still willing to supply it if risk return ratios are acceptable.

⁸⁸ Data of the World Water Council Biennial Report available at <http://pwf.foodandwaterwatch.org/comments.php?DiscussionID=9>, May 21, 2009.

⁸⁹ Bakker, Karen, The "Commons Versus the "Commodity": Alter-globalisation, Anti-privatisation and the Human Right to Water in the Global South, University of British Columbia, Vancouver, BC, Canada, Journal Compilation 2007, pg.440.

⁹⁰ Bakker, Karen, (2007): op.cit. ,pg.440

⁹¹ ECOSOC 2003, Bakker, Karen, (2007): op.cit. , pg.440.

The privatisation of water services involves the transfer of the production, distribution and management of water services from public entities into private hands.⁹² It also involves the mass transport of bulk water by diversion and by supertanker.⁹³ This raises fears that water prices can be regulated exclusively under the rules of the demand and the offer in the market and great amounts of water can move into the ocean into huge sealed bags in order to be sold elsewhere no matter what the social or the ecological cost of processes like those could be. What will be discussed in this chapter will be the privatization of water services and not the transportation of water.

It was the Hague World Water Forum in 2000 where the participation of the private sector was strongly encouraged and the water started being treated as a commodity.⁹⁴ Even before, from 1992, the “Dublin Principles” put an economic value to water “in all its competing uses” adding that it “should be recognized as an economic good”.⁹⁵ At the same time its access and affordability for all should be preserved by every state. Article four of the Dublin Principles clarifies that it is important to put an economic value to the water in order to preserve the environmental damage. At that time this position was adopted by numerous international, multilateral and bilateral agencies.

Water services under GATS

In 1994 the World Trade Organisation (WTO) encouraged the “progressive liberalisation” of the developing World by inserting the General Agreement on Trade in Services (GATS). Water services are covered under the auspices of GATS. This means that the management and the distribution of water can involve the international private sector as a process of the “progressive liberalisation” of the developing states.

GATS agreements are considered to be flexible as under them every state can determine which services and under which conditions it is willing to privatise. Furthermore, in articles IV and XIX the needs of the developing countries are stated

⁹² Filmer-Wilson, Emilie, (2005): op.cit. , pg 18.

⁹³ Barlow, Maude, Blue Gold, The Global Water Crisis and the Commodification of the World’s Water Supply, revised edition, spring 2001, pg.3.

⁹⁴ Barlow, Maude, (2001): op.cit. ,pg.3.

⁹⁵ Agreed in 1992 at the UN International Conference on Water and the Environment, Finger, Mathias/Allouche, Jeremy, Water Privatisation, Trans-national Corporations and the Re-regulation of the Water Industry, Spon’s Environmental Science and Engineering Series, 2001, pg.24.

as the priorities of the agreements.⁹⁶ Opponents of those WTO agreements put facts to prove that the reality is different. As trade delegates of developing countries supported in a survey of the United Nations Conference on Trade and Development (UNCTD) in 2003: “Of particular concern to developing countries is the lack of transparency of the ongoing request/offer process within the GATS which hinders their capacity to evaluate the requests submitted to them by developed country trading partners and the formulation of their own requests and offers, which is a particularly complex task.”⁹⁷

Through market access negotiations in the WTO member states engage in meetings with each other in order to open up new service sectors to competition for foreign service providers. In 2000, former WTO Director General, Mike Moore stated it clearly that “when it comes to influence, some members are more equal than others”⁹⁸ which means that it is common that rich states put pressure on poor ones towards their trade preferences not leaving the latter any other option but to accept by the fear of the loss of economic aid. At this point it is important to examine if and in which way GATS agreements can put at risk the right to water.

The pro-development objectives of GATS are focused on an economic development counted on the rise of the Foreign Direct Investment (FDI) in services in the Third World. The two most common critiques that GATS receive is the irreversibility of the contracts in the case in which the states want to resign as well as the ambiguity of the contribution of an international investment to the domestic economic development of a state. As a characteristic example one could refer to article XVII of the agreements that prohibits WTO members from “employing any measures which favor domestic over foreign service providers either explicitly or in practice unless such measures have been already specified in that country’s national schedule of GATS commitment”.⁹⁹ Under the same conditions article XVI prohibits member states from using requirements on type of legal entity or limitations on

⁹⁶ Hilary, John, GATS and WATER: The thread of services negotiations at the WTO, A Save the Children Briefing Paper, UK, 2003, pg.3.

⁹⁷ UNCTAD, 2002a quoted by Hilary, John, (2003):op.cit. , pg.3.

⁹⁸ Moore, 2000 quoted by Hilary, John, (2003):op.cit. ,pg.3.

⁹⁹ Hilary, 2000 quoted by Hilary, John, (2003):op.cit. ,2003, pg.4.

foreign capital participation.¹⁰⁰ In many cases poor states that required the relevant provisions were at latter negotiations forced by rich states to remove them.¹⁰¹

GATS are also accused as a “lock in” mechanism that makes it impossible for the states to break the contracts with the private actors if necessary to do so, for example if a case appears where the terms of the contract make it impossible for a state to comply with its social obligations to provide a minimum quantity of water to all and in an affordable price. Furthermore, under article XXI countries are engaged to provide compensation to any WTO member whose benefits may be affected by a proposed modification to the contractual terms even before it can be introduced.¹⁰²

Operations of the free market covered by GATS can be affected only by legislation and governmental administration.¹⁰³ This leaves out the public debate and the participation of the people affected as it weakens the role of courts and legislatures.

In article I: 3 of GATS services that are “supplied in the exercise of government’s authority” can be excluded from the agreement requiring that those authorities are not supplied “neither on a commercial basis nor in competition with one or more service suppliers”.¹⁰⁴ From a legal point of view the specific provision can be considered as non-existent as today there is no public service supplied exclusively under government’s authority and so every service is possible to be liberalised under GATS.

Water collection as well as purification and distribution of water services also composed the “environmental services” collected into the “development agenda” of the EU. In 2000 seventy two countries were approached by the EU to liberalise their water services under GATS. According to a statement of the European Commission in 2003 “The EU agenda is to seek better access for European services exporters in foreign markets”. The involvement of the EU in the GATS negotiations was to ensure that its water companies would lead in the market access in the developing world. Today, Vivendi and Suez, both French, are the two biggest water companies controlling the 70% of all private water services.

¹⁰⁰ Hilary, John, (2003): op.cit. ,pg.4.

¹⁰¹ In February 2003 EU requested their removal in countries as Indonesia, Pakistan, Thailand, Egypt, Cuba, information at www.gatswatch.org, 21 May, 2009.

¹⁰² Hilary, John, (2003): op.cit. ,pg.5.

¹⁰³ Cruse Tom, Ramos, Cecilia, Water privatization: Doubtful Benefits, Concrete Threads, Social Watch Project, Social Watch Report: The Poor and the Market, 2003, pg.98.

¹⁰⁴ Cruse Tom, Ramos, Cecilia, (2003): op.cit. , pg.6.

At that time, privatisation of water services in the developing world seemed to play a key role for the prosperity of the EU member states but also for all the powerful states and multinational corporations. Year after the other the efficiency of the private sector in the water management of the poor states was becoming more and more uncertain not only because of its social impacts to the states but also because it didn't seem to return to the foreign private companies the profit expected.

However during the past years due to national economic crises, social protests and difficulties of extracting profit delivering water to poor and indigenous population transnational corporations seem reluctant to continue their involvement to the water distribution business and started to retreat from their contracts. The main problems that have appeared are the inability to extract a surplus from selling water to the poor, the currency fluctuations and the political instability.¹⁰⁵

Controversial views of international private sector's involvement to the control of the water services

There are many and controversial opinions about the presence of the private sector in water management and distribution, especially in what concerns its impacts to the poor and the other sensitive groups.

The reason to define water as an economic good was said to be due to the failure of the public sector in states of the developing world to deal the water issue in an effective way which could ensure access and equal distribution to all people. The involvement of the private sector was expected to fight governments' corruption as well as to ameliorate the low efficiency and the low levels of cost recovery of public utilities that the states were unable to manage. Companies were expected to lower the prices as well as to upgrade and expand the water systems through efficiency gains and better management. Institutions like the World Bank and regional development banks focus on the management of water resources through the private sector rather than through states' economic contribution for them to develop their own infrastructures.

From an economic perspective, Foreign Direct Investment (FDI) by corporations can contribute to the increase of the flow of capital within the host

¹⁰⁵ Robbins, Peter T., Transnational Corporations and the Discourse of Water Privatisation, *Journal of International Development Dev.* 25, 1073-1082, 2003, pg. 1074.

country. This inflow increases the savings and the foreign exchange and boosts the economy of the developing country. The problem that frustrates the development process and restricts poor states from responding to their social obligations is the shortage of capital. FDI is seen as an attractive for the breaking out of states' "vicious cycle of poverty".¹⁰⁶ Progressively, this investment can increase technical and management knowledge as well as provide labor with new skills. Some academics see FDI as the only solution for the poor states unable to ensure the right to water. When it comes to water systems it is supported that private investment consists the only solution for meeting community needs.¹⁰⁷

Counter sayings support that FDI can benefit no one else but the transnational corporations. To them, the presence of a strong public sector is a precondition for the private sector to benefit the society. This is because the absence of proper policy making, strict contract management and close regulation cannot bring any significant improvement to the society.¹⁰⁸ Furthermore FDI could prove beneficial only based on a free, perfect competition and by not causing harm to the store of locally owned capital. A scenario like this is impossible due to the colossal economic power of the transnational corporations comparing to poor states. The size and the power of those corporations create imperfect, non-competitive markets and at the end they are the only ones to make profit throughout the world. As Sklair puts it "Transnationals' wealth contributes to class polarisation and produces development effects that mostly benefit the corporation and those connected with it".¹⁰⁹

The same academic supports that the term "sustainable development" puts a sole economic meaning in the word "development" and defines "sustainability" as conditioned only by the technical capacities of capitalist globalisation.¹¹⁰ An interpretation like this excludes environmental and social issues from the agenda of the global capitalism which seems to be unilateral. It is doubtful that corporations be likely to preserve the environment. Their increase of profit, dependent on water consumption can lead them to the use of chemical technology and desalination

¹⁰⁶ Robbins, Peter T., (2003): op.cit. ,pg.1074.

¹⁰⁷ Robbins, Peter T., (2003): op.cit. , pg. 1075.

¹⁰⁸ Carter Richard C., Danert Kerstin: The Private Sector and water and sanitation services-Policy and poverty issues, *Journal of International Development* 15, 1067-1072, 2003, pg.1069.

¹⁰⁹ Robbins Peter T., (2003): op.cit. , pg.1075.

¹¹⁰ Robbins Peter T., (2003): op.cit. ,pg.1076.

systems which is to cause severe harm to the nature and to ignore water conservation principles.¹¹¹

In opposition to the above, the view that through its involvement to the water management, the private sector could foster the sustainable development, including its environmental and social components is also common. Privatisation has been seen as a way for water conservation. Increasing water scarcity would automatically lead to a rise of water prices and would put a limit to water's abusive use. Facing market and economic growth as the solution for the environmental problems is the basic principle of a philosophy of development met in academic books as liberal environmentalism or green liberalism or market environmentalism.¹¹² According to those three theories which all have the same meaning the establishment of private property rights and the employment of markets as allocation mechanisms will price water at its fully economic and environmental cost and put a barrier to the waste of the water sources and to the environmental degradation. Private companies that manage the water profitably are believed to have more direct and effective accountability to their customers and their shareholders comparing to the accountability that the political representatives hold towards their citizens.

However, those theories take it for granted that the private sector will price water taking into consideration environmental factors as well as the water scarcity. Unfortunately a marketising as such may simply treat water as any other commercial good favorising the customers who are willing to spend the biggest amounts. "The more you consume, the less you pay" is a rule of the market that can have disastrous effects to the environment as it will not demand any significant cost for the corporations to spend as much water as they like.

Furthermore, a privatization like this would leave out people who need to survive but are unable to pay for their water. The distributional implications of this liberal dispossession of water can be met in many examples especially in the global South. After the privatization of water services in Uruguay prices got higher and those unable to pay were cutoff. Also, private companies were reluctant to invest in some rural regions acknowledging the high risk of low profitability of supplying the poor. As a result, in those regions with no water services at all, people were forced to

¹¹¹ Maude, Barlow, Clerk, Tony, *Who Owns Water?*, The Nation Magazine, Sept.2002, pg.2.

¹¹² Bakker, Karen, *The "Commons Versus the "Commodity": Alter-globalisation, Anti-privatisation and the Human Right to Water in the Global South*, University of British Columbia, Vancouver, BC, Canada, Journal Compilation 2007, pg.432.

buy their water by private vendors paying it many times more than the price at which the official private company sold it. Strong demonstrations of social and activist movements ended up with an amendment of Uruguay's constitution which created a human right to water and ensured the minimum exercise for all in 2004.

Cases of unequal distribution of water to the wealthier neighbourhoods in urban areas ignoring the needs of the poor and people living in rural areas can also be found where water services are publicly owned and managed. This limited supply by the government only to the privileged ones leaves the most vulnerable groups to buy their water under the provisions of informal, private, for profit vendors often at volumetric rates much higher than those of the public water supply system.¹¹³

The governments of the developing countries in most cases accept the privatization processes. The water privatization is literally imposed by the World Bank and the Monetary Fund as a condition of loans and debt relief. Economic management is left out of the political agenda of the developing states and is taken by economic international organizations. As a result the private corporations and not the domestic actors -public or private- are financed to manage the water services and to sell the water utilities under their financial rules as well as to profit by the return of the investments.¹¹⁴

Privatisation may contain the transfer of ownership of water supply systems of the public sector to private companies but it can also refer only to the construction, operation and management of public water supply systems by private actors. Supporters of those called "private sector partnerships"¹¹⁵ find it important to make a distinction between privatisation, deregulation and commercialisation. As Karren Bakker puts it in her article "The Commons Versus the "Commodity": "One may privatise without deregulating, deregulate without marketising or commercialise without privatizing."¹¹⁶

Privatisation arrangements between states and private actors vary in terms of the part of the ownership that is taken from the private company, the functions that the company performs and the time that the arrangement lasts.¹¹⁷ In their attempt to

¹¹³ Bakker, Karen, (2007): op.cit. , pg.443.

¹¹⁴ Barlow, Maude, Blue Gold, The Global Water Crisis and the Commodification of the World's Water Supply, revised edition, spring 2001, pg.27.

¹¹⁵ Barlow, Maude, (2001): op.cit. , pg.437.

¹¹⁶ Barlow, Maude, (2001): op.cit. ,pg.434.

¹¹⁷ Barlow, Maude, (2001): op.cit. ,pg.434.

find solutions to fortify their role in the global market and in order to be relieved from the debts, developing countries leave the management of the water services to the hands of the multinational corporations under the World Bank and the World Trade Organisation agreements mentioned above. In every case the prime goal of a private company is to make profit while the government fails to meet its social, environmental and human rights standards.

Supporters of the process of the privatization of the water services believe that after the public sector's failure to ensure water access to all world population it is time for the private sector to take on.¹¹⁸ The improving of the efficiency of the water system, the attraction of foreign investment and the developing of a market economy are some of the benefits said to stem from privatization¹¹⁹. According to them, private companies under the pressure of competitiveness invest more money to the technological and infrastructure updates. However those arguments do not take into consideration loads of people who do not have the ability to pay for those ameliorated water services

As the Center for Economic, Social and Cultural Rights confirms in most cases the effects were negative¹²⁰. Respectively to the example of Uruguay mentioned above, in many communities that had their water services privatised the prices raised and poor families that were unable to pay found themselves without water after the cutoffs that followed. Also, in many cases the water companies showed a sole interest to invest in rich neighbourhoods leaving out the poor urban and rural areas. The result was an unequal distribution of water to only to those customers who could afford it and not to every citizen who needed it.

Based on research private sector initially extended network coverage to poorer communities and ameliorated the infrastructures but it also led to unaffordable rises in the cost of the service. In November 2002 a UN committee responsible for overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights made a special reference to the affordability of water affirming that: "In all circumstances water and water facilities and services

¹¹⁸ Williams, Melina, Privatisation and the Human Right to Water, Michigan Journal of International Law, Winter 2007, pg.492.

¹¹⁹ Williams, Melina, (2007): op.cit. , pg.494-495.

¹²⁰ The Center of Economic, Social and Cultural Rights, Right to Water Fact Sheet 2: Why a Human Right? quoted by Filmer-Wilson, Emilie, The Human Rights-Based Approach to Development: The Right to Water, Netherland Institute of Human Rights, 2005, pg. 18.

must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable and must not compromise or threaten the realization of the Covenant rights. Payment for the water services must be based on the principle of equity, ensuring that these services whether privately or publicly provided are affordable for all including socially disadvantaged groups.”¹²¹

There is much uncertainty about whether private sector’s involvement can be realised without increasing the tariffs for the consumers. The reasons are the higher cost of capital for companies, the foreign exchange fluctuations and their need to ensure dividends for the shareholders as well as to turn a profit for their investments.¹²² Multinational corporations borrow in dollars on international capital markets but charge the consumers in the local currency. Consequently, this means a rise of pragmatic prices that puts additional problems to the disadvantaged groups due to the lack of regulatory capacity of the developing states needed to protect them.

Economically depressed rural villages, towns and poor urban neighborhoods gradually became “high risk” markets as poor cannot afford to pay for a connection and even if they can, they do not consume as much as to cover the operating costs of the cooperation. Unwillingness of private actors to invest there and cancellations of contracts in combination with the states’ inability to respond worsened the problem of accessibility for the poor.

In many cases it is the terms of the contracts that facilitate the companies to refrain. In Cartagena, Colombia, shantytown areas that were not connected were considered not to belong to the city area. Even in the case of El Alto, Bolivia, where it was explicit in the contract with the government that shantytowns’ connections were included, Suez argued that “connection” can refer to access to a standpipe or tanker and not only to a piped connection.¹²³ In January 2002 J.F. Talbot, chief executive of the water company SAUR International put it clear that water could not be delivered to the poor as it was proved as not “a good and attractive business” even

¹²¹Information at www.cohre.org/store/attachments/COHRE%20Implementing-RTW-CentralAmerica%20english.doc, June 1, 2009.

¹²² Hilary, John, GATS and Water: The thread of services negotiations at the WTO, Save the Children UK, 2003, pg.14.

¹²³ Robbins, Peter T: Transnational Corporations and the Discourse of Water Privatisation, Journal of International Development, 1073-1082, 2003, pg.1078.

though “central for sustainable development”.¹²⁴ Relatively, Mr. During, one of the directors of Suez Lyonnaise des Eaux said that “they were there to make money”¹²⁵. The inadequacy of the private sector to equally distribute the water in the Third world is self evident by statements like the above. The argument of Maude Barlow that comments like this “might be appropriate if one is talking about cars or golf clubs, but very distressing to hear when we are talking about water-a basic necessity of life” features the disapproval raised about private sector’s involvement in water issues.

Treating the water issue under these rules means that water is not any more considered by the states as a substantial common of prime importance for the life preservation but rather as a good, as an investment or as a service which can be commercialised no matter the social or the environmental cost it may bring up. Water is now subject to market principles which severely constraint the capacity of the governments to apply ecologically sensitive water policies and laws needed for the protection of human rights and other non-commercial societal goals that may frustrate the signed trade and investment agreements between those states and the private investors.

As Jim Olson, Michigan lawyer puts it “Water is always moving unless there is human intervention. Intervention is the right to use, not own and privatise to the exclusion of others who enjoy equal access to water. It is important to distinguish between sovereign ownership and control of water, enjoyed by states or nations through which water flows or moves, and private ownership. Sovereign state ownership is not the same and has to do with control and use of water for the public welfare, health and safety, not for private profit.”¹²⁶

This saying comes in opposition to the pro-corporation proposals which support that after the failure of the states to deal with the water crisis, the solution will be given by the private sector. In his interview to the Financial Times Mikhail Gorbachev, head of the World Water Council, an environmental education

¹²⁴ Robbins, Peter T., (2003): op.cit. , pg.1079.

¹²⁵ Barlow, Maude: Water as Commodity-The Wrong Prescription, Background, Institute for Food and Development Policy, Volume 7, Number 3, summer 2001, pg.3.

¹²⁶ Barlow, Maude, Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water , 2007, pg. 165.

organisation held that “corporations are the only institutions with the intellectual and financial potential to solve the world’s water problems”.¹²⁷

Counter sayings strongly question that the problems concerning water are to be solved through privatization agreements and globalisation rules. Under the state of globalisation the different national economies are interlinked to a point where they can successfully function only in one global economy model as a whole. In a model like this the principles of the market are above those of politics.¹²⁸ The global system is working under the rational of the free economy that has as a unique goal the permanent profit of the privileged groups while it ignores the principles of equality and environmental reparation and conservation. Logically one could wonder how a water crisis involving so severe social and ecological problems could be dealt with in an arena where every other policy measures except for the economic ones become more and more weak.

As Greg Philo and David Miller say “The relations of power and exploitation at the heart of the productive system were masked in a society which saw only “free” relations of exchange between individuals in the market.”¹²⁹ In that understanding of freedom, freedom refers only to those that own and defending the marginalised groups from the productive forces of capital is excluded from public view. In a global model like this weak states will never be able to take decisions and arrange their policies in a way that promotes equality. Today, the richest countries which consist the 20% of the global population make the 82% of the global exports of goods. This means that the wealth is transported from the poor countries to the rich ones.¹³⁰ As a result the profit is distributed in a totally unequal way which leaves out not only specific social groups but whole countries. To fight the hard competition and enter the globalised economy those countries excise the expenses in their social policies leaving the vast majorities of their populations in misery.

The rules of the market put by the World Bank, the International Monetary Fund and the World Trade Organisation are blamed to be responsible for the creation

¹²⁷ Barlow, Maude, (2007): op.cit. , pg. 171.

¹²⁸ Term of globalisation quoted by the article of Takis Nikolopoulos: “Market and society, alternative forms of social organising. The “inclusive democracy” and its political, economic, social and ecological sides” written in greek and published in the newspaper “To Vima”, January 16, 2000.

¹²⁹ Philo/Greg, Miller/David, Market Killing, What the Free Market Does and What the Social Scientists can do about it, Longman, 2000, pg.3.

¹³⁰ Information available at

<http://www.vlioras.gr/Philologia/Composition/Pagkosmiopoiisi.htm>, June 1, 2009.

of policies needed for the welfare of the corporations and for putting pressure to the weak states to adopt commercial policies that do nothing more but preserve the existing global inequality. Engaged by the contractual terms, governments find it impossible also to respond to the social needs of their peoples or simply hide behind those economic policies to excuse themselves for not responding to their duties. In every case when it comes to distribution of vital resources like water society is again divided in the “privileged” and the “others” and in this case those “others” are left to die by thirst.

According to Greg Philo and David Miller the privatization of water services was a “crucial change in the public service ethos of care and security promised. What had been seen as public services became merely commodities to be sold.”¹³¹ To them, it is the multinational corporations that threaten the existence of state social insurance programs which should be designed to spread across society and provide affordable services for all. If the exercise of a social right depends on the ability to pay then the social character of this right disappears. In a public sphere ruled by international private industry only those who can purchase in the market can be safe and respected. Those who are unable to follow this system “are deemed to have disconnected themselves.”¹³²

Strongest opponents of the globalisation process criticize human rights regime as individualistic and “eurocentric” and reject the contribution of the right to water as it does not establish water as a common good and is compatible with the current capitalistic politico-economic system. As such, it is unable to ensure access and equality to all no matter if and by whom it is recognized. The present human rights regime is flexible enough to prioritize individual’s private property rights even when it comes to that basic a need as water. For good or ill, the recognition of the human right to water does not mean that it will oppose to the privatisation process in the so called Third World, on the contrary, it may increase the private sector’s involvement in water supply. Different types of water management and new service delivery models are to distribute water under the government’s engagements for adequate water accessible for all.

¹³¹ Philo Greg, Miller David, *Market Killing: What the Free Market does and What Social Scientists can do about it*, Longman 2000, pg.6.

¹³² Philo, Greg, (2000): *op.cit.*, pg.8.

The defenders of neoliberal changes strongly support that the privatisation processes of previously public owned water services cannot affect the social equity in a negative way. They argue that the states retain three important means to protect the poor, the rural citizens and the marginalized groups in general. Those are the resource management institutions, the resource management organisations and the resource management governance.¹³³ The term “institutions” includes the different laws, policies, rules, norms and customs by which water resources are governed while the term “organisations” refers to the collective social entities that can partially govern the resource use. “Governance” is all the practices by which the exploitation of resources is constructed and administered.

As a non-substitutable and essential for life resource water supply is to be recognised as a human right and provided by states. With private sector’s involvement, either because of their incapacity or because of their unwillingness, governments fail to respond to their political obligations towards their citizens. Even the existence of “safety nets” put by governments to guarantee the right to water for every citizen is impossible to bring results at a time when governments have also the obligation to meet the terms of their bilateral contracts that come up when commodifying water.

“Privatisation is inconsistent with a human right to water unless it is coupled with a universality requirement and with strong regulatory framework for price controls and quality standards”.¹³⁴ This is what happened in England where the water services were privatised at the same time while laws were prohibiting disconnections of residential consumers. However, the developing states lack the means to support such a model in order for it to be applicable and secure peoples’ access to sufficient water.

Uneven distribution of wealth is the reality that is to be faced in order for the marginalized groups such as poor, indigenous, women and children not to suffer by the lack of water. There is a spread fear that following the rules of the market in water distribution will weaken the social dimension of the state and worsen the

¹³³ Bakker, Karen, The “Commons Versus the “Commodity”: Alter-globalisation, Anti-privatisation and the Human Right to Water in the Global South, University of British Columbia, Vancouver, BC, Canada, Journal Compilation 2007, pg.434.

¹³⁴ Bakker, Karen, The “Commons Versus the “Commodity”: Alter-globalisation, Anti-privatisation and the Human Right to Water in the Global South, University of British Columbia, Vancouver, BC, Canada, Journal Compilation 2007, pg.439.

existing situation as it will only preserve the global dominance of the “powerful” ones leading to the rich becoming richer and the poor becoming poorer. At the same time the private involvement in water services is believed to be the key for the realization of the right to water to groups of people and in areas where the Third World governments failed to respond to their duties in the past.

Solutions

In parallel with the argumentation about the impacts of the enforcement or the exclusion of the private sector’s involvement in water distribution it is more than urgent that a solution is found to apply to the 1, 1 billion of people who lack access to safe and sufficient drinking water.¹³⁵ The governments and not the corporations are held responsible for their inability to deliver sustainable solutions to the crisis of non-access and with the contribution of the international community it is them who have to find a way to respond to their duties of vital importance rather than to the terms of their economic contracts with the investors.

Sufficient financial support from the international organisations could prove very helpful to reform the water systems and make them workable and affordable for all but still it is not enough. The reduction of the developing states dependence to the economic development is another problem which could be solved with the cancellation of the debts of those states and the placement of a tax on financial speculation.¹³⁶ Institutional capacity building and sustainability are also considered to be of much importance for the solution of the problem. It is urgent that the required social and physical infrastructure is built and maintained by the states to ensure the right to water. It is more common for the governments to obtain foundation for new construction infrastructures while funding for maintaining the already existing ones is limited. There is a need to cover this gap through investment in social and physical infrastructure maintenance.¹³⁷

As far as it concerns the private sector’s involvement in water management, it is believed that the foreign investors have to commit joint ventures with domestic

¹³⁵Information available at portal.unesco.org/.../ev.php-URL_ID=6480&URL_DO=DO_TOPIC&URL_SECTION=201.htm... - 20k, June 2, 2009.

¹³⁶ Barlow, Maude/Clarke, Tony: Who Owns Water?, The Nation, 2 Sept. 2002, The Nation, pp.5-6.

¹³⁷ Carter Richard C./Danert Kerstin: The private sector and water and sanitation services: policy and poverty issues, Journal of International Development, 1067-1072, 2003, pg.1069.

actors under which governments will have the ability to safeguard the principles of equality by putting the conditions of foreign capital participation and of minimum capital investment. Furthermore, they will also be able to ensure requirements as technology transfer to all regions, employment of local staff and create the public service provisions needed for the sensitive groups.¹³⁸

Richard Carter points the solution for the alleviation of poverty and suffering to a model called “tripartite partnership” between governments, private sector and people.¹³⁹ According to him only a strong cooperation between central and local governments, transnational corporations and domestic private actors, community based and non-governmental organisations as well as academics and donors can function in an effective way to pleasure all economic, social and environmental goals and needs. This model approximates water as a human right, a human obligation, an economic good, a resource, a service, a social good and an environmental necessity variable in space and time which is today in scarce and concerns all.¹⁴⁰

According to the “tripartite partnership” model a balance in the existing asymmetries of power, influence, knowledge and money could be found through understanding and respect between all actors. Clear expectations in contractual arrangements where international finance institutions, states and corporations are involved can satisfy companies’ clients and shareholders while not frustrate the social and environmental obligations of the state. At the same time joint management of water and sanitation services by cooperation between public authorities and communities could respond to the governments’ inability to react and increase peoples’ participation in water issues. This integrated approach to the water issue treats water as that an important issue is to be dealt in a multidimensional way without dogmatisms.

The contribution of the people in water affairs is supported both by the opponents and the supporters of the privatisation process. Characteristically, a representative of the World Bank states: “Efficiency in water management must be improved through the greater use of pricing and through greater reliance on

¹³⁸ Hilary, John, (2003): op.cit. , pg.4.

¹³⁹ Carter Richard C., Danert Kerstin, (2003): op.cit. , pg.1069.

¹⁴⁰ Carter Richard C., Danert Kerstin, (2003): op.cit. , pg.1070.

decentralisation, user participation, privatisation and financial economy to enhance accountability and improve performance incentives.”¹⁴¹

In general the centralised bureaucratic state control of water services is not seen as an appealing way of dealing the water issue. Critics of the commercialisation process adopted the “commons view” to approach the water issue. To them, defining users as individual costumers is far from bringing the wanted results in a case like water management where citizens are directly affected and so have to get collectively involved.¹⁴²

At this point it is important to make a distinction in the terms “commons” and “human right”. Commons refer to a collective form of water management that under the motivation of building new socio-natural economies is to reduce the role of the state and rejects the commercialisation of water while it involves the participation of citizens to water distribution. From the other side human rights are state-centric and anthropocentric while they are compatible with the private sector’s involvement in water issues.

Following the commons view, water management and distribution has to be left to communities as it is seen as an essential for life and ecosystem non-substitutable flowing resource which is tightly bound to people. Both the state and the market failed in treating water wisely without the participation of the communities who together with the environment felt the most severe impacts of others’ mistakes. For this reason, according to the commons view it is the people themselves who now need to be mobilised and enabled to govern their water resources.¹⁴³

In her book “Water Wars” Vandana Shiva adds also cultural and spiritual dimensions to water especially for indigenous and other communities. To her, the crisis is due to the corporations’ and states’ short-term logic of seeing water as an economic good.¹⁴⁴ The only way to real water conservation is through an environmental, collectivist ethic of solidarity which will motive users to refrain from wasteful behaviour and put a limit to corporations’ overuse. Connected with the survival of people and nature and linked with common property rights of

¹⁴¹ World Bank, 2003, www.mitpressjournals.org/doi/abs/10.1162/152638001750336587, June 3, 2009.

¹⁴² Bakker, Karen, (2007): op.cit. , pg.442.

¹⁴³ Bakker, Karen, (2007): op.cit. , pg.442.

¹⁴⁴ Shiva, Vandana: Water Wars: Privatisation, Pollution and Profit, South End Press, 2002, pp.19-39.

communities living so linked with natural water sources adds to water symbolic, spiritual and ecological values that make it resistant to neoliberal reforms and incompatible with economic rules. What is needed is a “decentralised, community-based, democratic water management in which water conservation is politically, socio-economically, culturally inspired rather than economically motivated”.¹⁴⁵

This inclusive model of commons is considered to be the most progressive model of water management as it redistributes the resource management directly to the society members abolishing the state governance and the individualism of neoliberalisation by strengthening public participation in the defense of environmental and human needs. Management, disposition and consume of water from citizens to citizens at a local level describes in a few words the term “water democracy”.

“Public public partnerships” is an alternative model of water management that can be said to be close to the “commons view” and was encouraged by the UN Commission on Sustainable Development.¹⁴⁶ Those partnerships combine the existence of the public and the international sector as they involve public water operators supported by an international association of expertise that give advice to locals on water supply utilities. Those models already exist in many countries of the Global South as Argentina, Bolivia, Brazil, Indonesia, South Africa and others.

¹⁴⁵ Bakker, Karen, (2007):op.cit. , p.442.

¹⁴⁶Information available at www.unsgab.org, June 2, 2009.

Chapter 3: Democracy deficit: need for public participation in water issues

It is a matter of fact that globalisation had a great influence to the policy making processes in every country and gave birth to a brand new neo-liberal type of democracy. In this recently emerged reality international non-state actors influence the policy making processes together with the governments while more and more political aspects traditionally belonging in the domestic agendas of the states now switch to the foreign affairs' ones.

It is strongly argued that this shift puts at risk democratic principles of vital importance as it weakens both states' and citizens' role in the political sphere. Democracy is defined as a system of fundamental rights where people can rule and decide either directly through assemblies or indirectly through voting their governmental representatives by elections and by keeping control over their policies and decisions.¹⁴⁷ However, in the international level some of these principles cease to exist. More and more state decisions are taken in international bodies where powerful states together with multinational corporations are able to determine the future of national policies of other states without the need of the public consent.

Democratic question between states

Today many of the state policies are decided under supra-state regional trading blocs, sub-state regions, transnational associations of regions and multilateral economic institutions of global governance such as the WTO, the WB and the IMF.¹⁴⁸ In those institutions economic powerful states and non-state actors such as multinational corporations are "more equal" than the developing states in their participation and influence in the policy-making processes. As it comes clear those actors' power is arbitrarily extended from the private sphere of economics to the public sphere of politics and it makes the presence of democracy ambiguous in the world' s politics. Under such a neo-liberal democracy transnational governance can

¹⁴⁷ Shapiro, Ian/ Hacker- Cordon, Casiano: Democracy' s Edges, Cambridge University Press, 1999, pg.20.

¹⁴⁸ Anderson, James: Transnational Democracy, Political Spaces and Border Crossings, Routledge, 2003, pg.11.

put at risk the autonomy of the states by transferring power to a minority of actors while it can create severe democratic deficits in relation to legitimacy and public accountability.¹⁴⁹

This is to say that the principles of globalisation demand a global market deregulation that can severely undermine the national political regulation and put the legitimacy of the political decisions taken in international financial institutions in question.¹⁵⁰ In the new terms of liberal democracy the leading powers such as the G8 and some giant transnational corporations have a raised influence in the decision making process in financial institutions and leave no alternative for the poor developing states but to adopt decisions maybe effective for a unilateral economic development but destructive for their minimal standards of social equality.¹⁵¹ The foreign direct investments and capital can support the economy of the developing states but this is not to mean the strengthening of democracy and of civil society. For this reason some academics argue that a “global hegemony” that functions with liberal rather than democratic criteria can prove to be more of dangerous for democracy and society.¹⁵²

In a globalised economy decisions taken in one nation state can have significant impacts in other nation states. Transnational corporations and developed states can therefore much influence governmental decisions taken in developing countries. The latter, in order to create an attractive market for the investors, invited them to follow the “unconstitutional rules of the capital markets”.¹⁵³ Gradually they lose control over their national economies while they become “politically paralysed” to defend their peoples.

Elmar Altvater talks about the emerging of a type of “formal democracy” which has as principles only those compatible with the western capitalism. To her, in all international institutions where western states keep a dominant role, developing countries are asked to pass a “democracy test” in reality made solely according to the criteria of the market and being far from the traditional principles of democracy and political justice. The goal of the “structural adjustment” to the world market does not

¹⁴⁹ Anderson, James, (2003): op.cit. , pg.6.

¹⁵⁰ Shapiro, Ian/ Hacker-Cordon, Casiano (1999): op.cit. , pg.45.

¹⁵¹ G8 is an informal group of the eight most industrially developed states of the world, France, Germany, USA, Japan, Italy, Canada, Grain Britain, Russia <http://en.wikipedia.org/wiki/G8>, June 18, 2009.

¹⁵² Anderson, James, (2003): op.cit. , pp.10-14.

¹⁵³ Shapiro, Ian/ Hacker-Cordon, Casiano (1999): op.cit. , pg.47.

leave space to the developing states to enforce their political aims.¹⁵⁴ What simply happened according to Altvater is that “the direct repression of authoritarian political systems (Latin American dictatorships of the developing states, “socialist” planning economies in Central and Eastern Europe) has been replaced by the “systemic constraint” imposed by the world market, no less effective and harsh than the previous authoritarian political regimes”.¹⁵⁵

Counter argumentations support that the talk of democracy had to be almost entirely absent from the governance of international financial institutions in order for the global finance to be dealt with effectively. Experts and market actors should be free to operate as independently as possible avoiding the political interference of democracy. According to this theory the complex nature of the financial institutions does not allow them to adopt formalised procedures associated with democracy if they are to effectively function.¹⁵⁶

An argument that questions the existence of democratic deficit in global financial institutions concerns the state delegations in those institutions. As the majority of the states involved in the rule making of those global financial institutions are democratic those institutions cannot be but democratic as well. According to Geoffrey RD Underhill and Xiaoke Zhang “Legitimacy exists and persists in the international system when processes and outcomes conform sufficiently to a prevailing system of norms.”¹⁵⁷ Under the same rational all democracies are to be held accountable to their citizens for the decisions they take as delegations of international financial institutions. However, in the case of international institutions the talk is more about a democracy of governments –if it can be considered as such taking into consideration that the principle of equality between states is absent- rather than a democracy of people.¹⁵⁸

Michael Zurn finds that the existence of those institutions fortifies rather than weakens national democracies as there through a collective action states can ensure for their people more goods than they would be able to ensure if they worked as individual states. Explicitly he argues that “...international institutions give back to

¹⁵⁴ Shapiro, Ian/ Hacker-Cordon, Casiano (1999): op. cit. , pp.49-55.

¹⁵⁵ Shapiro, Ian/ Hacker-Cordon, Casiano (1999): op.cit. ,pp.50-55.

¹⁵⁶ Shapiro, Ian/ Hacker-Cordon, Casiano, (1999): op.cit. , pg.57.

¹⁵⁷ Underhill, Geoffrey RD/ Zhang, Xiaoke: Norms, Legitimacy and Global Financial Governance, World Economy and Finance Research Program Working Paper Series, Economic and Social Research Council, September 2006, pg.14.

¹⁵⁸ Shapiro, Ian/ Hacker-Cordon, Casiano (1999): op.cit. , pg.56.

national policy makers the capacity to deal effectively with denationalised economic structures. Seen thus, international institutions are not the problem but part of the solution to the problems confronting democracy in the age of globalisation.”¹⁵⁹

Democratic question within a state

Academics argue that the elites are those who monopolise the participation in the sphere of the transnational governance. The delegations of the states in the international financial institutions are not said to be representative enough to ensure the rights of all citizens and the opinion leaders keep the privilege to express their own individualistic interests. As a result, the majority of people and especially the vulnerable groups are left out of the decision making processes, in some cases even on political issues -like the water issue- directly related with their survival. In those cases even if the government gains more control over the problems, citizens’ capacity to influence governments towards their needs is diminished.¹⁶⁰ The parameters that define legitimacy are determined by capitalistic terms under a system of rules and exclusions that does not address concerns of marginalised groups in society.”¹⁶¹

Under the economic globalisation the democratic principle “one man one vote” seems to diminish and therefore even the minimum standard of social equality is put at risk. In the international level, decision-making is considered to be de-politicised. This questions the existence of legitimacy in international institutions as peoples’ consent is not any more needed for a decision to be taken by the government. Power is transferred from the directly elected representatives by the people to a small number of agencies such as “offices of presidents and prime ministers, treasuries, central banks” where decisions are taken in the lack of any democratic accountability or public participation.¹⁶²

Under the framework mentioned above, even that a crucial aspect as the water management is becoming a matter of foreign policy with the decision making left to be generally made by political elites without appropriate accountability

¹⁵⁹ Zurn, Michael: *Global Governance and Legitimacy Problems, Government and Opposition*, vol. 39/2, spring 2004, pg.286.

¹⁶⁰ Shapiro, Ian/ Hacker-Cordon, Casiano, (1999): *op.cit.* , pg.23.

¹⁶¹ Banerjee, Subhabrata Bobby, *Corporate Social Responsibility, the Good, the Bad and the Ugly*, Edward Elgar Publishing, 2007, pp.72-74.

¹⁶² Anderson, James, (2003): *op.cit.* , pg.9.

mechanisms. Consequently, citizens' opinions become neutralised as it becomes much harder for them to get informed about the situations that can put at risk their needs and their wants. Citizens, without having gained a better understanding of their interests and lacking a fully developed and expressed view on many crucial aspects, adopt a passive role and leave the interests of their political leaders prevail.¹⁶³

The following paragraph of Robert A. Dahl's article "Can an International Organisation be democratic?" makes the answer more than clear. According to him "If the public goods on foreign affairs were rationally demonstrable, if in fine platonic fashion elites possessed the necessary rationality and sufficient virtue to act on their knowledge of the public good, and if ordinary citizens had no opinions or held views that demonstrably contradicted their own best interests, then a defensible argument might be made that the political leaders and activists should be entrusted with decisions on foreign affairs. But on international issues the public good is as rationally contestable as it is on domestic questions and we have no reason to believe that the views of elites are in some demonstrable sense objectively correct. Yet, the weight of elite consensus and the weakness of other citizens' views mean that the interests and perspectives of some, possibly a majority are inadequately represented in decisions."¹⁶⁴

Apart from the social, ecological reasons are also mentioned to justify the need of a new democratic order in global economics. In cases of scarce common pool resources as water, ecological parameters are to be seriously taken into consideration by states so as to create conditions appropriate for its renewal. However, for the sake of profit common goods are allowed to be treated both by governments and corporations as sole commodities no matter of the ecological destruction they are to provoke.¹⁶⁵ To gain control over this irrational global arena academics discuss about the immediate need of putting in the international policy-making new democratic principles able to function as social and ecological borders to the extension of an unlimited economic competition which in many cases provokes grave impacts both to the society and to the environment. Karl Polanyi contradicts liberal thinkers and sees that the solution is to be found in the "visible

¹⁶³ Shapiro, Ian/ Hacker-Cordon, Casiano, (1999): op.cit. , pp.27-30.

¹⁶⁴ Shapiro, Ian/ Hacker-Cordon Casiano, (1999): op.cit. , pg.27.

¹⁶⁵ Nonini, Donald Macon, The Global Idea of the Commons, Berghahn Books, New York, Oxford, 2007, pp.5-6.

hand” of the state that has to take on in order to politically and socially regulate the global economic sphere.¹⁶⁶

As it was mentioned above many aspects traditionally belonging to the domestic political agendas of the states and directly affecting all their citizens are now dealt with in a supra-state level. International trade and investment agreements the impacts of which greatly influence the lives of the citizens within the developing states are gaining in power and scope and seem to replace the domestic decisions. However, the vast majority of citizens are not aware of their contents or even of their existence.¹⁶⁷ Therefore it is needed that the citizens have the opportunity to be organised in small units in order to be able to participate, influence and control the policy decisions of the international organisations as they do with the governmental decisions adopted within their states. Through appropriate formal political institutions, political elites that form the international financial organisations should take into consideration the public pulse and be held accountable for their decisions to the people or to their elected representatives.¹⁶⁸ The existence of NGOs, nationals and internationals, however important it might be for putting pressure and controlling the financial institutions, lacks the capacity to play that a significant role for the promotion of aspects in the social and environmental agendas as it lacks the appropriate representative mechanisms and has no means to systematically participate in the forming of the policies adopted in the formal institutions.¹⁶⁹ In a framework where every decision is taken in the absence of any strong popular consent and control the democratic character of the international organizations can be viewed as doubtful.

Exploitation of the Global South, urgency for alternative solutions

Critics argue that under today’s western capitalism “sustainable development” preserves a sole economic meaning and is in no case appropriate to tackle social inequalities and environmental dangers in the developing world. Poor regions of the world destroy or export their waters and other natural resources in order to meet the demands of richer nations or to correspond to the austere

¹⁶⁶ Shapiro, Ian/ Hacker-Cordon Casiano (1999): op.cit. , pg.45.

¹⁶⁷ Barlow, Maude: Blue Gold, The Global Water Crisis and the Commodification of the World’s Water Supply, Diane Pub Co revised edition, February 2000, pg.66.

¹⁶⁸ Shapiro, Ian/ Hacker-Cordon Casiano, (1999): op.cit. , pg.31.

¹⁶⁹ Anderson, James, (2003): op.cit. , pg.16.

conditions of the World Bank for debt-servicing. In that reality vulnerable groups have no means to ensure their survival.¹⁷⁰

Industrialised countries of the “First World”, the one quarter of the global population, consume 80 percent of the world’s commercial energy while developing countries consume 4 to 7 times less of natural resources and energy compared with the amounts consumed in the West.¹⁷¹ This overconsumption in the “First World” however being considered as a necessary condition of sustainable development, is also to be blamed for the severe ecological damage in the “Third World” due to the relocation of western polluting industries to developing countries. Environmental protection measures exist only in industrialised countries at the expense of local rural communities in the developing states that host the transnational corporations most dangerous for their water and other resources. Rich countries seem to enjoy standards of living that are of much dependent on the exploitation of the poorer nations.¹⁷² For Boaventura de Sousa Santos “modern humanity is not conceivable without modern subhumanity. The negation of one part of humanity is sacrificial in that it is the condition of the affirmation of that other part of humanity which considers itself universal.”¹⁷³ Under those circumstances, social and environmental standards are not taken into consideration by poor states and vulnerable groups like poor and indigenous peoples are to live the grave impacts of this negligence. As Seymour Martin Lipset puts it: “The more well-to-do a nation, the greater the chances that it will sustain democracy.”¹⁷⁴

Boaventura de Sousa Santos discusses that under the rule of economic globalisation no equality is possible for the developing states as the official state of international law is formed in a way that identifies the colonial zones as a “lawless space” where civil society’s institutions is impossible to exist.¹⁷⁵ According to him “...a massive world region of the state of nature is thereby being created, a state of nature to which millions of human beings are condemned and left without any

¹⁷⁰ Banerjee, Subhabrata Bobby, (2007): op.cit. , pp.73-74.

¹⁷¹ Silver, Cheryl Simone/ DeFries, Ruth.S. , One Earth, One Future, Our Changing Global Environment, National Academies Press, 1990, pg.53.

¹⁷² Banerjee, Subhabrata Bobby, (2007): op.cit. , pg.74.

¹⁷³ De Sousa Santos, Boaventura, Beyond Abyssal Thinking, From Global Lines to Ecologies of Knowledges, Fernand Braudel Center, Binghamton University, 24 October 2006, pg.52.

¹⁷⁴ Lane, Jan-Eric/ Ersson, Svante O., Democracy, A Comparative Approach, Routledge, 2003, pg.44.

¹⁷⁵ De Sousa Santos, Boaventura, (2006): op.cit. , pp.45-52.

possibility of escaping via the creation of a civil society.”¹⁷⁶ Those “Guantanamo” are considered to be the continuing of the colonisation in the developing world. Western political dominance is here replaced by powerful non-state actors who, taking advantage of developing state’s inability to take any serious social regulation, do not dare to obtain control of the existence of vast populations by regulating waters, lands, seeds, forests and health care under the rules of the neo-liberalism.¹⁷⁷

The same perception of the exploitation of the South by the West is supported by Josh Karliner who explains that: “Indeed the process of globalisation is steamrolling social and financial support for the basic rights of the poor, increasingly shunting the disenfranchised off to the side, where they must fend for themselves in the brutally competitive market. Growing numbers of people are becoming victims of globalisation, as the forces of corporate expansion move into farmlands, deserts, oceans and river systems they previously ignored. Already poor, but largely self-sufficient, communities across the earth are being cast into deeper social and ecological poverty, as well as cultural dislocation, as their resources are appropriated for the seemingly insatiable demands of the world’s even growing consumers societies.”¹⁷⁸

Santos describes those intense inequalities in the relationships between the North and the South inserting the terms “social fascism” and “contractual fascism” that are to put at risk the lives of the weaker part’s populations. Left without any alternative in relation to the creation of a social contract, poor states can do nothing but accept the despotic terms of the commercial contracts put by the stronger parties. Under the state of this “contractual fascism” social and economic rights gradually diminish while vulnerable groups of citizens unable to become consumers are excluded from every social and political process. In this “social apartheid” there were even cases where indigenous populations were considered as non-existent.¹⁷⁹

As it comes clear according to the view above the existence of a politically democratic society in the developing world is again put into question. International soft law is incompetent to deal with the matter of democratic deficit within the states as well as in the international level while according to many academics it seems to be selective to the kind of international –and as a consequence domestic- matters it is

¹⁷⁶ De Sousa Santos, Baventura, (2006): op.cit. , pg.50.

¹⁷⁷ De Sousa Santos, Boaventura, (2006): op.cit. , pp.53-56.

¹⁷⁸ Quoted by Barlow, Maude, (2000): op.cit. , pg.19.

¹⁷⁹ De Sousa Santos, Boaventura, (2006): op.cit. , pp.55-65.

to regulate. From the other side, developing states are incompetent –or according to some views unwilling- to ensure a democratic framework appropriate to secure the well-being of the vulnerable groups as the poor and the indigenous. For the reasons above it is high time that the water and other social goods are redistributed with the participation of the citizens who are the most affective of the decisions taken and under the principle of equality and recognition of the differences that characterise some specific groups like the indigenous.

The human rights based approach to development is below given as an alternative solution that can be applied to the water issue against the exclusion of vulnerable social groups and for the preservation to the environment. As far as it concerns the indigenous populations a model of self-regulation of the natural resources is also presented thereafter.

The human-rights based approach to development: a model to diminish water inequalities

Under a traditional interpretation of development there is no link between development process of the developing world and human rights. This economic thinking managed nothing but to worsen the inequalities and the insecurity already existing in the Third World within the society. However, in 1986 the GA adopted the Declaration on the Right to Development that added human rights and participatory attributes to the meaning of development linking it with the realisation of human rights obligations. In the Declaration it is clearly stated that: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised.”¹⁸⁰

Seven years later, at the Vienna World Conference on Human Rights this idea was enforced as it was stated that: “Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes, including resource banks of

¹⁸⁰ Full document available at: <http://www.unhchr.ch/html/menu3/b/74.htm>, July 4, 2009.

information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.”¹⁸¹

The Human Rights-Based Approach to Development (RBA) is a model that inserts human rights principles at the heart of development. It is considered as perfectly suitable to be applied to the water distribution and management as it establishes the obligations of state and non-state actors to ensure the fulfillment of societal justice and equity while it much involves peoples’ participation in the development process. RBA “describes situations not simply in terms of human needs, or of development requirements, but in terms of society’s obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as a charity and gives communities a moral basis from which to claim international assistance where needed.”¹⁸²

RBA seems to alter both the objectives and the outcomes that should stem from the developing programming process as it emphasises on the principles of participation, non-discrimination and equality, accountability, interdependence and indivisibility that are to proceed in the developing process of the states.¹⁸³ RBA can be considered as a progressive alternative solution proposed to eradicate poverty and inequalities. This is because it describes citizens as rights-holders with active involvement and responsibilities in the decision making process while it gives both to state and non-state actors the role of the duty-bearers with direct obligations to fulfill human rights provisions.¹⁸⁴

Under the RBA what was traditionally considered as human need now becomes a rightful claim while justice ceases to be seen as charity. Poor people and communities are empowered and motivated to litigate their rights as well as to raise their voices against unfair decisions taken in their absence. A second element of

¹⁸¹ Article 74 of the Vienna Declaration and Programme of Action available at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument), July 4, 2009.

¹⁸² United Nations Development Programme, Integrating human rights with sustainable human development-a UNDP policy document, January 1998 available at http://www.undp.org/governance/docs/HR_Pub_policy5.htm#Developing, July 4, 2009.

¹⁸³ UN Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Attachment: The Human Rights-Based Approach to Development Cooperation- Towards a Common Understanding Among UN Agencies, 5-7 May 2003 available at <http://www.undp.org/governance/cdromhr/homepage.html>, July 5, 2009.

¹⁸⁴ UN Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Attachment: The Human Rights-Based Approach to Development Cooperation-Towards a Common Understanding Among UN Agencies, (2003): op.cit.(note 182).

RBA model is that of accountability. As duty-bearers all state and non-state local, national, regional and international partners are expected to accept higher levels of accountability and to fulfill their obligations to meet marginalised groups' claims. Accountability and transparency is to be safeguarded in a local level with the help of local, national and international social institutions as NGOs who will be responsible of monitoring the actors involved and giving information to the citizens.¹⁸⁵

Much of emphasis is given to the widening of the till today very limited participation of communities, civil society, minorities, indigenous people and women who are very much affected by the impacts of the existing water distribution and management. At all levels of the development process those people are called to determine the decision-making process according to their own objectives of development as well as to contribute with their local knowledge in the realization of the relevant developing programmes. The meaning of sustainable development shifts from profit-based to human-based and marginalised groups are given the option to express their priorities and use their capabilities in projects that match with their needs and do not exclude them as societal players. For a progressive change as such to be successful it is premised that the citizens involved are well informed about how the relevant existing laws, social practices and national and international policies can work in favour of their claims and indicate the sources of poverty, inequality and discrimination to effectively tackle them with their decisions.¹⁸⁶

RBA defines communities and people, not development organisations, as the key actors in the water case. The type of technology as well as the level and the prices of services are to be decided and maintained by the people for the people who are also expected to meet the responsibility of preserving the natural environment for the future generations. The importance of a model of self-organisation of water resources is considered to be crucial for the eradication of poverty as well as for the preservation of the environment. Having a deep knowledge about their natural environment and their needs people themselves can use this competence of them to change an existing reality, where impacts seem to be more than destructive for the humanity.¹⁸⁷ The involvement of the sensitivity and the non-scientific knowledge of

¹⁸⁵ Filmer-Wilson, Emilie, (2005): op.cit. , pp.5-6.

¹⁸⁶ Filmer-Wilson, Emilie, (2005): op.cit. , pp.6-9.

¹⁸⁷ Filmer-Wilson, Emilie, (2005): op.cit. , pg.21.

the locals in the development process are viewed as elements of a very hopeful scenario by academics.

To Maude Barlow: “Only local citizens can understand the overall cumulative effect of privatization, pollution and water removal and diversion on the local community. Only local citizens know the effects of job loss or loss of local farms when water sources are taken over by big business or diverted to faraway uses. It must be understood that local citizens and communities are the front-line keepers of the rivers, lakes and underground water systems upon which their lives and livelihoods rest.”¹⁸⁸

To Boaventura De Sousa Santos the systemic human suffering of populations in the Global South is due to a western scientific way of thinking and acting and due to the exclusion of the local communities like the indigenous from the decision-making process. To him knowledge is not only the one scientifically based one but also the heterogeneous knowledge that steams from the various culturally diverse communities located in the developing states, a traditional knowledge that managed to perfectly preserve the environment before the interventions of the actors from the West.¹⁸⁹ An interaction between all forms of knowledge in combination with the greatest level of “real world interventions”, term that he uses to define the social local groups of South, are believed by Santos to form the sole hope for the biodiversity and the humanity to ameliorate.¹⁹⁰

For this human rights-orientated model to be effective states and multilateral institutions such as the WB and the IMF are called to change their policies in a way that they respect the minimum conditions that should not be bargained away in the course of their trade-offs. Those actors are expected to meet new responsibilities, to “ensure that the rights of marginalised groups are not arbitrarily sacrificed to those of the majority and that the minimum essential level of certain economic and social rights...are not compromised.”¹⁹¹ In relation to the access to water, development organisations together with the states first have to identify the sensitive groups – women, minorities, migrants, elderly, indigenous, persons with disabilities, persons

¹⁸⁸ Barlow, Maude, (2000): op.cit. ,pp.78-79.

¹⁸⁹ Sousa Santos, Boaventura De, (2006): op. cit. , pp.67-69.

¹⁹⁰ Sousa Santos, Boaventura De, (2006): op.cit. , pg.69.

¹⁹¹ Draft Guidelines on a Human Rights Approach to Poverty Reduction, Mary Robinson, United Nations High Commissioner for Human Rights, May 2002, document available at <http://www.ohchr.org/english/issues/docs/guidelinesfinal-poverty.doc>, July 5, 2009.

with HIV- mostly affected by development programmes and to ensure that their minimum needs are corresponded in the decisions they adopt.¹⁹² States have also the duty to analyse the legislative framework and form it in a way that it safeguards the right of the vulnerable groups to have access to adequate, clean water. Under RBA the traditional development actors keep the responsibility to inform all the stakeholders –residents, civil society, local institutions, NGOs- about their decisions under the principle of transparency and non-discrimination as well as to ensure citizens’ training and involvement in the negotiations for the management and the implementations of the water programmes.¹⁹³

For a government to meet the principles of accountability, transparency, elimination of corruption and democratic participation there is a need for appropriate institutions to exist in order to monitor the creation and the effectiveness of the human-centered programmes and policies at a local and national level. Civil society institutions and NGOs can significantly contribute with their involvement in political lobbying and media campaigning that can press the governments and the private sector for advocacy and awareness-raising of vulnerable groups. What is of crucial importance for a model as such to be effective is the existence of the appropriate legal framework and tribunals where people will have the ability to have access in order to hold state and private corporations accountable for their decisions and ask for redress and compensation in cases where their right to water is violated in any sense.¹⁹⁴

The success of the RBA much depends on the existence of an effective national political and legal framework, competent national and international institutions and coherent cultural and social factors for the strengthening of the civil society and the fulfillment of their human rights. It also demands that the development and financial institutions take on political initiatives and be formed in a more inclusive and democratic way taking into consideration human rights and environmental principles. International aid programmes and government agencies have to trust local communities to equally distribute their water resources and

¹⁹² Filmer-Wilson, Emilie, (2005): op.cit. , pg.9.

¹⁹³ As examples of the positive measures that states have to take in order to ensure the inclusion of marginalised groups in the development process Emilie Wilson refers to organising special programmes for the boosting of the participation of women and to making planning information available to the languages of the minority groups of every society under the principle of non-discrimination, Filmer-Wilson, Emilie, (2005):op.cit. , pg.10.

¹⁹⁴ Filmer-Wilson, Emilie, (2005): op.cit. , pp.11-28.

manage their water systems without forcing for the implementation of new technologies that are impossible to be afforded by the vulnerable groups and communities.¹⁹⁵

Today, states in the developing world seem to be far from building such a framework while financial institutions and private sector appear reluctant to get involved to aspects that they consider to belong to the political rather than to the economic sphere. This reluctance of public inclusion in the water decision-making process is more than clear in the following statement of a water corporation executive at the World Water Forum in Hague in March 2000 who supported that “as long as water was coming out of the tap, the public had no right to any information as to how it got there”.¹⁹⁶ Without the pressure put by the international human rights organizations and relevant social movements the possibility of the human and environmental objectives to be met seems more than vague.

¹⁹⁵ A pilot project in one of the most populous and least developed states of India, Uttar Pradesh, where public water management committees were elected by the villagers functioned efficiently with a cost two thirds less than the governmental water projects, Barlow, Maude, (2000): op.cit. ,pg.51.

¹⁹⁶ Barlow, Maude, (2000): op.cit. ,pg.29.

Chapter 4: Texaco case in Ecuador: The anti-globalisation trial of the century

Beyond the borders of any nation, most environmental problems that occur today affect natural environment and populations worldwide. Solutions on air and water pollution, climatic change or loss of habitat for endangered species should be found on a global basis in order to effectively deal with environmental hazards before it is too late. However, due to the intense diversities of ethical standards between states – in many cases even within one state- today there is no unanimity on the environmental principles that are to lead national legislations and corporate behaviors. Janeen E. Olsen finds it almost impossible to globally follow one ethical jurisdiction of environmental problems meaning that it seems rather complicated to him to manage to identify the “territorial range of power” that is to set on a new common basis legislations and corporate guidelines.¹⁹⁷

The Working Group III of the United Nations Conference on Environment and Development (UNCED) Preparatory Committee contains numerous proposals to include a right to a healthy environment in the Rio Declaration. According to the first principle of the Declaration “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”¹⁹⁸

Even from 1972, in the UN Conference on the Human Environment in Stockholm, states recognised the need of agreeing on common global principles for the preservation of the nature and the enhancement of the human environment. Principle 2 of Stockholm Declaration states as such: “The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future

¹⁹⁷Olsen, Janeen E.: Environmental Problems and Ethical Jurisdiction: The case concerning Texaco in Ecuador, Business Ethics: A European Review, Blackwell Publishers Ltd. 2001, UK, pg.71.

¹⁹⁸ Report of the UN Conference on Environment and Development, Rio Declaration on Environment and Development adopted by the GA, Rio De Janeiro 3-14 June 1992, all document available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>, July 7, 2009.

generations through careful planning or management, as appropriate.”¹⁹⁹ Unfortunately, the same year Texaco case comes to prove that none of those provisions was respected in Ecuador, one of the assigners of the Declaration in 1972.²⁰⁰

The trial on Texaco’s operations in Ecuador can be considered as an environmental case with social extensions. To Subhabrata Banerjee most of the debate about resource scarcity, biodiversity, population and ecological limits is more of a “debate about the preservation of a particular social order rather than a debate about the preservation of nature per se. The reframing of the relationship between economic growth and environmental protection is simply an attempt to socialise environmental costs on a global scale that assumes equal responsibility for environmental degradation while obscuring significant differences and inequities in resource utilisation between countries.”²⁰¹

Ecuador met many difficulties in attracting funds for development as it has historically been one of the least developed states of South America with little population, wealth and land. The discovery of oil was the source that provided the Ecuadorian government with the capital needed for the implementation of development projects and infrastructure. Unable to find the funds and the technology needed for extraction and delivery of oil to the world markets, Ecuador’s government proceeded to a partnership with Texaco under the name “Petroecuador”. Texaco started exploring for oil in 1964 while actual pumping of oil started in 1972.²⁰²

From then and on Texaco, because of not following safe methods of disposing of waste products by injecting them back deep into the ground, was rendered responsible for many serious environmental and health problems occurred in Ecuador. Much of the spilt oil was seeping back into the ground contaminating soil and water supplies, toxic waste was being dumped into unlined pits and excess overflow was burning off. According to one of the Center’s for Justice, Tolerance and Community report: “In the years that Texaco operated over 10 million gallons of

¹⁹⁹ Declaration of the UN Conference on the Human Environment, Stockholm 5-16 June 1972, all document available at

<http://www.temple.edu/lawschool/drwiltext/docs/Stockholm%20Declaration.pdf>, July 7, 2009.

²⁰⁰ Olsen, Janeen E., (2001): op.cit. ,pg.74.

²⁰¹ Bobby Banerjee, Subhabrata, (2007):op. cit. , pg.74.

²⁰² Olsen, Janeen E., (2001):op.cit. , pp.71-72.

wastewater per day were discarded into 351 pits that ranged from one to ten acres in size. When the pits would fill, workers would drain them into nearby rivers and estuaries, which are the lifeblood of eight tribes indigenous to the Oriente region. The indigenous in the area bathe and fish in the streams, and depend on them as their sole source of water for drinking and agriculture.”²⁰³

Furthermore, roads that were built in order to reach the Amazonian jungle had as a result a serious deforestation in the Amazonian area. The government of Ecuador released Texaco from any further obligations after the latter accomplished its obligation to clean up 250 contaminated sites at a cost of 40000 dollars. However the destructive actions of Texaco that resulted in great increases in numbers of deaths of humans and livestock kept on occurring even after the corporation’s pulling out in 1992.²⁰⁴

The Amazonia of Ecuador had been for centuries an unapproachable land. It was considered as “the land of no one”, an unwelcome wild district where the human being couldn’t survive. However, eight indigenous groups -Sionas, Cofanes, Secoyas, Shuares, Huaorani, Kichwas, Tetetes and Sansahuaris- were living in the deep of the jungle in harmony with the environment without coming in contact with the rest of the world around. The Samans of the Cofanes were communicating with Khuan Khuan, the god of the substratum who protects the jungle and the animals. They were asking from him to send to their community hunting animals and when the animals were approaching the community, they were chasing them and sharing them with the rest of the community.²⁰⁵

When the workers of Texaco firstly appeared in the jungle of Amazon indigenous people had no idea about what was going to happen. Alejandro Samanos from the Cofanes indigenous groups says when interviewed: “And while we were leaving peacefully in our ancestor’s land, someone said one day, that an oil company came in our land. We didn’t know what kind of job was that, even that they came to destroy the nature. The communication between us was really difficult because we couldn’t understand their language.” When seeing three indigenous delegates that

²⁰³ Bridging Bays, Bridging Borders: Global Justice and Community Organising in the San Francisco Bay Area, An Analysis of Globalisation and Bay Area Community Organisations in preparation for attendance by an SEC Delegation at the 2005 World Social Forum, Center for Justice, Tolerance and Community, University of California Santa Cruz, pg.35.

²⁰⁴ Olsen, Janeen E., (2001):op.cit. , pp.72-73.

²⁰⁵ Information taken from the Greek documentary “The Blood of Khuan Khuan” available at <http://video.google.com/videoplay?docid=-6026029010072184946>, July 7, 2009.

approached, Texaco's workers offered them rice in a plate with and three spoons to eat. When the Cofanes ate the rice, they took the plate and the spoons and they left. By this way the Ecuadorian Amazon came in contact with the "development" and the West world. Today the Cofanes say that the oilers in their land negotiated for a plate of rice and three spoons.²⁰⁶

Recent epidemiological studies, including one conducted under the auspices of the prestigious London School of Tropical Medicine, indicate skyrocketing rates of cancer and other health problems in the area where Texaco drilled. The primary reason is that residents have no source of drinking water other than the swamps and rivers that were used by Texaco for the disposal of toxic wastewater that is the byproduct of oil drilling. Having no other alternative, people kept on drinking and using contaminated water for domestic uses putting their lives at risk. An indigenous woman whose leg was amputated due to cancer says: "It started with a little sore on my toe, which grew a bit larger. The water near my house, where I washed clothes, was full of crude and the sore grew bigger, as if the flesh were rotting. It didn't hurt, but I couldn't stand its stink. I had a fever and chills."²⁰⁷

As soon as oil operations began, residents realized that they started having health problems from the contamination. But the only health care professionals in the region were Texaco's doctors, who were telling to the people that their health problems had nothing to do with oil. When people complained of having to walk barefoot on the roads that Texaco had sprayed with oil to keep the dust down, the company's response was to give them free gasoline with which to wash the oil off their feet. According to another indigenous woman's testimony: "...after bathing, our skin was covered with crude. I went to the oil companies, and they said this wouldn't affect me, that the reason I had cancer was because I didn't have good personal hygiene."²⁰⁸

Today Chevron-Texaco was renamed in Chevron during the years- continues to deny any responsibility for the health problems of the people. It claims that there is no proof of a link between oil and cancer although there are evident data showing that high rates of cancer in the region as a whole are caused in large part by oil contamination. Recent studies show that small wells dumped no more than 100

²⁰⁶ From the documentary: "The Blood of Khuan Khuan", op.cit. ,(note 204).

²⁰⁷ From the documentary: "The Blood of Khuan Khuan, op.cit. , (note 204).

²⁰⁸ From the Documentary: "The Blood of Khuan Khuan, op.cit. , (note 204).

barrels of waste water a day into streams could slightly increase the risk of cancer among local residents. In the Amazon, Texaco was dumping up to 100,000 barrels of waste water a day-1,000 times more-. As Michael Economides, who is the coauthor of "The Color of Oil" said: "That's an obviously bad practice. They would never have done that in the United States... a generally pro-industry history of the oil business".²⁰⁹

Environmentalists state that Texaco knew that its operations in Ecuador did not meet the standards of the United States and that the company had a responsibility to do more than local laws required. They acknowledged that the environment was not as important an issue in the early 1970s as today, but contended that Texaco did not keep up with changes in technology as environmental practices improved. Judith Kimerling, an environmental law professor who first documented Texaco's practices more than a decade ago, notes that: "The big picture is that we know from experience around the world that it's irresponsible to just dig a hole, dump your waste and walk away" arguing that this is exactly what Texaco did in Ecuador."²¹⁰

Chevron attributes the health problems of the Ecuadorian Amazon to poverty and a lack of sanitation. However, bacteria in drinking water do not cause cancer. Research shows that the contamination of water is due to chemicals present in crude oil, drilling fluids, and produced water. Poverty is simply another impact of Texaco's operations in the Amazonian jungle.²¹¹ Polluted water renders people unable to find their food as they knew to do for centuries and now they are forced to stand hunger, illnesses and poverty as well as try to find different ways of gaining their living in order to survive.

Texaco's responsibility after its operations in Ecuador from 1972 to 1992 is today to be decided from the US Federal Court system. 30.000 of indigenous people composed of members of the Cofan Indian Tribe of the Amazon jungle accused Texaco of ruining their environment and being responsible for peoples' grave health problems as tumors and spontaneous abortions seeking for reparation. It is important

²⁰⁹ Michael' s Economides arguments available at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TexacoChevronlawsuitsreEcuador>, July 7, 2009.

²¹⁰ Information at <http://www.nytimes.com/2003/10/23/business/texaco-goes-on-trial-in-ecuador-pollution-case.html>, July 7, 2009.

²¹¹ Information at <http://chevrontoxico.com>, July 7, 2009.

to note that the case was filed in New York State where the headquarters of Texaco are located and not in Ecuador where the alleged offenses occurred. Despite Federal Court's ruling in favour of Texaco in 1998, US Court of Appeals overturned the decision and the case is now pending.²¹²

This case consists the first time that indigenous people have forced a multinational corporation to stand trial in their own country for violating their human rights. A 2008 report by a court-appointed scientific expert provides conclusive evidence of Chevron's responsibility, and recommends a fine up to \$27 billion – the largest environmental damages award in history reflecting contamination, cancer deaths, and clean up groundwater's contamination costs.²¹³ Furthermore, it is the first time that a U.S. company faces a judgment in a foreign court over environmental crimes. Procedures started in 1993 when a group of Ecuadorian citizens of the Oriente region filed a class action lawsuit in US federal court against Texaco (*Aguinda v. Texaco*), on behalf of the 30,000 affected Ecuadorians accusing the company as responsible for:

- a) pollution and contamination of the plaintiffs' environment and the personal injuries and property damage caused thereby.
- b) unreasonable industry standards of oil extraction in the Oriente, that did not comply with accepted American, local or international standards of environmental safety and protection. Rather, purely for its own economic gain, Texaco deliberately ignored reasonable and safe practices and treated the pristine Amazon rain forests of the Oriente and its people as a toxic waste dump.
- c) failure to pump unprocessable crude oil and toxic residues back into the wells as is the reasonable and prudent industry practice. Instead, Texaco disposed of these toxic substances by dumping them in open pits, into the streams, rivers and wetlands, burning them in open pits without any temperature or air pollution controls, and spreading oil on the roads. Texaco designed and constructed oil pipelines without adequate safety features resulting in spills of millions of gallons of crude oil.
- d) Texaco's practices of disposing of untreated crude and waste by-products into the environment has contaminated the drinking water, rivers, streams, ground water and air with dangerously high levels of such known toxins as benzene, toluene, xylene, mercury, lead and hydrocarbons, among others. Texaco's acts and omissions have

²¹² Olsen, Janeen E., (2001):op.cit. , pg.72.

²¹³ Information at <http://chevrontoxico.com>, July 7, 2009.

resulted in the discharge of oil into the plaintiffs' environment at a rate in excess of 3,000 gallons per day for 20 years. Many times more oil has been spilled in the Oriente than was spilled in the Exxon Valdez disaster in Alaska.

e) suffering severe personal injuries they are, as well, at an increased risk of suffering other diseases, including cancers. Their sources of potable water have been contaminated, their properties polluted, their livestock killed or made ill, and their very existence as a people jeopardized.²¹⁴

The case is being billed as the oil industry's "Trial of the Century" as the destruction represents the worst ongoing ecological disaster in the Western Hemisphere. However, Texaco supported that as it met all the terms laid out by the government no domestic law was ever broken and stated that any complaint from the part of the indigenous should be addressed against the Ecuadorian government. According to the corporation, to be kept retroactively accountable for not meeting higher environmental standards was seen as unfair.

Spokespersons of indigenous counter argued that at the time that Petroecuador begun its activities, Ecuador lacked both the leadership and the expertise to develop adequate environmental policies in order to protect its indigenous populations. In contrast, at that time Texaco even if it met all the knowledge and capacity standards to protect the livelihood of the indigenous, it decided not to use them ignoring generally accepted industry measures for the protection of the environment that were taken in similar cases. To the indigenous' view Texaco should have used its superior knowledge and introduced the environmental standards for them to gradually become domestic law.²¹⁵

As Luis Yanza states: "By the same time in the USA, where Texaco has its base, it was forbidden to throw toxic wastes in open tankers, and burn gases to the atmosphere. They discovered a secure way of rejecting the wastes. Toxic wastewater is reinjected deep into the ground where it cannot impact the environment. However, in Ecuador none of those measures and methods took place. And the reason is simple. By this way the corporation saved 4 billion dollars..."²¹⁶

²¹⁴ Information at <http://chevrontoxico.com/assets/docs/complaint-1993.pdf>, July 7, 2009.

²¹⁵ Olsen, Janeen E., (2001): op.cit. , pg.73.

²¹⁶ Luis Yanza has been the first president of the Amazon Defense Front (FDA), now coordinating the FDA's involvement in the ChevronTexaco case and serves as liaison with the Assembly of Delegates. More information available at:

The government entrusted Texaco, a well-known U.S. company with more than a half-century's work experience, with employing modern oil practices and technology in the country's emerging oil patch. However, despite existing environmental laws, Texaco's oil extraction system in Ecuador was designed, built, and operated on the cheap using substandard technology from the outset. When the company left the country in 1992, the workers of Texaco covered the oil pits with sand by using bulldozers and they left.²¹⁷

The government officials at the time said they were unaware of the environmental damage taking place in the Amazonian rainforest. Texaco, they said, assured them that it was using the best technology available. "Call us ignorant, call us ingenious, I accept it. We just didn't know," said retired Gen. Rene Vargas, head of the nation's Energy Ministry in the early 1970s and a plaintiff's witness. "If they had done in the U.S. what they did here, they would have been made prisoners. They knew it was a crime."²¹⁸

Texaco's activities, led to extreme, systematic pollution and exposure to toxins on a daily basis for almost three decades. Now when the rain starts, the wastewater ends to their land and to the substratum of their land causing serious problems for the survival of the indigenous people in the area and creating a chaos in their traditional way of living. This environmental catastrophe is now called from the experts as the "Amazonian Chernobyl".²¹⁹

As it comes clear there is an urgency that states agree on authentic legitimate moral norms to be imposed in every corporation wherever it operates even in the absence of appropriate domestic legislation. The ability to meet basic human needs and the need for environmental protection should in no case be compromised either from governments or from corporations. Those universal values should be built taking into consideration not only the globalisation concepts of private property and free trade but also with respect and responsibility towards all human beings and natural environment. As environmental degradation has a direct impact on human life it is

http://www.oxfamamerica.org/whatwedo/where_we_work/south_america/news_publications/texaco/index.html, July 7, 2009.

²¹⁷ From the documentary: "The Blood of Khuan Khuan, op.cit. , (note 204).

²¹⁸ Information available at <http://chevrontoxico.com>, July 7, 2009.

²¹⁹ Donziger, Steven R.: Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America, Human Rights Brief, Center for Human Rights and Humanitarian Law, American University, Washington College of Law, Volume 11, Issue 2, Winter 2004, pg.1.

obvious that there is an interrelation between human rights and the existence of environmental principles. There is a need that international community becomes able to protect both environmental principles and human rights issues and to press for domestic legislations and corporate behaviors less greedy and less cruel.

General Conclusion

The existence of a right to water -implied in the International Covenant on Economic, Social and Cultural Rights- was explicitly recognised in 2002 by General Comment 15 that put an end to the ambiguities concerning its existence. Apart from GC15, many other international instruments verify the existence of the right and call states to take the appropriate measures to guarantee its fulfillment to their peoples. However, the suffering of great numbers of global population that live in the developing world lacking the most basic necessity for their survival does not seem close to come to an end. Dehydration, malnutrition and fatal illnesses due to the lack of adequate, affordable and of good quality potable water consist the hazards that the vulnerable groups are forced to face on an everyday basis.

Belonging in the category of Economic, Social and Cultural Rights and linked with many of the so called Third Generation Human Rights the right to water demands states to take positive action for its fulfillment. In the developing world, due to the lack of the appropriate legal, economic and social framework the goal of guaranteeing a right to water to all citizens remains far from being accomplished by the states. In the absence of a coherent and complete domestic social legislation the existence of international predictions, however important, seems inadequate to safeguard the right to all people and incapable of creating a compensation mechanism through which people are able to ask for remedies in the cases where their right to water is violated.

International financial organisations like the World Bank, the International Monetary Fund and the World Trade Organisation seem to have taken on a dominant role in the development process of the Third World. Following solely the principles of the globalised economy those actors refuse to insert human rights and environmental standards in their developing plans with the pretext that their role is rather economic than political. Developing states have no alternative but to accept the terms put by those financial institutions as this is seen as their only means of loan receiving and their only chance of becoming competitive players in the global market. However, trapped under international obligations set in those financial institutions with

powerful partners, developing states fail to form domestic social policies essential for the safeguarding of the vital rights of all people.

Adding to -or due to- this inefficiency of the legal systems in the Third World, for the sake of their “development” southern states tend to adopt bilateral contracts with western powerful state and non-state actors that in most cases are ruled by economic rather than social principles. Those partnerships’ ability to secure the right to water to the vulnerable groups proves more than ambiguous. Research shows that privatisation of water services in many developing countries raised the water bills for urban citizens while it left without water supply shantytowns and rural villages that were considered as “risky investments” by the private water companies. In the absence of any adequate supply of clean water, rural people –usually rural women- had to walk many kilometers and hours per day carrying water in buckets from rivers or lakes. Furthermore, poor people’s inability to pay their bills resulted in cutoffs leaving the poor with no other alternative but to buy small quantities of water from unofficial private vendors in a cost sometimes many times more than the price set by the official private supplier in the cities.

Environmental and livelihood damage to a large point seems to have its roots to the privatisation of natural water resources. Free of any international legal obligations and taking advantage of the loose domestic frameworks of the developing states corporations agree with the governments of the South to set their business in areas rich in waters and vegetation abusing the commons of the nature. Impacts are most severe for the indigenous people living there but are also globally felt. The voluntary character of the existing code of conducts that aim at inserting human rights and environmental principles in corporations’ activities prove to be inadequate to prevent the environmental destruction.

The analysis of the decision making processes followed in the international financial institutions raises the question of democratic deficit both in a supra state and in a state level. Economically fort western states and corporations compose the giants of the global economy and keep a “more equal” representation in the financial institutions where they succeed to promote solely their own economic goals. Furthermore, it comes out that the delegations of the developing states in the institutions are in most cases formed by the elite groups of the countries and so fail

to well represent the diverse interests of all societal groups, especially the marginalised ones.

Citizens of the developing states are dislocated from the decision-making process concerning even aspects that directly affect their lives like the water management. The representatives that they vote for in a domestic level do not have a place in the international financial arena where water issues are today mostly dealt with. People, the main substance of democracy are now left with the role of the spectator in policy making processes decided in their absence. Due to the lack of awareness raising and transparency concerning water projects people lack the opportunity to get involved in the decision-making processes in order to claim their interests. Public participation and accountability, two of the most significant principles of democracy seem to be swallowed from a greedy global market that refuses to be held accountable for the social and environmental impacts of its activities.

If it is to ensure equal access to water for all without discrimination water exploitation should in no case be left to the hands of the privileged few. Communities and citizens have to seriously be included in the decision-making and management of water issues to actively defend their claims. Water management does not belong solely in the sphere of economics as its impacts affect also the social and the environmental spheres. The traditional perception of development worsened the position of the vulnerable groups of people in the developing world. It is high time for a shift to an environmentally sensitive model of sustainable development focused on human needs of all people, able to fight inequalities and release humanity from suffering. Human rights-based approach to development has to come to replace the traditional profit-orientated perception of development. People have to be encouraged to consider themselves as right-holders of their own rights. This is the only way to meet the principles of justice, transparency and equity, all essential for the fulfillment of all human rights.

Western capitalist thinking inserts rights of property in a natural resource with a spiritual meaning for many indigenous communities of the South who for centuries managed to preserve their waters using their non-scientific traditional knowledge. In some cases those indigenous communities have been considered even as non-existent by governments setting corporations free to exercise their business in the

global South clearly ignoring both environmental and human rights principles. Vulnerable groups have to be heard and respected. The diverse concepts of knowledge have to be taken into consideration for the welfare of people and nature. Interaction and collaboration between all stakeholders is more than needed in order to combat misery and natural destruction. The principles of globalisation do nothing but widen the economic and social gaps within societies while it composes a menace for the preservation of our natural environment.

International human rights community together with World Social Forum and NGOs are expected to boost local organizations, social movements and indigenous communities in the developing world for a global implementation of social and environmental justice above profit. Much focus has to be put on awareness raising and public inclusion. As water justice is a political matter change can come only through pressure put by civil society that if activated, has the means to effectively fight today's senseless reality.

The need of a people centered and inclusive water policy renders urgent. Without water there is no life, human or natural. The right to water is the right to life, the right to human dignity, the right to food, the right to health, the right to a clean environment. It is the right that has to be immediately performed to all and ensured for the future generations. In a world where the greed for economic profit deprives billions of people from existing with dignity it is us who have to alert and act. Tolerance and passivity towards this inhuman utopia is equivalent to responsibility. People, if jointed, can become the most effective human rights claimant and motivate for the creation of a different world.

Bibliography:

Books:

- Anderson, James: Transnational Democracy, Political Spaces and Border Crossings, Routledge, 2003
- Banerjee, Subhabrata Bobby, Corporate Social Responsibility, the Good, the Bad and the Ugly, Edward Elgar Publishing, 2007
- Barlow, Maude: Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water, Trade Paperback editions, October 2007
- Barlow, Maude, Blue Gold, The Global Water Crisis and the Commodification of the World's Water Supply, revised edition, spring 2001
- Brownlie, Ian: Principles of Public International Law, Oxford University Press, 1998
- De Feyter, Koen, Human Rights: Social Justice in the Age of the Market, Zed Books, 2005
- Faundez Julio/Footer, Mary E./Norton Joseph, Governance, Development and Globalization, Blackstone Press, January 2001
- Lane, Jan-Eric/ Ersson, Svante O., Democracy, A Comparative Approach, Routledge, 2003
- Mathias/Allouche, Jeremy, Water Privatisation, Trans-national Corporations and the Re-regulation of the Water Industry, Spon's Environmental Science and Engineering Series, 2001
- Nonini, Donald Macon, The Global Idea of the Commons, Berghahn Books, New York, Oxford, 2007
- Philo/Greg, Miller/David, Market Killing, What the Free Market Does and What the Social Scientists can do about it, Longman, 2000
- Salman, Salman MA, McInerney-Lankford, Siobhan Alice: The Human Right to Water: Legal and Policy Dimensions, World Bank Publications, 2004
- Shapiro, Ian/ Hacker- Cordon, Casiano: Democracy' s Edges, Cambridge University Press
- Shiva, Vandana: Water Wars: Privatisation, Pollution and Profit, South End Press, 2002

Silver, Cheryl Simone/ DeFries, Ruth.S. , *One Earth, One Future, Our Changing Global Environment*, National Academies Press, 1990

Sjolander Holland, Ann-Christin, *Water Business: Corporations VS People*, Global Issues Series, 2005

Smith, J.W., *Cooperative capitalism, A blueprint for Global Peace and Prosperity*, Quality Books, Inc. , 2003

Snitow, Alan/ Kaufman, Deborah/ Fox, Michael, *Thirst: Fighting the Corporate Theft of Our Water*, Weekly Publishers, 2007

Articles:

Bakker, Karen, *The “Commons Versus the “Commodity””: Alter-globalisation, Anti-privatisation and the Human Right to Water in the Global South*, University of British Columbia, Vancouver, BC, Canada, Journal Compilation 2007

Barlow, Maude: *Water as Commodity-The Wrong Prescription*, Backgrounder, Institute for Food and Development Policy, Volume 7, Number 3, summer 2001

Barlow, Maude and Clarke, Tony: *Who Owns Water?* , The Nation, 2 Sept. 2002

Birdsall, Nancy/Nellis, John, *Winners and Losers: Assessing the Distributional Impact of Privatization*, World Development Vol. 31, No. 10, pp. 1617–1633, 2003

Bridging Bays, Bridging Borders: Global Justice and Community Organising in the San Francisco Bay Area, An Analysis of Globalisation and Bay Area Community Organisations in preparation for attendance by an SEC Delegation at the 2005 World Social Forum, Center for Justice, Tolerance and Community, University of California Santa Cruz

Carter Richard C., Danert Kerstin: *The Private Sector and water and sanitation services-Policy and Poverty issues*, Journal of International Development 15, 1067-1072, 2003

Cruse Tom, Ramos, Cecilia, *Water privatization: Doubtful Benefits, Concrete Threads*, Social Watch Project, Social Watch Report: The Poor and the Market, 2003

Donziger, Steven R.: *Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America*, Human Rights Brief, Center for Human Rights and Humanitarian Law, American University, Washington College of Law, Volume 11, Issue 2, Winter 2004

Estache, Antonio/Gomez-Lobo, Andres/Leipziger Danny, Utilities Privatisation and The Poor: Lessons and Evidence from Latin America, World Development Vol.29, No.7, pp.1179-1198, 2001

Filmer-Wilson, Emilie, The Human Rights-Based Approach to Development: The Right to Water, Netherland Institute of Human Rights, 2005

Grönwall, Jenny T., Access to Water, Rights, Obligations and the Bangalore situation, Linköping Studies in Arts and Science No. 439, Linköping University, Department of Water and Environmental, 2008

Hilary, John, GATS and WATER: The thread of services negotiations at the WTO, A Save the Children Briefing Paper, UK, 2003

Lynch, Michael J./Stretsky, Paul.B., The meaning of Green: Contrasting Criminological Perspectives, Theoretical Criminology, SAGE Publications, 2003

Maude, Barlow, Clerk, Tony, Who Owns Water? , The Nation Magazine, Sept.2002

Mehta, Lyla/Madsen, Birgit la Cour, The General Agreement on Trade in Services (GATTs) and Poor People's Right to Water, IDS Bulletin 35.1, Globalisation and Poverty, 2004

Nikolopoulos Takis, "Market and society, alternative forms of social organising. The "inclusive democracy" and its political, economic, social and ecological sides", newspaper "To Vima", January 16th 2000.

Olsen, Janeen E., Environmental Problems and Ethical Jurisdiction: The case concerning Texaco in Ecuador, Business Ethics: A European Review, Blackwell Publishers Ltd. 2001, UK

Postel Sandra L./Wolf, Aaron T., Dehydrating Conflict, Foreign Policy Magazine, 2001.

Robbins, Peter T., Transnational Corporations and the Discourse of Water Privatisation, Journal of International Development Dev. 25, 1073-1082, 2003

Roy, Jessica/ Crow, Ben, Gender Relations and Access to Water: What we want to know about Social Relationships and Women's Time Allocation, University of California, Santa Cruz, March 23rd, 2004

Sousa Santos, Boaventura De, Beyond Abyssal Thinking, From Global Lines to Ecologies of Knowledges, Fernand Braudel Center, Binghamton University, 24 October 2006

Trawick, Paul, Against the Privatization of Water: An Indigenous Model for Improving Existing Laws and Successfully Governing the Commons, World Development Vol. 31, No. 6, pp. 977-996, 2003

Underhill, Geoffrey RD/ Zhang, Xiaoke: Norms, Legitimacy and Global Financial Governance, World Economy and Finance Research Program Working Paper Series, Economic and Social Research Council, September 2006

Williams, Melina: Privatisation and the Human Right to Water: Challenges for the New Century, Michigan Journal of International Law, Vol.28:469, May 2007

Zurn, Michael: Global Governance and Legitimacy Problems, Government and Opposition, vol. 39/2, spring 2004

International documents:

Committee on Civil and Political Rights, General Comment 6, The Right to Life, <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>

Committee on Economic, Social and Cultural Rights, General Comment 14, The Right to the highest attainable standard of health, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

Committee on Economic, Social and Cultural Rights, General Comment 15, The Right to Water, [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/GO340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/GO340229.pdf)

Committee on Economic, Social and Cultural Rights, Resolution 1987/5

Convention on the Elimination of All Forms of Discrimination against Women, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article14>

Draft, Business, Human Rights and the Right to Water, Challenges, Dilemmas and Opportunities, Roundtable Consultative Report, Institute for Human Rights and Business, January 2009

Draft Guidelines on a Human Rights Approach to Poverty Reduction, Mary Robinson, United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/docs/guidelinesfinal-poverty.doc>

Economic and Social Council, Preliminary Report of the Special Rapporteur Mr. El Hadji Guisse, Relationship Between the Enjoyment of Economic, Social and Cultural Rights and the Promotion of the Realisation of the Right to Drinking Water Supply and Sanitation, UN Doc. E/CN.4/Sub.2/2002/10 (June 25, 2002).

Economic and Social Council, Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, <http://www.unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>

General Assembly, Resolution 32/130, <http://www.un.org/documents/ga/res/32/ares32r130.pdf>

International Committee of the Red Cross, Geneva Convention III relative to the Treatment of Prisoners of war, <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=375&t=art>

International Committee of the Red Cross, Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=380&t=art>

International Committee of the Red Cross, Protocol Additional I to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts, <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=470&t=art>,

International Committee of the Red Cross, Protocol II Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts, <http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=475&t=art>

UN Convention on the Rights of the Child, <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

UN Declaration of the Rights of the Present Generations Towards Future Generations, <http://www.unesco.org/cpp/uk/declarations/generations.pdf>

UN Declaration of the United Nations Conference on the Human Environment, <http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=97&ArticleID=1503>

UN Declaration on the Right to Development, <http://www.unhchr.ch/html/menu3/b/74.htm>

UN Declaration on the Human Environment, <http://www.temple.edu/lawschool/drwiltex/docs/Stockholm%20Declaration.pdf>

UN Rio Declaration on Environment and Development, <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

United Nations Development Programme, Integrating human rights with sustainable human development-a UNDP policy document, http://www.undp.org/governance/docs/HR_Pub_policy5.htm#Developing

UN Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Attachment: The Human Rights-

Based Approach to Development Cooperation- Towards a Common Understanding Among UN Agencies, <http://www.undp.org/governance/cdromhr/homepage.html>

UN, Dublin Statement on Sustainable Development, <http://www.unesco.org/water/wwap/milestones/index.shtml>

UN Global Compact, <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>

UN, International Covenant on Civil and Political Rights, <http://www2.ohchr.org/English/law/ccpr.htm>

UN, International Covenant on Economic, Social and Cultural Rights, http://www.unhcr.ch/html/menu3/b/a_ceschr.htm

UN, Rio Declaration on Environment and Development, Rio Declaration on Environment and Development

UN Subcommission on the Promotion and the Protection of Human Rights, UN Draft Norms, <http://www1.umn.edu/humanrts/links/NormsApril2003.html>

UN, Vienna Declaration and Programme of Action, [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

UN, UN Watercourses Convention, http://www.internationalwaterlaw.org/documents/intldocs/watercourse_conv.html

Documentary: “The Blood of Khuan Khuan” by Giorgos Avgeropoulos, <http://video.google.com/videoplay?docid=-6026029010072184946>

Websites:

<http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

<http://pwf.foodandwaterwatch.org/comments.php?DiscussionID=9>

www.gatswatch.org

www.cohre.org/store/attachments/COHRE%20Implementing-RTW-CentralAmerica%20english.doc

<http://www.vlioras.gr/Philologia/Composition/Pagkosmiopoiisi.htm>

www.mitpressjournals.org/doi/abs/10.1162/152638001750336587

www.unsgab.org

<http://en.wikipedia.org/wiki/G8>

<http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TexacoChevronlawsuitsreEcuador>

<http://www.nytimes.com/2003/10/23/business/texaco-goes-on-trial-in-ecuador-pollution-case.html>

<http://chevrontoxico.com>

http://www.oxfamamerica.org/whatwedo/where_we_work/south_america/news_publications/texaco/index_html