



Norwegian Church Aid Sourcebook



Advocacy for Safe Freshwater and Sanitation



NORWEGIAN CHURCH AID



Introduction

PART I: COMING TO TERMS WITH ADVOCACY

1. ADVOCACY: WHY AND WHAT?

1.1 Why Take Up Advocacy Work for Safe Freshwater and Sanitation?

1.1.1 The Reality of Water

1.1.2 Curing the Disease

1.1.3 Taking the Bull by the Horns - Together

1.2 A Normative Definition of Advocacy

1.2.1 Influencing Policies that Affect the Disadvantaged

1.2.2 Empowering the Disadvantaged to Take Centre Stage

1.2.3 Do No Harm

2. SUGGESTING AN ADVOCACY PLANNING FRAMEWORK

2.1 Eight Dimensions of the Advocacy Planning Framework

2.1.1 Identifying Good Issues: What You Want to Change

Box 2.1 Rules of Thumb for a Good Issue

2.1.2 Problem Analysis: Finding Out More

Box 2.2 Getting the Numbers Right Helps Combat Guinea Worm

Box 2.3 Students' Research for People-Centred Sanitation in Karachi

2.1.3 Setting Objectives: What You Want to Achieve

Box 2.4 WASH Campaign's SMART Objectives Checklist

2.1.4 Selecting Targets: Who You Want to Influence

2.1.5 Choosing Approach: The Way to Influence

2.1.6 Messaging: Being Understood

2.1.7 Working with Allies: Joining Efforts

Box 2.5 The Importance of Alliances for Achieving Influence in PRSPs

2.1.8 Resources: Mainstreaming Advocacy



PART II: ADVOCATING FOR JUST GOVERNANCE OF LOCAL FRESHWATER

3. SAFE FRESHWATER FOR THE POOR IN CITIES AND VILLAGES

3.1 Overview

3.2 Accountable Public Spending

3.2.1 What Allocations for Water in Local Budgets?

3.2.2 Are Funds Spent as Intended?

Box 3.1 Budget Tracking in Uganda and India

3.3 Privatization and its Discontents

3.3.1 The Privatization Argument

3.3.2 The Full Cost Recovery Doctrine

Box 3.2 Cochabamba - Paying the Price for Full Cost Recovery

3.3.3 Privatization and Pro-Poor Subsidies: One step forward, two steps back?

3.3.4 'Capitalism without Risk'

Box 3.3 Buenos Aires - The World Bank's Showcase

Box 3.4 Guidance Criteria for 'Socially Acceptable' Privatisation

3.4 Village Villains

3.4.1 Corruption

Box 3.5 Corruption in Pakistan's Irrigation Sector

3.4.2 Confusing Private Property Rights with Water Rights

Box 3.6 Poor Adivasi People Strike Back at Coca Cola in India

3.5 Applying the Advocacy Planning Framework to Key Issues

3.5.1 Harmful Service Sector Reform

3.5.2 Undue Corporate Extraction Permits

3.5.3 Corrupt Irrigation Schemes

3.5.4 Unaccountable Public Spending

3.5.5 Enshrine the human right to water in the national constitution



PART III: ADVOCATING FOR JUST GOVERNANCE OF NATIONAL FRESHWATER

4. SCARCE WATER, COMPETING CLAIMS

4.1 Overview

MAP 4.1 Irrigated Areas/Potential

MAP 4.2 Percentage of Undernourished People

4.2 Norms, National Governance and Public Participation

4.2.1 Governments' General Obligation

4.2.2 The Three Pillars of Public Participation

Box 4.1 Participating in Sao Paulo's Basin Management

Box 4.2 Human Rights to Water Specified

4.3 Reclaiming National Ownership of Water Services Reform

4.3.1 Conditionality of the World Bank/IMF

Box 4.3 Privatization in Ghana

4.3.2 WTO's General Agreement on Trade in Services (GATS)

Box 4.4 GATS: An Inroad to Sao Paulo's 'Choice Cut' Concessions?

4.4 When Claimants are Offenders

4.4.1 Agriculture as Offender

Map 4.3 Agriculture water withdrawal/renewable water

4.4.2 Aquaculture as Offender

Box 4.5 Lake Cocibolca: A Case for the Central America's Water Tribunal?

4.4.3 Industry as Offender

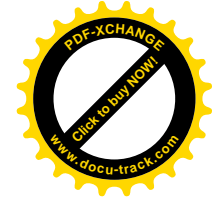
Box 4.6 Cellulose Pulp Exports vs. Indigenous' Water Rights

4.5 Applying the Advocacy Planning Framework to Key Issues

4.5.1 Failing to Include Civil Society in National Policy Making

4.5.2 Undue Concessions in Trade Negotiations

4.5.3 Big Business Offenders



PART IV: ADVOCATING FOR JUST GOVERNANCE OF TRANSBOUNDARY FRESHWATER

5. TRANSBOUNDARY WATERCOURSES

5.1 Overview

5.1.1 *A Global Grid of Interdependencies*

Map 5.1 Country Dependence on Water Resource Inflow

Map 5.2 Internationally Shared Aquifers

5.1.2 *Big Rivers, Big Rumble?*

Box 5.1 The Dangerous Ganges-Brahmaputra Stalemate

5.2 Norms, Governance and Public Participation

5.2.1 *International Law Still in the Making*

5.2.2 *Claiming Space for Public Participation*

Box 5.2 Improving the Governance of the Mekong River Basin

5.2.3 *Holding the Bank to Account on Her Promises*

Box 5.3 How the Bank Became a Fan of Public Participation

Box 5.4 The Nile Basin Initiative

5.3 Applying the Advocacy Planning Framework to Key Issues

5.3.1 *Harmful Intervention in Transboundary Watercourses*

6. CLIMATE CHANGE

6.1 Overview

6.1.1 *The Weather Does Not Work for the Poor*

6.1.2 *Disease*

6.1.3 *Droughts and Floods*

6.1.4 *Conflict and Refugees*

Box 6.1 Climate Change Fuels Deadly Conflict in Kenya

6.2 Curbing Emissions, Creating Alternatives

6.2.1 *Holding the Polluters to Account*

6.2.2 *Avoiding the Oil Trap: Sugar and Sunshine*

6.2.3 *Tomorrow's Promise: Concentrated Solar Power*

6.3 Applying the Advocacy Planning Framework to Key Issues

6.3.1 *Harmful Climate Change*



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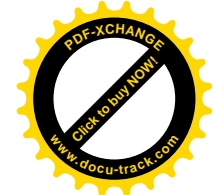
NOTES/REFERENCES

Introduction

The challenges facing the realization of poor people's right to safe water and sanitation are tremendous. NCA and partners have been working to cushion the effects of droughts and poor water infrastructure for decades, through *emergency relief* and *long-term development programs*. Throughout the last decade, we have increasingly engaged ourselves in a third working method, too, that of *advocacy*: '*Organizing information, knowledge and people strategically, so that the otherwise voiceless can influence the policies and practices that affect their lives*'. The time has come to make a sourcebook about this.

While we hope that the advice, perspectives and cases featured here may be helpful to partners in all of our 70 partner countries, we are fully cognizant that the scope and character of individual advocacy interventions must be determined by the specific context: strategies that are appropriate and effective in one place, might be outright dangerous and unproductive elsewhere. In general terms, many African countries – with their historical trajectory of modest political integration and weak states – provide ample space for the political involvement of civil society, but the advocacy specialist capacities are still few and far between. The first challenge is thus to build competence. Latin America - with her tradition of populism, class struggle and vacillations between repression and emancipation - has a highly politicized civil society with plenty of specialist capacities. Here, the primary challenge seems to be to bridge the knowledge gap between organisations and the grassroots. Many Asian countries, on their part, are still marked by their history of very strong and often authoritarian states, and the space for the political engagement of civil society remains constrained. A first challenge is to find cunning ways of 'softly' confronting decision makers, without coming in harm's way, so as to gradually expand the advocacy space and thus the popular accountability of the powerful.

This sourcebook is organized in three parts, distinguishing between advocacy issues at *local, national and international* levels, respectively. These are different levels of jurisdiction, reflecting the extent to which water systems exist within, or cross, community or state boundaries. Some issues - like groundwater extraction permits, development of irrigation infrastructure and deciding whether a city's water utilities are run publicly or privately - are *nominally* decided at the local/district level. Other issues - like the management of big watersheds and enactment of water laws (including accession to international treaties) and budgets – are *nominally* decided at the national level. Yet other issues – interventions in inter-state rivers, and mitigation of climate change that increases rainfall where there is already enough rain and reduces rainfall where there is



already too little – must be addressed at the international level.

Two important remarks must be made to this organisation of the book. Firstly, the fact that one might distinguish three levels in terms of nominal jurisdiction does not mean that these levels are politically unconnected! All the way down to the neatly localised bore well, there might be a stakeholder involved from the other side of the globe, and the local municipal council may come under pressure from a huge multinational company; a national government may come under considerable pressure from trade partners to subject water services sector to international trade law, effectively suspending national sovereignty. Secondly, the fact that some water systems are geographically located within a local community does not mean that the water is unaffected by actions elsewhere either: the capacity of a local well to replenish itself may be affected by the flow level in a nearby, national watershed, which in turn may be affected by reduced rainfall caused by climate change. In fact, these interrelations between localities – in terms of both politics and hydrology – is a major reason for scaling up our joint advocacy efforts.

Throughout this book, we reiterate again and again that our efforts must be based – in terms of attitude, knowledge and strategy - on the *human right to water*. The so-called rights-based approach may have been touted as the way forward for some years already, but the truth is that many of us still struggle to employ the approach in practice. Sometimes, we might even sense that the emphasis on 'rights' represents a spiritual resignation. As one prominent church leader once told NCA: 'Our prophetic call to instigate change to improve the lot of the poor and oppressed was originally motivated by and coached in the language of *love*. With some reluctance we later accepted to use the language of *justice*. Now, not even that is enough, and we must descend into the legalistic talk of *rights*.' Indeed, there are mundane problems with rights, too: if poor people's rights are actually in conflict, then the rights-based approach cannot help us much.

We nevertheless employ the right-based approach throughout this book. Firstly, because our spiritual doubts are offset by the fact that the powers everywhere are forced to listen to the 'language of rights.' Indeed, few other tongues cut through 'Babel Chaos' created by footloose capitalism's capacity to pit people from across geographic, cultural and value-based boundaries against one another. Secondly, because the instances in which poor people's rights are in direct conflict with another are manifold outnumbered by the instances in which poor people's rights are trampled on by the powerful and greedy.



PART I

*COMING TO TERMS
WITH ADVOCACY*



1

Advocacy: Why and What?

“If the misery of the poor be caused not by the law of nature, but by our institutions, great is our sin.”

Charles Darwin¹

1.1 Why Take Up Advocacy Work for Safe Freshwater and sanitation?

1.1.1 The Reality of Water

Some of us tend to think of water scarcity as something caused by the laws of nature: Apparently, some places suffer from what seems like perpetual drought; meanwhile, others are like the proverbial ‘oasis in the desert’, endowed with the bounty of rains, rivers, and lakes. It is true that nature is not exactly fair in its distribution of water. But many of the problems associated with water stress are man-made. Where nature is truly unfair in her endowments, the extent to which the poor suffer as a consequence is determined by the resolve of human intervention and political institutions. The poverty, sickness and death toll associated with the ‘silent emergency’ of the global water crisis is thus a scandal and a shame to humanity, and reflects a disastrous failure of governance:

- More than 1.1 billion people lack access to safe freshwater, and 2.6 billion do not have adequate access to safe sanitation².
- More than 2.2 million people in developing countries die each year from diseases associated with lack of safe drinking water, poor hygiene and sanitation. Most of them are children. A child born in the developing world consumes 30-50 times less water than one in the developed world. Daily, 6000 people, most of them children, die of diarrhoeal diseases. This is equivalent to *twenty fully loaded jumbo-jets crashing every day*, with no survivors.
- Yet, global freshwater consumption increased six-fold in the 20th Century, more than twice the rate of population growth. Exploding consumption and increasing misallocation is set to continue: the proportion of the world’s population living in countries under significant water stress is estimated to increase from 34% (1995) to 63% by 2025 unless the way we govern freshwater changes.



- ÿ Water insecurity contributes heavily to the fact that 800 million people suffer from malnutrition, and this number will grow, as man-made climate change will harm rain-fed agriculture.
- ÿ Poor people use much time and energy to access safe freshwater that could otherwise be spent on education and income-generation. It is estimated that over 10 million person-years are spent annually by women and female children who have to carry water from distant sources.
- ÿ Meanwhile, the leaders of developing and developed countries alike have committed themselves to 'halve, by 2015, the proportion of people living without sustainable access to safe drinking water and sanitation' (through the 7th Millennium Development Goal).
- ÿ But between 2000 and 2004, the proportion of overall aid to water and sanitation actually *shrunk* - from 6% to 5%. And southern governments fail to do their bit, too: at current rates of progress, the MDG sanitation target will not be met in Sub-Saharan Africa until 2105, *a hundred years from now*, and this 'delay' will cost an additional 133 million people their lives.³

1.1.2 Curing the Disease

Why do so many of the world's citizens, including much of civil society in developing countries, fail to exert pressure on their leaders to take determined action? As seen from the perspective of civil society organisations (CSOs) involved in development work, perhaps this is so because we ourselves are so busy trying to provide the poor with safe freshwater and sanitation that we fail to ask: What are the causes for this tremendous need, and how can we address these? Is it not true that the material resources we dispose for physical interventions are actually much scarcer, relative to the need, than our potential moral and political resources? This must not be taken to mean that we should contemplate abandoning life-saving physical interventions on the ground. The need for increasing efforts in terms of physical interventions, such as helping local communities drill bore wells, harvest rainwater, improve irrigation for food security and treat water-borne diseases, will grow.

But unless we *at the same time* address the very 'disease' that compels us to treat the 'symptoms' of injustice, then the symptoms will just keep popping up everywhere. Moreover, poor people's water rights are violated by mechanisms to which physical interventions are largely irrelevant: There will be no rains to harvest if the rich of the world are allowed to continue destroying the global climate; there will be no water to drill for if industry and monoculture are allowed to empty or pollute groundwater aquifers; our interventions for human health will not suffice if water for food crops or fisheries is lost because of hydroelectric dams or if the legal arrangements governing water distribution make water so costly that poor people forced to drink unsafe water.

When we thus go to the heart of the advocacy approach, CSOs' identity and working methods are challenged. *Access to safe freshwater is a human right, and upholding human rights is ultimately the duty of governments.* When we nevertheless take on the duty, we do so as a 'stop-gap-measure': in the grand scheme of things CSOs are involved in providing freshwater in order to



eventually make themselves redundant as providers. Neither NCA nor the readers of this book are the ultimate duty-bearers as far as providing safe freshwater is concerned. Nor are we the relevant rights-holders. Being respectful of the fact that the ultimate duty-bearers, in terms of power, are 'above' us, and the rights-holders are 'below' us, denies us the privilege of becoming complacent about our role as service providers. We betray the poor if we allow ourselves to become so fond of our own interventions that we fail to help them claim the rights that are theirs - not from us, but from their governments. It would, however, be a huge mistake to conclude that our role as advocates is in *conflict* with our roles as service providers. It is quite the opposite way around: being service deliverers on the ground, compelled by the duty to see God's love manifest in our world, endows us with tremendous moral and political strengths. Because we relate directly to the real lives of people whose rights are threatened every day, we can serve as legitimate interlocutors between the people concerned and the decisions that matter.

1.1.3 Taking the Bull by the Horns - Together

Stressing that developing countries' governments are ultimately responsible for upholding the human right to water does not suggest that they alone are to blame. They are not. Tremendous global forces that constrain their capacity to protect rights are brought to bear on governments. Such forces are not merely manifest in the pressures exerted by multinational companies, donor governments or global institutions; structural constraints are just as important, such as the unfortunate role of poor countries in the global division of labour and trade, and their subsequent income insecurity and weak tax base; and their commonplace reliance on imports that are strategically important, but prohibitively expensive, including oil and technology. Political deadlock ensues if a country's civil society is mobilised to hold their government to account while their governments' hands are effectively tied by these outside forces. This is the key challenge in the age of globalisation. Consequently, advocates in the South must ally themselves with those in the North (whose duty is to hold *their* governments and global companies to account) so that Southern governments' hands may be untied. Global alliances are not merely possible; sometimes, they are absolutely indispensable.

Many southern organisations are nevertheless reluctant to move decidedly into advocacy work. Sometimes this may be due to complacency or unfortunate internal politicking that betrays the poor. But there are real concerns, too. One is the contention that advocacy is political, confrontational and sometimes dangerous. This may be true. But given the severity of the water crisis, can anyone afford to *not* be political? As we discuss in Chapter 2, the advocacy notion straddles a range of approaches; confrontation is just one of many, and can often be inappropriate. Eventually, the extent to which advocacy becomes truly dangerous is a matter of professionalism (including working through 'proxies' where necessary). Danger does not reside in advocacy as a general working method. But it is perhaps true that the more complex the situation and the bigger the political and economic forces involved, the more important it is to be cautious. And caution may be costly in terms of finances and time. Indeed, many organisations are reluctant to engage in



advocacy because they feel there is not sufficient funding for it. As discussed in Chapter 2, this can be remedied by better planning and by eliciting required funds from northern partners such as NCA.

1.2 A Normative Definition of Advocacy

1.2.1 Influencing Policies that Affect the Disadvantaged

This book features a number of case examples that, taken together, give more meaning to the term 'advocacy' than any definitional discussion can provide. Some general considerations may be useful, however. Advocacy is commonly equated with '*speaking on behalf of someone.*' People fighting for justice are typically not among the poorest themselves but they are engaging themselves precisely because they have concluded that unless someone speaks up for the poor, their needs and interests may go wholly unnoticed. This is often a reasonable conclusion: in the context of *scarcity, immature democracies, and globalisation*, most politicians seem to busy themselves with lining their own pockets and forwarding the interests of their kin and allies, while being under increasing pressure from global political and economic forces. At the end of the day, the rights of the poor may be at the bottom of the agenda. In an international stakeholder conference about advocacy for safe freshwater and sanitation, participants thus suggested that advocacy is:

*"The process of managing information and knowledge strategically to influence policies and practices that affect the lives of people, particularly the disadvantaged"*⁴

1.2.2 Empowering the Disadvantaged to Take Centre Stage

The above definition is quite instructive. But, as many of the conference participants were quick to remark, it says nothing about poor people *being involved* in change processes themselves, and thus reduces them to the status of 'clients', *the very role which causes violations of their right in the first place.* Indeed, *speaking on behalf of* the poor is just the beginning. We will not precipitate any lasting changes, nor be true defenders of poor people's rights, unless we help them *speak for themselves.* Moreover, few organisations involved in advocacy can credibly claim to be democratic. The adversaries that advocates encounter typically exploit this fact by asking: 'I share your concern for the plight of the poor. But how do I know that what you're saying is representative of their needs, and not just some wishy-washy stuff that you cooked up in the kitchen with some friends?' So in order for advocacy efforts to be working, it must be *people-centred.* Consequently, advocacy can also be defined as

The process of organising information, knowledge and people strategically, so that the otherwise voiceless may influence policies and practices that affect their lives.

Political decisions, even when made by fairly democratic decision makers, do not affect stakeholders equally. When we empower the affected people themselves to claim centre stage, we convey the varying *depths* to which different people in the same society are affected by specific



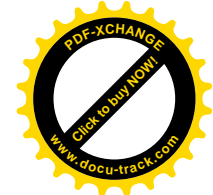
policies and practices. Some years ago, NCA Oslo and other NGOs campaigned against a Norwegian multinational, Hydro, whose prospective bauxite mine in Orissa, India would displace hundreds of poor casteless people and seize the land and water of thousands more. The CEO of the company was a clever man, and he argued: *'We have the requisite permissions from and full support of the relevant authorities in India. India is a democracy, and unlike our adversaries, we do not belittle that democratic government's capacity to make legitimate decisions in the interest of society.'* But in matters as essential as water and livelihoods, democracy is about more than legitimate majority rule. It is not true that the vote of any Indian in *New Dehli* weighs as much as the vote of the casteless mother, whose children will be denied access to clean water, in deciding whether a mining project shall be permitted or not. Driving this point home, however, was not something campaigners in Oslo could do. Once Hydro was set up to engage with the affected people themselves, however, it concluded that it could not build the mines.

The extent to which it is possible to place affected people at centre stage varies. Advocates often have to engage in nitty-gritty research and tactics, relate to numerous policy questions and meet scores of stakeholders. Affected people have neither the requisite training nor the time to take part in all this. But the claim that people are 'too ignorant' to take part, be it in issue identification, political analysis or action, eventually recoils back upon the advocate himself: it means that either he is himself ignorant in terms of how to guide and involve; he is unduly condescending; he is working with an issue that has no true relevance to the people that he considers the constituents of his organisation, or he's lazy.

1.2.3 Do No Harm

Saying that advocacy is essentially about 'organising knowledge in a way that empowers the poor to claim their entitlements' does not mean that advocacy's rationale is *only* to help the poor involved in the particular instance. Advocacy efforts that are too single-minded may have perverse effects on society. When designing an advocacy intervention, one should always ensure that it 'does no harm' to three key requisites of positive political development: *invoking state responsibilities*, *engendering nationhood* and *fostering democracy*. Firstly, the *state* is a sovereign political organisation of human beings whose key definitional characteristic is that it *enacts and enforces laws and collects taxes* across its territory. In so doing, the state has the privilege and the duty to exercise its *monopoly of violence*. Needless to say, many developing countries suffer from failed statehood, and many more still need considerable state building. The main contribution of proper advocacy in this regard is to invoke the state responsibility to collect taxes and ensure the general 'rule of law', stressing that, ultimately, the state is responsible for the protection of poor peoples' fundamental security and rights, not civil society.

Secondly, *nationhood* is about the extent to which people within the state perceive themselves as a *single, overarching 'imagined community'*, so that every inhabitant - regardless of ethnicity, residence or other communal belonging - may enjoy their full citizenship without divisive



discrimination or oppression. Advocacy may help engender nationhood by emphasising that the rights protection and benefits that accrue to a majority group must also accrue to a minority. However, when advocating on behalf of an ethnic or religious group, organisations should be careful not to act chauvinistically themselves by pitting one ethnic category against another. Advocacy must stress that it is *by virtue of their equality as citizens* that a specific group needs support (not by virtue of their *difference in ethnic terms*, even if this difference is otherwise virtuous). A useful approach toward engendering nationhood is to stress the rights of the *poor as such*, working in alliances that straddle religious, ethnic and geographic divides.

Thirdly, *democracy* is about the extent to which the lawmakers and tax redistributors are *accountable* to common people, and state institutions resolve issues of scarcity, competing needs and distribution in a manner that *accommodates differences* (as opposed to ethnocratic rule, which fuels differences). A problem in many Southern democracies is that elected politicians and political parties are either not accountable to people, or the 'currency' of their accountability is that of ethnic loyalties. It was upon this observation that emphasis on civil society's potential to represent the poor in politics came to the fore in the 1990s. However, in the long run, civil society organisations cannot assume the crucial role of political parties, nor should they: unlike CSOs, political parties' rationale is to be inherently democratic organisations representing aggregate preferences on a wide range of issues pertaining to the general fabric of society. Of course, CSOs should continue to fill the gaps left by dysfunctional parties, but they must strive *to not undermine* them. Advocacy to this effect may serve as an accountability link between the grassroots and political parties, following up on the extent to which parliamentarians actually promote the rights of the poor, monitoring and evaluating the political programs of different parties etc. In so doing, advocacy straddles the divide between being an adversary and an ally. On the hand, it *scrutinises and criticises* parliamentarians and parties when appropriate; on the other, it *capacitates* them by feeding them information, perspectives and premises from the grassroots. In this way advocacy may be truly helpful in closing the so-called 'governance gap'.



2

The Advocacy Planning Framework

2.1 *Eight Dimensions of The Advocacy Planning Framework*

2.1.1 *Identifying Good Issues: What You Want to Change*⁵

Unless the issue grows out of the context in which you work, there is no issue: as you drill bore wells, provide treatment to the sick or help small farmers get water to grow their crops, you may try to see the problems you are facing through the prism of politics. You 'put on the advocacy glasses.' Then, you may come across water issues that are upsetting; some are well suited for advocacy, others not. While influencing authorities to, say, make it easier and cheaper to import drilling equipment may be very important to your physical intervention, it is not a particularly good advocacy issue. Most of the cases featured in this book represent good issues in that have many of the characteristics listed below (Box 2.1)

Box 2.1: Rules of Thumb for Identifying a Good Advocacy Issue

Consider whether the issue at hand has some of the following characteristics:

- i. It calls on changes that result in lasting improvement of many people's lives (as opposed to short-term changes to the benefit of the few)*
- ii. It is 'winnable': it yields clear objectives, relevant targets, limited time frames and credible alternatives to current policy and/or practice*
- iii. It promotes awareness and respect for rights, and gives affected people a sense of empowerment, ensuring that both women and men learn about and participate in politics (as opposed to relating to people as ignorant, incapable clients)*
- iv. It enables the organisation to further its own vision and mission (e.g. it is not an issue which will alienate main stakeholders)*
- v. It invites a lasting alliance outside of the individual organisation - be it locally, nationally or even globally - so as to exploit synergies and create fellowship across organisational or communal boundaries (as opposed to issues that are parochial and merely concerned with the needs of one's own constituency)*



When an organisation picks up on an issue it will not be instantly clear if these qualities reside in it. Indeed, the extent to which an issue is well suited for advocacy can often not be determined until a proper problem analysis is made - sometimes not until all of the dimensions as listed below are considered. Indeed, the eight points of the planning framework must be thought of as a cycle of interwoven dimensions.

2.1.2 Problem Analysis: Finding Out More

Analysis is the most important dimension of any advocacy effort. This is so, first and foremost, to avoid embarrassing and politically damaging mistakes and inefficiencies. Efforts that fail to document the problem properly, describe its causes precisely, and suggest credible alternatives, may well create lots of noise but are not likely to claim credible ownership or credit for positive changes that may occur. As one observer notes: 'NGOs have been accused of missing opportunities by submitting evidence which is poorly researched, vague and focused on NGO funding' (WASH, p16). Research sits at the heart of any analysis. It typically sets out with an *observation of a problem*, goes on to document and determine the *scale and nature of the problem (consequences)*, identifies the *causes of the problem*, and possible *solutions*. Identifying the extent of a problem, by framing it in numbers of people affected, and letting them tell their stories, is a powerful advocacy tool in its own right (see Box 2.2)

Box 2.2: Getting the Numbers Right Helps Combat Guinea Worm

The waterborne *Guinea Worm*, which affects millions across the globe, is a major cause of disability and the third biggest cause of *tetanus* ('lockjaw'). However, before a campaign in the early 1990s, it was largely underreported: only one out of twenty cases was known. The objective of the campaign in Ghana and Nigeria was extensive awareness-raising in local communities about contamination and prevention, but this required considerable funding and political effort, so base research was necessary. This was done by means of mapping, village by village, the prevalence of cases. The result was overwhelming: more than 800 000 people were affected and some communities suffered from critical concentration. This data later proved instrumental in making the case to government and international donor agencies and helped elicit support in terms of financial commitments as well as targeted efforts to eradicate the disease.

Many CSOs are well placed to carry out research that identifies the consequences and social realities of a problem, as they have access to and trust in local communities. This is particularly so if you need data about prevalence rates of water borne diseases, actual coverage rates of safe freshwater and sanitation, the cost incurred to households in obtaining water, or of failing irrigation etc. But when one comes to the identification of *underlying causes of current practices or*



prospective consequences of proposals, and possible political alternatives, the individual NGO may not always have the required capacity and competence. In such cases, the challenge is to either form an alliance with a sufficiently competent research organisation, or raise funds to contract a professional research capacity.

It is *easier to reject than to inject*. It is not uncommon for CSOs to get so upset by the problem that they forget to think through 'credible alternatives'. Then their advocacy may be considered unconstructive. In fact, the most rewarding part of problem analysis relates to producing *credible alternatives* that actually improve the lot of the poor (as opposed to merely shielding them from further deterioration). This again requires expertise, but inventiveness may come a long way in limiting the costs (see Box 2.3)

Box 2.3 Student's Research for People-Centred Sanitation in Karachi

In Karachi, Pakistan, the Orangi Pilot Project (OPP) cooperates with students to document the sanitation needs and the coverage and merits of self-built sewerage systems in low-income neighbourhoods. These studies form the basis for OPP's advocacy for safe sanitation throughout the city. In the late 1990s, the Asian Development Bank (ADB) offered the Karachi city governor a loan of US\$ 70 million to set up a private-public waste water management project, if the city put in US\$ 25 million. However, drawing on the students' extensive research, OPP successfully convinced the city governor to cancel the ADB deal, demonstrating the availability of cost-effective and feasible alternatives modelled on the self-built facilities and needs of the poor. Consequently, four *nallas* (open drains) were turned into box culverts, improving sanitation for more than 2 million Karachiites, *without* the US\$ 70 million debt being incurred. Thereby, OPP's advocacy did not only cater for the needs and rights of the poor; it saved plenty of taxpayers' money. This case is not merely remarkable in terms of innovativeness, its success, and the extent to which it was people-centred. Also, students, working together with the local rights-holders, raised its crucial knowledge capital.

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Research also needs to provide input into other dimensions of advocacy planning: What objectives can we realistically hope to meet? Who are the relevant decision makers, other claimants and the power relationship between them, which of them is likely to be the most appropriate and amenable target? What approach is likely to have the best effect?



2.1.3 Setting Objectives: What You Want to Achieve

Objectives specify what we want to achieve. It is quite common to *confuse activities with objectives*. Consequently, what many CSOs label 'advocacy' is often criticised for being mere 'talking shops'. Workshops may be important as a means to build competence, confidence and ownership, but as such they change nothing on the ground. To hold a workshop is not an objective; it is an *activity that may help us set objectives*. To change a specific law pertaining to regulation of water service company; to increase water infrastructure development's share of local budgets by 15%; to ensure reparations for communities whose health and livelihoods were adversely affected by industrial pollution of a river; these are examples of objectives. The WASH campaign suggests the application of a S-M-A-R-T checklist for specifying objectives (see Box 2.4). The overall point is to be specific. Note that this is not necessarily the same as being ambitious.

Box 2.4 The WASH Campaign's SMART Objectives Checklist

- ÿ Specific: What exactly do you want to happen?
- ÿ Measurable: Will you know when you have achieved it?
- ÿ Achievable: Is it possible to achieve it, given your resources and time?
- ÿ Relevant: Is it relevant to the community you service, the issue you work with and is it within the 'jurisdiction' of the decision makers that you may reach?
- ÿ Time-bound: When do you want it to happen?

Examples of Not-so-SMART Objectives:

- ÿ *To promote the improvement of sanitation services in poor communities.* (Relevant and achievable, but not specific, measurable nor time-bound)
- ÿ *To ensure that the World Bank triples its funding of public water infrastructure in developing countries by 2010.* (Specific, measurable and time-bound, but not relevant - outside the jurisdiction of home decision-makers - and hardly achievable)

2.1.4 Selecting Targets: Who You Want to Influence

Depending on the issue, targets can be: a city governor or municipal council; a national parliamentarian committee; a cabinet minister; a multinational company; or an international agency. If your analysis is of quality you will realise that *more than one* decision maker has a role to play in attaining your objective: if a multinational company's operations threaten water rights in a local community, you might want to target company leadership through their shareholders or consumers, but you may also wish to petition the government authorities whose responsibility it is to regulate the business. If an international donor agency such as the World Bank is involved, you might target it. It is not necessarily so that your best target is the *major offender*, with the *most power*. It may be the one decision maker that *can least* afford to be politically embarrassed.



2.1.5 Choosing Approach: The Way to Influence

NCA and many of her partners have found the distinction between the approaches of *dialogue*, *confrontation* and *mobilisation* to be useful. *Dialogue* is an insider approach which is useful whenever the organisation has been granted formal participation in decision making processes, i.e. is invited into preparatory work, impact assessments, policy discussions etc. Dialogue provides ample space for constructive inputs, and it also ensures access to 'insider' knowledge and considerations that are important to your target. The downside to dialogue is that while it may be surprisingly easy to extract promises from decision makers when 'behind closed doors', such promises can be broken with little cost afterwards. Consequently, others may accuse you of being co-opted.

The *confrontational* approach typically seeks to hold to account, or even embarrass, the target in the public sphere. By exploiting media or public events, you point to the importance of your issue, disclose and denounce the failure of the target decision maker to act appropriately, and point to your solution. Consequently, the target may be enticed to make promises or grant concessions *with the general public as your witness*. Taking decision makers to court, *litigation*, is also a confrontational action; but such advocacy is only feasible after rights violations have taken place. The downside to confrontation is that it may create more noise than you want. Your message may be given undesired 'spin' by media, and you may become discredited in the eyes of the target and thus forfeit future opportunities to play a constructive role.

In every instance, the 'weight' of your advocacy will eventually rely on your capacity to tacitly draw on the political and moral 'weight' of your grassroots constituency. Using the approach of *mobilisation* is to explicitly *make your target feel this 'weight'*. It may involve demonstrations, picketing, mass petitions or consumer action, and may prove effective whenever the target has stakes in 'winning the hearts and minds' of the people you mobilise. The main challenge with mobilisation is that it requires much effort, and may have a demoralising and embarrassing effect if unsuccessful.

Most advocacy organisations combine actions from all three approaches, often reflecting the phase their effort is in. E.g. a combination of *soft confrontation* and *mobilisation* may be followed by formalised participation and *dialogue* as the organisation has successfully proven itself to be a stakeholder to reckon with. The most cunning advocacy organisations, however, manage to combine the three approaches at the same time.

2.1.6 Messaging: Getting Your Point Through

Messaging sits at the heart of advocacy and is crucial no matter what approach you choose. If you are involved in dialogues the target may relate to a number of stakeholders, and focusing and reiterating your key message is important. The same goes for working in the 'spin' and noise of media, and when you want people to rally behind you. The message may be a *claim*, *demand* or a



friendly suggestion; in any case it must be closely related to the *objective*. A key challenge in messaging is to strike a balance between what communicates well and is understandable to the public, and what is sufficiently specific to hold someone accountable to. The massive global trade campaigning of the last few years rallied behind the message of 'fairer, not freer trade', but now no one knows quite how to measure whether and when world leaders have delivered on this demand; the message was too general. This also reveals that the larger the number of stakeholders involved, the greater the chance that demands will be diffuse.

2.1.7 Working with Allies: Joining Efforts

Alliances are always important, and in some cases they seem to be required (see Box 2.5). A complimentary alliance including both grassroots-oriented organisations (which research the social effects of an issue, and rallies people behind a message) and policy-oriented organisations (which analyse roles and interests of different decision makers and propose policy solutions) saves costs and avoids 'reinventing the wheel' again and again. Equally, alliances comprising both 'insider' and 'outsider' organisations may access insider information without forfeiting the alliance capacity to confront targets. Moreover, inter-faith alliances may give great moral weight to a cause.

Box 2.5 The Importance of Alliances for Achieving Influence in PRSPs

It is commonly acknowledged that civil society organisations working for water and sanitation have not been as successful as those working with health and education in terms of claiming public budget allocations in Poverty Reduction Strategy processes. In 2002, Water Aid carried out research on Poverty Reduction Strategy processes in a number of countries, to assess their emphasis (or not) on water and sanitation, and to study whether civil society organisations working in the sector were influencing the resulting PRS processes.

The findings confirm that wherever water sector *multi-stakeholder alliances* or *civil society networks* were in place, they were able to ensure that civil society perspectives were heard, and sometimes reflected in final PRSP documents. In countries where actors in the sector were more fragmented or had no working relationships, it was difficult for stakeholders to comment coherently and consistently on the water supply and sanitation elements in their PRSP. There is little doubt that in order to successfully ring-fence more public funds for investment in water and sanitation for the poor, advocacy alliances are needed.

Visit: http://www.wateraid.org.uk/documents/more_for_some_csd_prsp.pdf



Nevertheless, the most important allies sometimes come from *outside* the ranks of civil society organisations. The potential role of *the media* is obvious: they serve as allies whenever they help dig up governance failures, convey the stories and opinions of the poor rights holders, and follow up on decision makers' promises. Sometimes, they may even 'offload' risks that otherwise would fall on CSOs, by themselves confronting decision makers. Enticing the media into the role of ally requires that you offer something, e.g. exclusive pre-embargo access to a report, or invitation to meet poor people and document their plight etc. Much the same goes for *parliamentarians* (unless they are targets). Your advocacy may be greatly enhanced by involving them: by virtue of position, parliamentarians have access to important decision makers (if not always the real decision making), and may help petition ministers. Again, this requires that you *capacitate* them by feeding them information, perspectives and premises from the grassroots.

2.1.8 Resources: Mainstreaming Advocacy

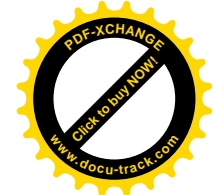
For some reason, many people in the NGO community tend to think that advocacy somehow comes for free. This is an ignorant and ridiculous proposition. Proper advocacy is costly: advocating organisations require as much time as any on their projects: research, documentation, events and travel expenses may be substantial; involving local communities by providing political literacy training and organising community events is at least as costly as any education program. The response to the challenge of cost is straightforward: *mainstream it*. Advocacy work should be integrated in projects and programs, not add-ons, nor substitute projects. For every dollar in your budget toward a physical water intervention, try to ring-fence 30 cents for advocacy. For every project you have, ask yourself the question: What might the related advocacy project be here?

Funding organisations increasingly prioritise support to advocacy projects. In its current Global Strategic Plan, *Together for a Just World: Working to Uphold Human Dignity (2005-2009)*, Norwegian Church Aid has committed itself to fund partners that work to 'ensure broad public participation in policy decisions with regard to systems of water and sanitation management;' to fund activities that 'contribute to increasing participation of poor communities in policy, [...] dialogue between the users of water resources, local interest groups and local authorities', and efforts to promote the 'establishment of legal frameworks at the national level ensuring access to water as a basic right'. NCA will 'support core partners to empower local communities to ensure the right of poor people to water [...] strengthen the capacity of core partners to promote water and sanitation as priorities in PRSPs [and] global ecumenical advocacy towards an international framework that alleviates the impact of water shortages and climate change' (p22-23). These pledges, while demonstrating considerable readiness on the financial supply side, will not translate into actual advocacy interventions in developing communities unless organisations on the demand side determinedly seize the financial opportunities thus created.



PART II

ADVOCATING FOR JUST GOVERNANCE OF LOCAL FRESHWATER



3

Safe Freshwater for the Poor in Cities and Villages

3.1 Overview

Global, national and local issues overlap, and unfair global and national governance always results in local consequences. The local context may be separated, however, by reference to political jurisdiction: some decisions are formally made locally, through a city governor or municipal council. The *mode of supplying drinking water* is one such issue; *permits to extract groundwater* is another; the actual *allocation and use of local budget money* for water infrastructure is a third. But the distinction of a local governance level is commonly blurred by globalisation. Stakeholders whose interests may be protected by international agreements to which the national government is party may force their way into local water markets; multinational companies - whose main decision makers are neither accountable to nor located in the local communities - may establish themselves in local villages to do business. These are circumstances that require the attention of civil society organisations if they are not to lead to injustice, and they commonly require that local jurisdiction is seen in relation to the top-down pressures stemming from the national and global level. Sometimes we even have to question the jurisdiction of local authorities ourselves: if local government decisions contravene the state's human rights obligations (see Box 4.2 below), our advocacy may have to demand that local decision makers' jurisdiction is suspended, by petitioning the national government to intervene, or pressing charges in national courts.

3.2 Accountable Public Spending

3.2.1 What Allocations for Water in Local Budgets?

In the last decade of participatory governance, few issues have been hailed as loudly as the 'decentralisation' of public budgeting. Decentralised systems can make governments more responsive, as it is more likely that local public sector officials will be held accountable by local consumers of services than by central government officials. In most developing countries, water and sanitation is nominally the responsibility of district authorities under a decentralised regime. Thus, no local government can legitimately refuse to provide constituents information about the share and size of budget revenue to be spent on water and sanitation, the sources of these revenues and the actual intervention ('costed activities') that funds are planned to be spent on, and audit



records. Meanwhile, civil society organisations must remember the backdrop when approaching local governors. Most, if not all of local budget revenue is granted by the national government, and the problems associated with inadequate budgets relative to the water services in the remit of local governments are sometimes compiled by diverging national and local priorities.

In cases where water is high on the national political agenda, the national government commonly transfers funds to district governments in 'ring-fenced' grants. The Ugandan government thus channels grants to local districts through a *Poverty Action Fund* which is ring-fenced for the priority allocations set in the national PRSP, including water and sanitation; Rwanda is using a comparable state-to-district grant instrument called *Common Development Fund*, which also ring-fences grants for water. However, if water and sanitation feature less prominently on the national agenda then grants toward water and sanitation in local or district budgets are just as likely to come from so-called *Social Investment Funds (SIFs)*. Unlike the above, these have more of a bottom-up character: national grants are channelled on a 'demand responsive basis', i.e., district governors may apply for grants to fund small-scale local water projects. SIFs account for as much as 40% of all of Ethiopia's investment in water and sanitation. In instances where the gaps between local water and sanitation needs and available funds are considerable, civil society organisation may petition their local governments to propose more 'costed activities' and apply for grants for these through SIFs⁶

3.2.2 Are Funds Spent as Intended?

A major challenge for civil society is to ensure that whatever funds were nominally allocated to water and sanitation in the local budget are not diverted away through the implementation stage. Typical causes for diversion may be fraud, gross inefficiency or pressure from other spending areas. Once civil society organisations have accessed proper information about the shares and size of budget allocated for water and sanitation, the sources of these revenues and intervention that funds are planned to be spent on, such 'budget tracking' is not as technical as it may seem. In fact, budget tracking may be well suited for popular involvement: poor people may themselves act as 'auditors' by physically calling on the sites of 'costed activities', overseeing that these are actually carried out on ground (digging of bore wells; improved irrigation; extension of mains etc). Such auditing serves as a check on district authorities and their contractors, and may help reveal and deter theft or the undue diversion of public funds (see Box 3.1)

Box 3.1 Budget Tracking in Uganda and India⁷

In 1998, the Ugandan government established a *Poverty Action Fund (PAF)* as a mechanism to target, protect and monitor funds (released through the HIPC initiative) for poverty alleviation. PAF involves civil society organisations in the selection of projects and in monitoring the impacts of its allocations. This monitoring is coordinated by the *Uganda Debt Network*, and is undertaken through quarterly field surveys by a team of researchers and



community members. The initiative also tracks monthly expenditure releases from the central government to local governments, and reconciles these with releases from the central bank. Quarterly progress reports are presented at multi-stakeholder meetings. In a relatively short period of time, this initiative has helped to identify the blockages in funding to local government, increased funding to poverty relief programmes and shifted expenditures towards priority sectors.

In rural Rajasthan, India, the organisation *Mazdoor Kisan Shakti Sangtan* (MKSS) has developed into a powerful social justice movement. MKSS, a union of peasants and workers, uses budget information as an effective tool to empower local people. Through public hearings, called *social audits*, MKSS facilitates structured discussion in local communities about the spending of public development funds. These hearings have not only significantly reduced corruption in public works projects, but spurred the Rajasthan Government to require that social audits be held annually within each village; all village residents are thus given the opportunity to vote on a resolution verifying that the projects in their village have been successfully completed.

A typical social audit by MKSS involves five stages. Firstly, relevant information about public projects (including cash books, payrolls, expenditure voucher files) are gathered in line with the Right to Information Law (enacted after pressure from MKSS). Secondly, the information is collated: MKSS staff summarise project records into cross-reference matrixes to reveal fraud. Thirdly, staff members personally distribute accessible information to all households in the village, to check validity of records: the copies of payrolls, for example, become sources of considerable excitement as villagers identify names of dead or fictitious people in the records, and anger as workers themselves reveal how their salaries have been inflated for the records. Fourthly, the public hearing is held; it has a festive atmosphere, is typically held in an open field, and is attended by local elected representatives, residents and the media. A panel of 'eminent citizens' administers proceedings. Instances of corruption, gross inefficiency and poor planning are uncovered in testimonies. Finally, a formal report is compiled by MKSS, and sent to the state government, the media and other watchdog organisations.

Visit: www.udn.or.ug; www.internationalbudget.org/

3.3 Privatisation and its Discontents

3.3.1 The privatisation argument

In a world where over one billion people live without access to clean water and 2.6 billion people live without safe sanitation, the need for investment and efficient, expert management is huge.



Cut-pricing, the failure to recover costs and inefficiency together cost developing nations US\$ 180 billion a year. It will cost at least US\$ 500 billion to provide clean water and proper sanitary conditions for everyone⁸. A crucial question is accordingly: Where and how can one raise the funds needed to meet people's basic water needs? The World Bank and other donor agencies have long argued that private operators will be willing to contribute to full cost recovery and new investment, as well as expert and efficient management, *provided* they receive long-term concessions with reasonable profit returns. Their policy conditionality has thus been that governments dismantle public water utilities, and let private companies operate cities' concessions for water distribution and waste water management. Scores of developing countries' governments have thus privatised. But privatisation supporters have problems defending their arguments once the consequences of practice have transpired. The developing world context is fundamentally different from the model countries in Europe: the need for investment, expertise and efficiency is at its greatest in the very places where the *profit outlook is worst* – or at least where full cost recovery will result in the *greatest social problems*. The question is: Can poor people in developing nations afford to bear the burden of an infrastructure built with capital on which solid financial returns are expected? ⁹

3.3.2 The 'Full Cost Recovery' Doctrine

The logics of full cost recovery are straightforward. Quality services are difficult to maintain over time if the costs of management and development are not, for the most part, covered by the users themselves. *Cut-pricing and inefficiency cost the developing world US\$ 180 billion per year*. Privatisation enthusiasts reject the possibility that public funding through taxation is a viable solution, given the weak and politically sensitive tax base in developing countries, the pressure on the public budget, and the fact that publicly funded and under-priced water does not promote responsible use. But what if it costs more to provide people with water than they can afford to pay? Will full cost recovery, particularly on the multinational companies' terms, be the ideal solution?

Box 3.2 Cochabamba: Paying the Price of Full Cost Recovery

In the months after Bechtel's subsidiary Aguas del Tunari took over the water service in the Bolivian city of Cochabamba in late 1999, the price of water rose by an average 50% - in some instances by as much as 300%. For many poor families, this meant that more than 25% of their income was being spent on water bills. The concession contract, meanwhile, promised the company a guaranteed profit of 15% per year. In January 2000, activists blocked roads in towns and villages for four days in protest at an arrangement that most people thought to be socially unjust. The authorities promised to revise the new water law and the concession agreement with the company, but little happened. In early April, more than 100 000 people took part in a violent demonstration in the centre of town. The police and army opened fire on the crowd, killing 17 year-old Victor Daza and injuring more than



100 people. Aguas del Tunaris' contract was terminated with immediate effect, and the water law was substantially revised.

The company later took the case to the World Bank's International Centre for Settlement of Investment Disputes (ICSID), demanding US\$ 25 million in compensation for loss of future profits, four times the value of the company's total assets. By late 2005, ICSID ruled that it had the jurisdiction to rule in the case. In fact, Aguas del Tunari had changed her legal residence to Amsterdam in 1999, so as to have recourse to a Bilateral Investment Treaty between Bolivia and Netherlands under ICSID's jurisdiction. However, on January 19th 2006, Bechtel withdrew the case for a token payment of 2 *bolivianos* (one quarter of a US dollar), citing international citizen pressure as the reason for the company's withdrawal. Meanwhile, the venture had wrought havoc on the city, killed a young boy and costing the Bolivian government more than US\$ 1 million in legal fees.

Source: <http://www.democracctr.org/bechtel/bechtel-vs-bolivia.htm>

3.3.3 Privatisation and Pro-Poor Subsidisation: One step forward, two steps back?

Vulgar 'full cost recovery' policy in developing countries is a threat to the water rights of the poor. Some suggest that the poor may be shielded by subsidies. Chile's system is cited as a model: the poor are sent full price bills, which they must stamp with confirmation ID before forwarding them to the local authorities that pay. The assumption is thus that everyone wins: the poor benefit from safe freshwater paid by the city, the city and its well-to-do consumers benefit from inward investment and expert management, and the company enjoys a profitable business opportunity¹⁰. But the fact that developing countries *lack the public resources* for water service investment to benefit the poor was the very argument for privatisation in the first place: under the Chilean model the bills of the poor are paid with tax money. In practice, the cost of serving the poorest is therefore delegated to the community – just as before. However, the rich consumers now subsidise the company's profit margins instead of subsidising the consumption of the less fortunate (as is the case with publicly regulated cross-subsidies). Contrary to cross-subsidies, which are integrated into the sector pricing, public subsidies remain a politically vulnerable line in the budget. Ironically, the pressure on public budgets comes particularly from the supporters of privatisation themselves.

Moreover, the fact that Chile can afford to pay for the poorest consumers out of their budgets is good, but not a feasible option for poorer countries, such as Honduras. While Chile's public budget permits the use of US\$ 1130 gross per head per annum, Honduras has only US\$ 62 per head per annum to spend. The disparity is significant in that capital costs towards infrastructure (digging machines, pipelines, pumps, purification plants and water meters, expertise etc.) may prove just as expensive in Honduras as in Chile. There is little reason to believe that multinational corporations will operate with significantly lower water prices in Honduras.



3.3.4 'Capitalism without Risk'

Evidence suggests that water companies are not interested in investing where investment is most needed. This is hardly surprising. Companies have money to make, and the reality is that clean water and sanitation for the poor costs far more than one would wish. This results in companies either concentrating on the water market's 'choice cuts' (concessions where the development costs are low, and the capacity to pay high); becoming dependent on a socially undesirable full cost recovery programme to secure investments and profit by anti-social pricing (e.g. Cochabamba); leaving the subsidising of the least fortunate to the public sector (e.g. Chile); or demanding a minimal level of guaranteed profit from the public sector or access to subsidised credit or aid (which, strictly speaking, was never meant to subsidise the profits of multinational companies).

Box 3.3 Buenos Aires - The World Bank's Showcase¹¹

The World Bank's *best practice* case in terms of private-public partnerships servicing the poor is the concession contract for Aguas Argentinas in Buenos Aires: the company has made some spectacular improvements in four very poor neighbourhoods, where access to clean water has contributed to a marked fall in infant mortality rates and disease. However, a closer look at this case reveals the weakness of the World Bank's argument. The concession deal between the city of Buenos Aires and Aguas Argentinas (a subsidiary of French multinational Suez) was set up in 1993, and collapsed in 2002. In the period between 1993 and 1997 the company had only fulfilled 57% of the investment obligations it had undertaken to make in the original agreement. Over this period a mere 54% of the households the company had committed itself to supplying were actually connected to mains water. Waste water removal covered only 40%.

Between 1993 and 2001, retail water prices nevertheless rose by 88% (while inflation for the same period was a mere 7%) – without the company managing to reach their stated investment goals. Meanwhile, the investment risk was minimized by a 15% profit guarantee. The company had an average annual profit of 19% while the average for the country's 100 largest businesses lay as low as 4-5% in the same period. The much-touted development of infrastructure and water services in the four poorest neighbourhoods happened with the company's loaning of expertise, whilst *the local community did all the work themselves*. The local authorities purchased the materials and covered the investment costs for this "pro-poor" project – financed by a solidarity tax that the city's inhabitants paid themselves. The company let the people in the communities do the work themselves, but were able, in accordance with the concession, to nevertheless demand US\$ 600 per connection.



Given that the justification for the privatisation experiment was the lack of public funds and the need for investment, the question must arise: Can developing countries really afford to pay 15% profits in order for multinational companies to be able to sell water on a commercial basis, without being prepared to invest their own capital or serve the poor at their own risk? The multinational companies themselves are quite frank in recognizing that profit and development may be an impossible match. The Managing Director of Saur stated in January 2002 that *“the scale of the need far out-reaches the financial and risk-taking capacities of the private sector”*. When Biwater withdrew from a concession contract in Zimbabwe some years ago, the managing director explained:

“Investors need to be convinced that they will get reasonable returns. The issues we consider include who the end users are and whether they are able to afford the water tariffs. From a social point of view, these kinds of projects are viable but unfortunately from a private sector point of view they are not”.

The World Bank typically claims that the numerous unsuccessful privatisation attempts, particularly those involving systematic exploitation of concessions, and consequent social resistance, must be written off as the fault of administrative inadequacy and poor governance. The tacit assumption seems to be that it is not privatisation that there is something wrong with, but that developing communities lack the requisite intelligence and governance. Clearly, private exploitation of such an important resource as water will result in damage to the human, financial or environmental sphere if administrative bodies and governments are not up to the task. But it was the Bank itself that made practically all aid dependent on unstable and ill-considered privatisation, and the Bank itself that set up some of the most shocking concession deals. In moral and political terms, it is becoming hard for the Bank to trample over advocacy that questions the wisdom of privatisation.

The privatisation experiment now finds itself in limbo: it has proven itself a political failure, but the governments and people of developing countries are left with just the same funding needs as before. Developing countries' governments will keep on enticing investment partners. In order to avoid that further illegitimate privatisation is undertaken in name of the world's poor and thirsty cities, civil society must remain vigilant. Not because all and any privatisation scheme is bad, but because privatisation only works for the poor if there are proper governance mechanisms in place, both with regards to institution and process criteria, and output criteria. There is no authoritative and exhaustive list of such criteria, but we have suggested some (in Box 3.4 below).

Box 3.4 Guiding Criteria for 'Socially Acceptable' Privatisation

Institutional and Process Requirements

- i) Appropriate regulations and governing bodies, which set and audit licensing and performance requirements and ensure that bidding processes are transparent and



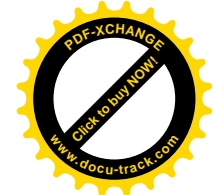
subject to public scrutiny, are in place *prior to* actual privatisation.

- ii) Governing bodies and regulations *require* due participation of civil society and user groups in setting and auditing licensing and performance requirements.

Contract and Output Requirements

- i) Drinking water utilities and sanitation utilities *should always be contracted-out integrally*, to ensure mutual sustainability of the two (e.g. to avoid increased consumption and distribution of water without corresponding measures to collect grey water/sewerage)
- ii) Private contractors operating an extensive concession area populated by both rich and poor (e.g. concession contracts for entire cities), must commit to clear and time-bound performance requirements for *extending mains and sanitary facilities to poor neighbourhoods*, commit to measures that mitigate antisocial effects of 'full cost recovery' by *differentiating tariffs* both socially (richer households pay more-than-recovery costs, poor households less) and quantitatively (more-than-recovery price per cubic litre above a certain threshold, less-than-recovery cost below)
- iii) Private contractors operating a limited, wealthy concession area ('choice cut') that may otherwise cross-subsidise tariffs and developments in poorer concession areas, *must pay due concession fees* to offset the consequent social loss.
- iv) Contracts should *never provide a 'profit guarantee,'* and be highly restrictive in terms of accepting public liability for sharing operating losses; such measures create perverse commercial incentives.
- v) Contracts must *prohibit disconnection* of users, set absolute *price caps and water quality targets*, and allow for *limitations on bulk water provision* in case of drought or other ecological emergency.
- vi) Contracts *may be suspended, without liability on the part of the public*, if contractor repeatedly fails to meet licensing and performance requirements.

The problem is, of course, that the very requirements which safeguard the water rights of the poor and social developments are the very same that private operators are reluctant to accept. Yet, the privatisation experiment is not over for multinational companies. The painful reality for Vivendi, Suez and RWE/Thames and others is that home markets are saturated. Rich countries need no more commercially provided water. Further growth requires the opening of emerging markets at terms that are 'commercially viable.' The companies thus lobby for the creation of such a 'business climate' through donor conditionality and trade agreements. To block this strategy, however, requires advocacy at national and international level (see Chapter 4).



3.4 Village Villains

3.4.1 Corruption

Corruption is undoubtedly one of the biggest threats to development and human rights observance. Across the globe more than US\$ 1 trillion is paid in bribes every year, representing 1/30 of the entire global economic turnover¹². Unlike other political or inefficiency losses, corruption *always* benefits the rich and powerful. While the extent of the problem in the water sector is not fully known, corruption undoubtedly costs millions of dollars annually, undermining the rule of law and the principle that contracts and positions should be granted according to merits such as expertise, efficiency and effort, thus causing multiple affronts to the poor. While the most attractive 'cherry picking' opportunities are at national government level, local water governance is undoubtedly affected, as transparency may be low, and checks and balances poorly developed. Bribery might be used in a range of water related decisions to thus undermine the rights of the poor, including permits to drill for excessive quantities of groundwater, access to lucrative contracts to develop water infrastructure, and unfair shares of irrigation water (see Box 3.5)

Bribery and misuse of public authority for personal gain is a crime. Corruption is hard to tackle precisely *because* it is a criminal offence; it happens out of sight, and elicits reasonable fears because the very authorities that serve to enforce laws are profiting from the violation of law. This poses a heavy challenge to civil society: while the commitment to protect the poor compels us to serve as 'watchdogs', we are rightly afraid to 'bark' if the very guarantors of our security are themselves corrupt.

Box 3.5 Corruption in Pakistan's Irrigation sector¹³

Agriculture is the largest sector in Pakistan's economy, employing half of the national labour force. Agricultural production is highly dependent on irrigation, and the *Indus Basin Irrigation System* and groundwater resources irrigate 80% of the country's croplands. Productivity is hampered, however, by corrupt irrigation governance, and this especially harms small farmers and those living far downstream in canal irrigation systems.

The delivery system and pricing regime commonly benefits those who have large holdings. In many municipalities, rich farmers compete to entice officials to divert irrigation water to the highest bidder, skewing water distribution. This has a threefold cost on the poor: they pay for water charges whether or not they are getting water; can rarely afford to bribe officials to get the water that is their right; and suffer from lower productivity due to uncertain and erratic water supply.



3.4.2 Confusing Property Rights with Water Rights

This is best explained by the following case:

Box 3.6 Poor People Strike Back at Coca-Cola in India

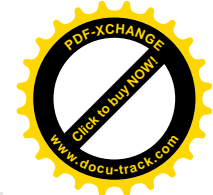
Coca-Cola set up its bottling operation in Plachimada in the Indian state of Kerala in 2002, promising that it would bring jobs and welfare to the poor local community. But operations soon created severe water shortages, health problems and failing yields as excessive amounts of groundwater were extracted and waste discharge polluted water and land to the detriment of local *Adivasi* (indigenous) people. Within a year, Coca-Cola's operations had elicited a massive uprising of local communities, calling on relevant government authorities to hold the company to account. Since 2004, NCA has partnered an advocacy organisation, VAK, in order to help uphold the water rights of the people in Plachimada.

The company's licence to operate was originally granted by the Kerala state government, with the physical permission issued in the name of the local municipal council, the *Panchayat*. But already in December 2003, the Kerala high court ruled that the company could extract only as much water from the common groundwater resource as a farmer owning 34 acres of land could, as the plant is located on 34 acres. Furthermore, the court ruled that the groundwater belonged to the people and that the Kerala state government had no right to allow a private party to extract such huge quantities of ground water which was "a property held by it in trust".

In March 2004, the government of Kerala ordered the company to shut down operations to ease drought conditions for a mere 4 months. But the bottling plant has since been unable to open: the local *Panchayat* now adamantly refuses to reissue its licence to operate, citing the company's irresponsible extraction and pollution. Coca-Cola, in typical fashion, has appealed to the courts that the *Panchayat* (local council) has no jurisdiction over the plant or Coca-Cola, and that it is within the jurisdiction of the more company-friendly State of Kerala to make relevant decisions.

However, even state authorities are now turning against the company. In August 2004, the Kerala State Pollution Control Board, acting upon a Supreme Court order, directed the Coca-Cola company to ensure water delivery through pipelines to all affected communities in its vicinity. In another Kerala State Pollution Control Board statement of August 2005, a stop order was issued because of high levels of cadmium and lead in and around the plant.

In the spring of 2006, the newly elected Kerala state government assured community leaders that it will 'take proactive measures against the Coca-Cola bottling plant' in south



India; the state has challenged Coca-Cola's right to extract water to the Supreme Court of India, arguing that water is being taken from poor communities to produce drinking water for the rich, and has ordered the State Pollution Control Board to consider whether there are grounds for filing criminal charges against the company.

Visit: <http://www.indiaresource.org/index.html>

3.5 Applying the Advocacy Planning Framework to Key Issues

3.5.1 Harmful Service Sector Reform

Issue: Your organisation suspects that the privatisation of water utilities in your municipality is compromising the water rights of poor people

Research and Analysis: If the utilities are not privatised yet, you have the strategic advantage of being abreast of a final decision; however, in terms of research you must present 'evidence' of yet-to-happen-consequences. This is complicated, and you may want to cooperate with a research organisation. While you may yourselves manage to map poor people's vulnerability and ability to pay, it requires expertise to determine future tariff increases, distributional effects, legal performance requirements etc. If the utilities are already privatised, researching consequences is much more straightforward as you may map actual effects on the poor. In many cases of privatisation, local authorities' jurisdiction is typically 'suspended' by national policy, which in turn may be dictated by donor institutions or international agreements (see next chapter), so you need to get a clear idea about the different decision makers and processes involved.

Objectives and Targets: An *objective* (see Box 2.4) would typically be 'to ensure that the harmful reform is halted or reversed by decision of the relevant authority.' But in cases where these authorities themselves are under pressure from the national government or international donors/agreements, your *target* cannot be the local authorities alone; you must lift the effort up to the national level, and sometimes beyond (see chapter 4).

Approach and Messaging: Upon completion of research/analysis you may want to convey the findings and your objective to the target. You can either take the dialogue approach, writing to or lobbying the target, who will perhaps grant you a say in decision making; or you can use a confrontational approach by 'shaming' the reform in media, filing a case to the high court (in cases where water rights are constitutionally protected), or mobilising affected people to demonstrate against or petition the target. The *messaging* may stress that authorities will violate the rights of poor constituents if the reform is not halted or reversed.



Allies and Resources: Advocacy relating to service sector reform is always complicated; it requires professional research and comes up against powerful (and often foreign) interests. But it very rarely sustains support from any poor people at all, and you will therefore find potential allies among the many organisations that fight to uphold the rights of the poor across denominational and geographic divides. You may also seek support from university researcher and call for financial or other support from northern partners, such as NCA.

3.5.2 *Undue Extraction Permits*

Issue: Your organisation suspects that a company (locals or foreign) is granted permission to extract such sizeable quantities of local water that the rights of farmers and poor people are violated.

Research and analysis: As elsewhere, research is easier after-the-fact, but of the greatest social value before the permit is issued - when you still have a chance to prevent rights violations from happening at all. Alongside proper documentation of the effects on poor people, identifying the laws that govern groundwater/river water extraction and making the case on this basis commonly requires support from expertise. If laws are unclear, as is often the case with groundwater extraction, this may strengthen your case; you may then argue that permits must be suspended until a proper law is in place.

Objectives and Targets: In general terms, your objective should either be to ensure that 'the permit is not issued', that 'the permit is issued on the condition that water rights of the poor people are not affected adversely', or that 'authorities take action to grant reparations to those affected'. Your primary target should consequently be the governing authority, not the company. While the company itself may be liable, it is legally accountable to the authorities (which in turn should be accountable to the local community), and not directly to the local community. Indeed, companies almost always have the required permits (legitimate or not). You may, nevertheless, target the company morally, so as to attract public sympathy and attention.

Approach and Messaging: Failure to regulate businesses' water use properly invites combined approaches: you may want to 'shame' the company directly, through confrontational, popular manifestations, while initiating dialogue with the key target, the governing authority. This dual strategy may also reflect in your messaging. While the company is the perpetrator, the local authorities are responsible for enacting proper laws, enforcing them and granting justice.

Allies and Resources: It is important to remember that there might be poor and vulnerable people on both sides in a conflict. Sometimes, the company might have workers whose interests are well served by undue water extraction. To prevent conflicts within the community, you might have to



'win the hearts and minds' of the company's employees before you take confrontational action. If this is not possible you should not drop the issue but be more cautious in your efforts.

3.5.3 Corrupt Irrigation Schemes

Issue: Your organisation suspects that managers of irrigation water skew distribution in favour of users that pay bribes, and consequently that poor farmers' livelihoods and food security is threatened.

Research and Analysis: The illicit and covert nature of corruption makes proper research and analysis difficult; few organisations would have the courage and know-how to embark on a documentation of the actual offences (which is a job for policing authorities). You may, however, concentrate on documenting the *social manifestations* of alleged corruption, e.g. the extent to which distribution of irrigation water is unduly biased so that bigger farmers get the water they need, while poorer farmers cannot obtain the share they have paid for, and what the consequences on poor people's livelihoods and food security are. You then leave to allies, and eventually to your main target, to 'name and shame' and confront those who you suspect to be involved in outright bribery and misuse of public authority.

Objectives and Targets: The objective would typically be 'to ensure that governing bodies bring actual practice into conformity with socially just operating procedures, including a guaranteed minimum quota of water for every farmer, and that consumption above such quotas is paid for according to agreed-on tariffs, in a transparent fashion.' If the irrigation scheme is managed by 'a user association board' you may target this directly, or even petition local government authorities to audit or intervene in the board's practices. If managed by a municipal government body, you may appeal to a superior local body (Mayor or Governor), or even petition national authorities to intervene.

Approach and Messaging: When dealing with the misdeeds of powerful people confrontational action should be left to allies that can shoulder the risk involved. Your own strategy may be one of mobilisation: corrupt irrigation schemes benefit the few and harm the many, and this injustice can be turned to your advantage if you manage to involve numerous dissatisfied poor farmers in a joint petition against your target - while they are poor, they are many enough that their joint 'political capital' exceeds that of the bribers. You may well opt for cautious messaging, focusing on the fact that 'poor farmers' entitlements are being trampled on' and the need for change, and *not* on your suspicion 'that decision maker X is being bribed by rich farmer Z'.

Allies and Resources: Enticing media to act as a 'proxy' may be a particularly helpful strategy when trying to combat corruption. You may offer a journalist (e.g. in a national newspaper or radio station) exclusive access to your report, invite her to come see the poor people affected, and hint



that there are strong indications of corruption. If you are lucky, and the journalist is brave, she might do some research of her own that more directly reveals the bribery. This increases the pressure on your target. You may also ally with a strong anti-corruption organisation from abroad to come and assess the situation.

3.5.4 Unaccountable Budgeting and Spending

Issue: You suspect that poor water infrastructure development reflects either failing budgetary priorities or corruption and fraud.

Research and Analysis: Again, the illicit and covert nature of budget fraud makes proper research and analysis difficult. Key research and analysis questions would be: Are there local budget finances allocated for water development, either in the form of ring-fenced grants from the national government or SIFs? What are the planned 'cost activities'? You may need ally with or contract expertise to collect and collate budget information. Once this is done you may concentrate on mapping the extent to which scheduled activities are actually implemented.

Objectives and Targets: The objective would typically be 'to ensure that local government applies for requisite funding from national sources' and that 'these are spent as planned'. You may target the relevant municipal government body, or contractors involved in public works.

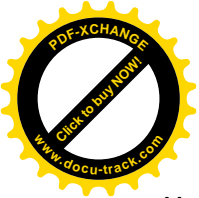
Approach and Messaging: A mobilization-based approach as successfully applied in India (Box 3.1) may be employed when dealing with the misdeeds of powerful people. Budget frauds benefit the few and harm the many, and this injustice can be turned to your advantage if you manage to involve numerous dissatisfied poor people who can disclose the misdeeds. Your messaging should be cautious, however. If you organize a 'social audit', testimonies of those involved may well speak for themselves.

Allies and Resources: As with corruption, enticing media to act as a 'proxy' may be a particularly helpful strategy when trying to combat public fraud. Involve journalists (from a national newspaper or radio station) to take part in the social audits. Media coverage increases the pressure on your target.

3.5.5 Enshrine the human right to water in the national constitution

Issue: Securing the human right to water in the national constitution

Research and Analysis: Water is looked upon as a social and environmental resource. The term 'right to water' does not only refer to the rights of people but also to the needs of the environment with regard to river basins, lakes, aquifers, oceans and ecosystems surrounding watercourses.



Maintaining a safe water supply means that overall river basin management, agricultural practices, and other works are important if we are to meaningfully strengthen and uphold any right to water. Thus, we need to make certain that river basins and groundwater are managed in their entirety. Steps need to be taken to make provision for environmental flows for healthy river systems, i.e. to maintain downstream ecosystems and their benefits (see www.iucn.org/themes/law).

It is crucial that all stakeholders are involved in advocacy and lobby work towards parliamentarians and relevant government bodies to ensure the all-inclusive human right to water is included in the national constitution. Relevant experiences from other process and countries are helpful. Resource persons with different professions need to be mobilised to argue for the case. It is appropriate to use the UN "General Comment no. 15, a non-legally binding document, the right as thus interpreted by the UN Committee on Economic, Social and Cultural (ESC) Rights was nonetheless designed to promote binding and enforceable rights under national laws, as a step towards filling the gaps in water services" (www.odi.org.uk/publications/briefing/bp_july04_waterrights).

Objectives and Targets: The objective would secure sustainable use of water resources within the framework of social and environmental concerns protected. Furthermore, it would give legitimacy to monitor water in national strategy plans.

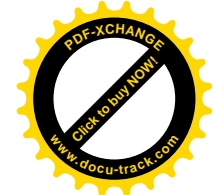
Approach and Messaging: It is crucial that all stakeholders are involved in advocacy and lobby work towards parliamentarians and relevant government bodies to make sure the all-inclusive human right to water is included in the national constitution. The process may need a long-term plan to sustain divergent ideas to merge and ensure appropriate time of opportunities.

Allies and Resources: Relevant experiences from other processes and countries are helpful. Resource persons with different professions need to be mobilised to argue for the case. Involve journalists (from a national newspaper or radio station) to take part in arguing the case: media coverage increases the pressure on decision makers.



PART III

*ADVOCATING FOR
JUST GOVERNANCE
OF NATIONAL FRESHWATER*



4

Scarce Water, Competing Claims

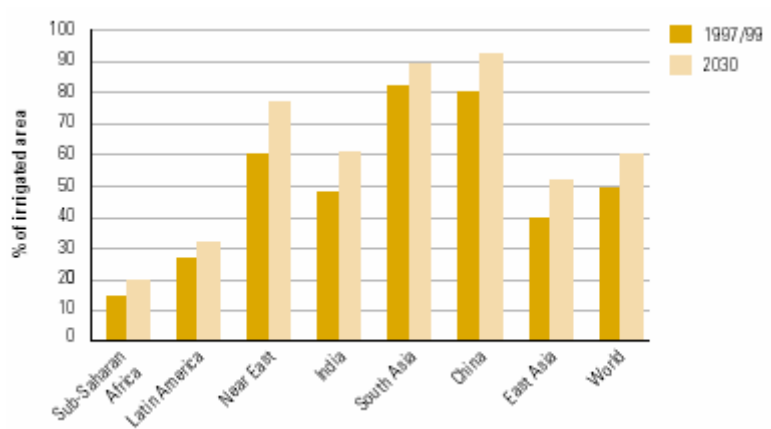
4.1 Overview

The pressure on and competition for water resources at national level typically stems from six main claimants: 1) *Ecosystems and habitats*; 2) *agriculture*; 3) *aquaculture*; 4) *industry and mining*; 5) *hydropower production*, and 6) *residential use and leisure*. Moreover, there may be considerable competition *within* each of these realms.

The major water claimant in developing countries is certainly agriculture: more than 800 million people are undernourished, and many more are food insecure. Any national water governance that aspires to help combat poverty must concern itself with *irrigation*: 70% of the world's poor live off the land, and a majority of these are dependants of rain-fed agriculture. However, as rain-fed agriculture stands to suffer from *climate change* (see Chapter 6), millions of rural livelihoods can only be sustained by irrigation development. Even if we discount for tomorrow's adverse climate effects, many more livelihoods would be sustained, and the level of food security would be much higher, if larger shares of world agriculture were irrigated. Currently, irrigated land constitutes a mere 20% of all arable land in developing countries, yet it accounts for 40% of all cereal production¹⁴.

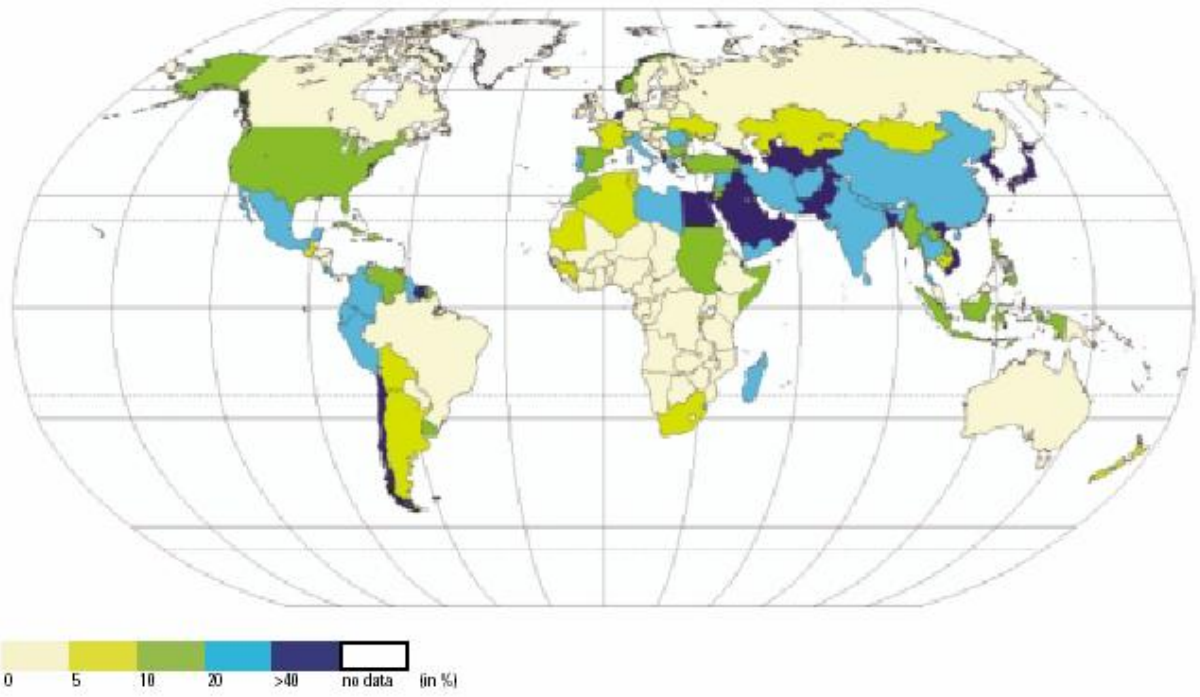
The domestic effects of irrigation on poverty reduction can be spectacular. Massive irrigation schemes have made China capable of *providing food security for 22% of the world's population, while using only 7% of the world's cultivated land*, thus curbing much of its structural hunger. A World Bank study in India in the early 1990s demonstrated that in non-irrigated rural areas, 67% of the population was poor, against a mere 26% in irrigated districts. The productivity boost provided by irrigation, allowing higher yields and diversification of crops, results in increased and sustained agricultural employment. This, in turn, increases demand for basic non-farm products and services in local communities, and if these are produced and provided locally, agricultural growth will create synergies for people outside of agriculture, too. Historically, income growth in the agricultural sector has doubled overall local welfare in parts of India and Malaysia.

MAP 4.1 Irrigated areas as percentage of irrigation potential in developing countries



Source: FAO, 2002

MAP 4.2 Percentage of undernourished people by country



Expansive irrigated areas can be seen in the Middle East and Asia compared to the significantly under-irrigated arid and semi-arid regions such as sub-Saharan Africa. Developed countries worldwide show a consistently heavy irrigated area.

Source: Map produced for the World Water Assessment Programme (WWAP) by the Centre for Environmental Research, University of Kassel. Data source: FAOSTAT, 2002.

Meanwhile, the overall access to water for agriculture is limited by the fact that many other national claimants have a stake in water, too. In the wake of China's ongoing 'industrial miracle' with its consequent urbanisation, the water available for irrigation has decreased rapidly, causing intense competition even within unstressed basins. China is already having to make 'tragic choices':



whether to divert water to urban areas to feed industry and provide drinking water to China's huge and relatively poor urban dwellers, or to sustain water access for the countryside and its domestic food production. Sri Lanka's proposed mega-development of industry in Ruhunupura City seems set to create similar 'tragic choices': it is consciously located in the poorer south-eastern side of Sri Lanka, where overcoming unemployment is a critical factor for regional development and political stability, and is intended to provide people access to industrial employment and thus offload the burden on overexploited fisheries, agriculture and tourism. The development will, however, demand in excess of 100 million cubic metres of water per annum, requiring the diversion of three main rivers and thus placing severe water stress on the already vulnerable agriculture, wildlife resources and coastal fisheries. In South America, the proposed to conversion of the Paraguay-Paraná Hidrovia river system into an industrial shipping canal, in order to expand agro-business and mining activities, may have irreversible effects on the world's biggest wetland area, Pantanal. Consequently, 300 members of the organisation Rios Vivos are opposing the project.

Alongside enhancement of food security by expanding and improving poor peoples' access to water for agriculture, the key challenge in the national context is providing poor people with safe drinking water and sanitation. The capacity to provide safe drinking water to the rural poor is commonly affected by undue water abuse from otherwise legitimate claimants in agriculture and industry. In the cities, insufficient investment in and *poor governance of water infrastructure and utilities* accounts for the fact that millions of urban poor people must rely on unsafe water and sanitation: cut-pricing, failing to recover costs and water waste together cost developing nations a staggering US\$ 180 billion a year. But the response to this by international institutions and companies to privatise public water utilities has commonly failed to help the poor, and created wrong-footed accountability - toward donor governments, international financial institutions and big business. Meanwhile, accountability to domestic constituents and national ownership of water service reform is increasingly undermined by *international trade agreements* whose purposes are to liberalise the water service sector.

4.2 Norms, National Governance and Public Participation

4.2.1 Governments' General Obligations

Public participation in a nation's water management is now a norm under international customary law. Principle 10 of the 1992 Rio Ministerial Declaration on Environment and Development states that:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate



and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”¹⁵

Chapter 18 of Agenda 21, the implementing document of the Rio Declaration, compels all signatory states to ensure that the following objective is met:

“To design, implement and evaluate projects and programmes that are both economically efficient and socially appropriate within clearly defined strategies, based on the approach of full public participation, including that of women, youth, indigenous populations and local communities in water management policy-making and decision-making.”

4.2.2 The Three Pillars of Public Participation¹⁶

In order for civil society to meaningfully participate in water governance, three pillars of participation must be in place: the first pillar, *access to information*, is the cornerstone of public involvement. It includes the right of the citizen to obtain (freely or at an affordable price) information on the *state of a water*, e.g., the quality and quantity of watersheds, aquifers, rivers etc. Furthermore, the government must *actively disseminate information* about *proposed interventions* in the watercourses and reserves. Such rights and duties may be upheld through the setting up of state water websites, as African governments have committed themselves to¹⁷.

The second pillar, *access to meaningful participation* in policy making processes and implementation, is the centrepiece of public involvement. The communities that are affected by the management of watercourses and reserves must as an absolute minimum *be consulted* (that is, given institutionalised opportunity to voice their concerns and opinions). According to standard democratic procedure one may also expect that affected communities' concerns are actually *reflected in management decisions*. In the case of specific interventions, such participation is commonly offered through undertaking so-called *Environmental Impact Assessments* (EIAs). Equally, participation should be ensured in *policy forums* where overall national strategies and management of individual basins is discussed, and by listening to affected people in preparing the enactment of laws and regulations governing operations of drinking water utilities.

Governments are increasingly expected to design decision making processes that are *strategic, holistic and inclusive*. The buzzword for such participatory processes is *Integrated Water Resource Management* (IWRM). IWRM is supposed to differ from traditional water governance in that it is:

“A process which promotes the coordinated development and management of water, land and related resources, to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems”¹⁸

International advocates of IWRM now concede that there is no 'blueprint' for what IWRM actually looks like in practice. Many stakeholders may succumb to 'jargon fatigue' and confusion as the

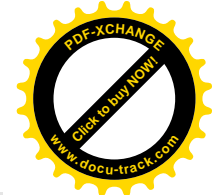


'wishy-washy'-ness of IWRM becomes apparent. Nevertheless, civil society organisations should steadfastly focus on the extent to which IWRM, either on the level of a *National Water Plans* (budgets and laws), or on the level of *Individual Basin Management* (see Box 4.1 below), actually creates practical opportunities for defending poor people's interests, and if not, claim such opportunities, e.g., by advocating for and exploiting interfaces between PRSPs and IWRMs. In so doing, they will eventually gain meaningful participation in the making of a range of regulatory decisions, including:

- i) *Usage priorities for and setting claimant's shares of the individual basin-water*, e.g., allocating fair seasonal quotas for relevant claimants (ecosystems, agriculture, aquaculture, industry/mining and domestic use);
- ii) Setting, monitoring and enforcing *license requirements and permits* for abstraction of river and groundwater, including quality and flow point targets;
- iii) Setting operating procedures for *dam management*; to avoid both undue impoundment leading to drought and undue water releases causing flash floods;
- iv) Setting up the regulatory framework for water utilities (see section 4.3), including the regulation of *water tariffs (of both public and private operations)* to ensure fair and responsible use (differential prices that recover costs from big consumers in monoculture, industry/mining and leisure, while shielding the poor from anti-social 'full cost recovery' pricing);
- v) Setting *budget priorities* for use of public funds toward development of water infrastructure, and developing *budget tracking tools* to ensure that funds are spent as intended;
- vi) *Demarcating vulnerable ecological catchment areas*, so as to shield them from unsustainable intrusion of industry, agriculture or human settlements

Box 4.1 Participating in São Paulo's Basin Management

The São Paulo Metropolitan Region (RMSP), the largest urban area in Brazil, with approximately 18 million residents, is facing tremendous challenges in terms of guaranteeing the quantity and quality of water supplies for the population. The causes lie in the long history of poor management of water resources, the lack of urban planning in the settling of areas in the nearest sources of water, such as the Billings and Guarapiranga watershed basins, and the deterioration of conditions in more distant areas, such as the



Cantareira system of dams. The objective of the Water Source Program of the Socio-Environmental Institute (ISA), longstanding partner of NCA, is to develop the participatory monitoring of socio-environmental conditions of these water resources. This process encompasses the production and constant updating of participatory socio-environmental diagnostic studies, holding seminars for proposing means to recuperate and conserve water supplies, monitoring and proposing public policies, promoting public awareness campaigns, and mobilizing social action.

ISA's involvement with water resources began in 1996, when it conducted the Participatory Socio-Environmental Diagnostic Study of the Guarapiranga Watershed Basin, demonstrating that it had lost 15% of its vegetation cover and suffered an urban growth rate of 50% in the preceding 7 years. In 2002, ISA hosted the Billings Seminar ("Evaluation and identification of priority areas and actions for the conservation, recuperation, and sustainable use of the Billings Watershed Basin"): Although Billings is the largest dam in the region and more than half of its watershed basin is preserved, it cannot be fully utilized as a public water supply due to the enormous accumulation of pollutants, resulting from water pumping in the Tietê river over the past sixty years. Subsequently, ISA was elected representative of environmental non-governmental organisations in the Council on the Capivari-Monos Environmental Protection Area (covering Billings and Guarapiranga).

Currently ISA also participates in the development of Regional Master Plans for two major city districts. These Master Plans, which will be approved by law, are regulatory instruments of public policies, defining mid-range and long-range actions to be pursued in the region. The two plans are developed in a participatory manner by means of workshops and plenary meetings in the region, and also involve the production of maps, and a databank with proposals presented by the population.

Visit: <http://www.socioambiental.org/e/>

The third pillar of public participation is *access to justice*. People whose water rights are violated by actual policies and practices must be granted opportunity to seek redress, by means of halting or adjusting intervention, and through appropriate *reparation*. A democracy shall grant access to justice by ensuring the rule of appropriate laws, but laws might be ambiguous or contradictory as to whose rights to water shall prevail; law enforcement may be lax or arbitrary; and poor people's real access to impartial courts may be illusory. In this context, civil society organisations should strive to hold their governments to account on their human rights obligations (see Box 4.2 below), possibly in national courts. A key principle in human rights law is that so called 'retrogressive measures' - policy decisions that run counter to the state's obligation to progressively ensure that water is accessible and affordable to all - are a violation of international human rights law. While the system



for sanctioning human rights internationally is still in its infancy, invoking human rights obligations is a morally powerful message. Moreover, a civil society that is vigilant in terms of monitoring domestic respect for human rights is indirectly helping its government to withstand undue pressure from abroad.

Box 4.2: Human Right to Water Specified

Although the right to water is covered by the UN Covenant for Economic, Social and Cultural Rights, there has been considerable uncertainty as to how this bears on a government's responsibilities under international law. The UN Committee for Economic, Social and Cultural Rights is mandated to help specify what state obligations are under the Covenant, and its General Comment no. 15 (2002) specifies these with regards to water:

"Water and water facilities and services must be affordable for all [...] be accessible to all, including the vulnerable and marginalized sections of the population, in law and in fact, without discrimination [...] State parties should ensure that the allocation of water and the investment in water, facilitate access to water for all members of society" (paragraphs 12c, and 14)

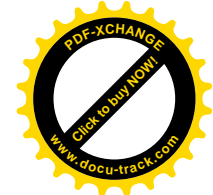
"There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives" [paragraph 19]

"The obligation to protect requires the state party to prevent third parties from interfering in any way with the enjoyment of the right to water. This include individuals, groups, corporations" [Paragraph 23]

"Where water services [...] are operated or controlled by third parties, State 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 established [...] which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance. [Paragraph 24]

[...] State parties should ensure that [international agreements] do not adversely impact upon the right to water [Paragraph 35]

Visit: <http://www.righttowater.org.uk/>



In instances where national law or courts do not provide formal access to justice, civil society organisations should campaign to claim interim solutions. Such may include the setting up of quasi-legal civil society tribunals, such as the Central American Water Tribunal (see Box 4.6); allying with parliamentarians that may petition executive powers to ensure ad hoc reparations; or confronting the offenders with moral claims. If successful, such interim solutions will help the establishment of clear laws and policies that are enforced.

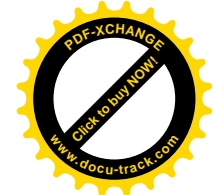
4.3 Reclaiming National Ownership of Water Services Reform

4.3.1 PRSPs and Conditionality of The World Bank/IMF

In recent years, civil society organisations have diligently and sometimes successfully advocated for just allocation of public budgets in the context of crafting *Poverty Reduction Strategies* (PRSPs). Efforts and competence building towards budget monitoring and tracking must be sustained. But advocacy related to PRSPs is often too narrow-minded in its concern for budgets. The legal lending instruments that PRSPs are supposed to imbue with national ownership and popular legitimacy, *PRGFs* (*Poverty Reduction Growth Facility*) and *PRSCs* (*Poverty Reduction Support Credit*), lay down policies that extend well beyond budgets, including those that determine poor people's access to productive resources, namely, decent employment, land, credit and markets. Public budgets, at their best, can provide basic services to the poor. *But public budgets cannot sustain livelihoods; that is neither their purpose nor within their means.* Meanwhile, structural policies that determine poor people's livelihood opportunities unfortunately tend to remain the prerogative of bureaucrats and donors.

Civil society organisations engaged in protecting people's rights can gain much headway by claiming a wider scope for PRSPs so that these engage with the numerous structural conditionalities in PRGFs/PRSCs, not just budget allocations. This is as relevant with regard to water as elsewhere. If one is exclusively concerned with budgets, then anti-poor privatisation measures may well go unnoticed. In fact, if seen through the prism of budget figures, privatisation may transpire as *positive* since outsourcing, concession and leases relieve public budgets of operating costs and sometimes result in modest income (through divestiture or utility sales). But such budget saving or income is deceitful if the concomitant privatisation leads to unaffordable water prices for the poor! A recent World Development Movement review of 50 PRSPs (and their concomitant PRGFs/PRSCs) provides clear evidence of continuing bias towards water privatisation; nearly two-thirds of the strategies explicitly include water privatisation or greater private sector involvement. Not a single one includes a review of privatisation policy¹⁹.

Meanwhile, the World Bank seems to increase the privatisation pressure, despite the immense political trouble: in 2000, 91% of her funding to the water sector was tied to privatisation. By 2003, *all* loans promoted privatisation. A study by *Water Aid* indicates that the Bank conditionality



prevents governments from making up their own minds about privatisation. However, governments can only afford 'not to make up their own minds' as long as the people to which the World Bank itself wants governments to be accountable, allow them. Civil society organisations are well placed to ensure that such complacency is not an option (see Box 4.3).

Box 4.3 Privatisation in Ghana²⁰

In March 2002, IMF made it clear that Ghana would only be given a PRGF loan if the government approved full cost recovery in all sectors, including water. The National Coalition against Privatisation of Water in Ghana organised an *International Fact Finding Mission*, carried out by 12 experts from around the world. The experts gathered data from a range of stakeholders - including government, international financial institutions and local communities - to consider the potential impact of a proposal for private sector involvement. Their final report concluded that *'the current proposal is not the optimal option for ensuring expanded access to clean and affordable water for people in Ghana'*, stressing that the principle of full cost-recovery might reduce access to low-income consumers; that separation of drinking water utilities and sanitation utilities would reduce opportunities to address public health problems; that there were no contract commitments for extending services to poor neighbourhoods; no independently determined performance requirements related to poverty and public health indicators, nor any provisions for independent evaluation of contract performance.

4.3.2 WTO's General Agreement on Trade in Services (GATS)²¹

Ever since the signing of the global services trade agreement GATS²² in 1994, civil society organisations have voiced their concern that a free trade regime in services might unduly force privatisation schemes upon communities that are too poor and too vulnerable to shoulder the consequences. The same concern is rightly voiced with regard to hemispheric (FTAA/ALCA), regional (CAFTA) and bilateral (FTAs and EPAs) trade treaties. It is true that most countries are first and foremost under pressure from the multilateral institutions to privatise water services, but GATS and other treaties are instruments of international law. Therefore, their capacity to legally bind the member countries constitutes a much more powerful straightjacket than any structural adjustment or PRSP agreement. Until recently, many northern governments typically rejected such concerns as unwarranted¹⁰, referring to two main aspects of the agreement (that actually were instrumental in ensuring the accession of Developing Country Members in 1994):

- i) GATS expressly states that public services are exempt from the agreement;



- ii) GATS is based on a 'positive list' (or bottom-up) approach by which the individual member country decides which sectors to enlist on its GATS schedule (i.e. subject to the disciplines of international trade law).

But in recent years, the EU has successfully included the category *water for human use and waste water management* under the Environmental Services Chapter of GATS, thus circumventing the exception for public services. In bilateral GATS negotiations, which are currently stalled, the EU has consequently demanded that some 50 developing countries place water services on their GATS schedules. Indeed, several countries that *provided water solely on a public basis at the time of the request* – including Botswana, Honduras, Nicaragua and Tunisia – have received such demands. The EU liberalisation request demonstrates how GATS is being used to force privatisation on countries. The reservations that developing countries inserted in the original text of the agreement have not obstructed the EU from exploiting GATS as privatisation lever:

- i) The definition of a public service is very limited, being defined as services that are provided “neither on a commercial basis nor in competition with one or several other service providers”. There are very few water service providers who can claim to fall into this category. If so, EU’s creation of new categories circumvents the exception.
- ii) The right to reserve a sector from commitments is no more worth than the individual country’s bargaining power and will. Many countries are also desperate to extract concessions from EU and US in other negotiation areas (especially in agriculture), and may be tempted to ‘pay’ for such concessions by ceding to GATS demands.

Furthermore, the main problem with GATS may not be that the agreement will pry open national water services that are currently run by the public sector; there are quite few of these left after a decade of World Bank and International Monetary Fund privatisation conditionality. Rather, the main problem with accepting full GATS obligations is that many regulatory policies required to ensure fair distribution of water will become prohibited under trade law. Indeed, GATS is essentially an investment agreement protecting the investments of private operators delivering services abroad.

In fact, GATS is not just about *non-discriminatory* treatment of foreign companies as its supporters claim: any regulation that might scare off international service providers, *even if the regulation applies equally to national and foreign providers*, may be reported to the WTO as unduly trade restrictive. Pursuant to article VI.4 in GATS, authorities can only use those licensing, standardisation or qualification demands that are “no more [trade] restrictive (and) no more burdensome than



necessary". For example, to make universal water access an operating requirement will be in contravention of GATS law. Even if the purpose of regulation is perfectly legitimate, WTO's panels could rule that there are other *less trade restrictive ways* to achieve the same ends, e.g. through use of public subsidies. A WTO analysis group, which is examining this so-called 'necessity-test', has come up with a set of regulations that are in contravention with GATS. The necessity test rule, along with other provisions of the WTO/GATS, indicates the following limitations on national policy space:

- i) A country that enlists water services in her GATS schedule will suspend the jurisdiction of individual municipalities. Assume that one municipality in your country has decided to let a private company operate her water concession. If your national government commits her water sector to GATS under such a circumstance, *all* municipalities must consequently do the same.

- ii) A GATS commitment 'locks in' all existing privatisations experiments. Reversing the privatisation process would now be prohibited; the possibility of walking away from GATS obligations is almost non-existent. As a WTO course on GATS puts it: "By guaranteeing that trading and investment conditions will not be changed against their interests, a commitment in the GATS provides the security which investors need." (<http://www.wto.org/english/>). In order to cancel an obligation, the authorities of the country in question will have to wait at least three years, following which they must negotiate a compensation deal that satisfies ALL of the other WTO members. Failure to do so will result in the imposition of sanctions. Hypothetically: had Bolivia thrown Bechtel out of Cochabamba (see Box 4.1 above), while having her water services sector enlisted on her GATS schedule, she would face sanctions, possibly by WTO cross-retaliation impeding her exports of soy beans. Such a prospect would create such unhealthy domestic infighting (the thirsty urban poor against the rural soy workers and their patrons) that the government would be deterred from taking action.

- iii) GATS may preclude socially motivated cross-subsidies *between different concession areas*: publicly owned private companies will lose the ability to transfer revenue from the most lucrative concessions into other concessions, as multinational companies flock around 'choice cut' concessions (see Box 4.4 below), while unprofitable poor areas will remain the responsibility of the public sector.

- iv) GATS may prohibit price caps, i.e., authorities may not set upper limits on a company's water prices. Moreover, concession requirements cannot vary from one municipality to the other, even if geographic variations (for example availability of water, environmental vulnerability or socio-economic conditions) should warrant it. The lowest standard will automatically become the *only* standard.



- v) GATS may have deregulatory effects on areas that are outside the remit of the agreement, as any unforeseen regulatory action that has adverse economic impact on a foreign service provider will be prohibited. A precedent set in the WTO dispute panel indicates that if governing authorities were to limit the distribution of water quantities to one utility (e.g. in a period of drought), such action would be rendered illegal by WTO.

- vi) GATS will spell the end for operators' direct accountability to end-users. Direct public involvement and target setting from user groups (a particular type of legal structure) will contravene article XVI.2 (e) and in all likelihood article XVII (National Treatment). Thus prohibiting institutionalised models for ensuring that the voices of affected people are heard, GATS enhances the natural monopoly-like character of water services: since consumers cannot 'punish' the service provider by switching to another provider (as they may in telecommunications, electricity and transport), providing them a voice in setting performance requirements and auditing these is crucial in order to block operators from extracting monopoly rents. Yet, accountability to end-users is a government obligation under human rights law (paragraph 24 of UN's General Comment no 15/2002 on the right to water, see box 4.2).

No wonder that the EU, despite demanding that 97 WTO member countries shall enlist water services on their GATS schedule, refuses to make such a commitment herself!

Box 4.4 GATS: An Inroad to Sao Paulo's 'Choice Cut' Concessions?

In the state of Sao Paulo, Brazil, all 400 municipalities issue an individual concession for water distribution. SABESP, previously a public utility owned by the State of Sao Paulo today operates 165 of these concessions, including most of the 24 concessions in Greater Sao Paulo City. Today, SABESP is a commercial company listed on the Sao Paulo stock exchange and bound by Brazilian company law; it is the largest water service company in the southern hemisphere and has the second highest international investment rating of all Brazilian companies. However, the state still holds a stock majority, thus ensuring the company's social performance: SABESP delivers water at pro-poor differentiated tariffs; the poorest households are charged at mere 10 Brazilian *reals* per month, which is equivalent to 1% of the monthly income of a car mechanic in the casual labour sector. Between 1995 and 2000 SABESP increased their coverage in Sao Paulo City from 84% to 95%.

A respected politician in the federal state parliament, who previously held an executive position in SABESP and now leads the project for an integrated water plan in the state,



explains how the company manages to service the poor: of the 165 concessions which SABESP operate, 20 of them cover particularly wealthy neighbourhoods. Due to differential tariffs, these concessions alone earn more than 80% of the company's total income, and the company has systematically used this income to improve capacity and lower prices in poorer concession areas. He explains that the reason why the EU wants Brazil to take full GATS commitments is because multinational companies want trade law to ensure them access to operate these 20 'choice cut' concessions when they expire in the coming years. The social model that is practised today - through which SABESP ensures cross-subsidisation by means of operating both rich and poor concession areas - will wither with every choice cut concession taken over by a multinational company.

Visit: <http://www.sabesp.com.br/>

The WTO Doha Round Negotiations are stalled, and whether individual developing countries eventually will enlist their water service sectors in their GATS schedules is yet undecided. Consequently, civil society organisations have won themselves some extra time, and should now scrutinise their governments' stances in the negotiations carefully, stressing that public-private partnerships under GATS jurisdiction will be counterproductive in upholding the water rights of the poor: such partnerships will focus on the water sector's 'choice cuts' and be subject to poor regulation in the area of human rights, security and environment. Moreover, once under GATS jurisdiction, such partnerships cannot be reformed nor reversed within the time span of the services contract (typically 20 years or more). In fact, subjecting the water service sector to GATS may well constitute prohibited retrogressive measures *under human rights law*, as governments knowingly trade away regulatory tools needed to protect the water rights of poor people. The potential realisation of efficiency gains, investment and sector growth cannot justify arrangements that jeopardises the human rights of the poor and marginalized. This is precisely where the logics of enforced privatisation are testing the sound and moral reasoning of everyone concerned with poor people's inalienable rights to the most essential of all things: water.

4.3 When Claimants are Offenders

Below we consider concrete instances and mechanisms by which otherwise legitimate claimants to water - *agriculture, aquaculture and industry/mining* - offend basic human rights by their undue water management. Note that *hydropower production* commonly causes poor people's rights to water, health and livelihood to be violated, but that such cases are covered at some length in Chapter 5 and therefore omitted here. Advocating against rights breaches that follow from socially



irresponsible company practices may sometimes be just as relevant as engaging with the government's lofty policy processes. Indeed, the cases below suggest that such advocacy is much needed. Nevertheless, organisations that advocate against corporate malpractice are well-advised to remember that such malpractice is never the responsibility of the company alone: *it is always indicative of poor governance*, either because appropriate laws are not in place or poorly enforced; because corruption compels authorities to issue permits that should not have been issued; or because monitoring of water quantities and qualities is insufficient.

4.3.1 Agriculture as offender

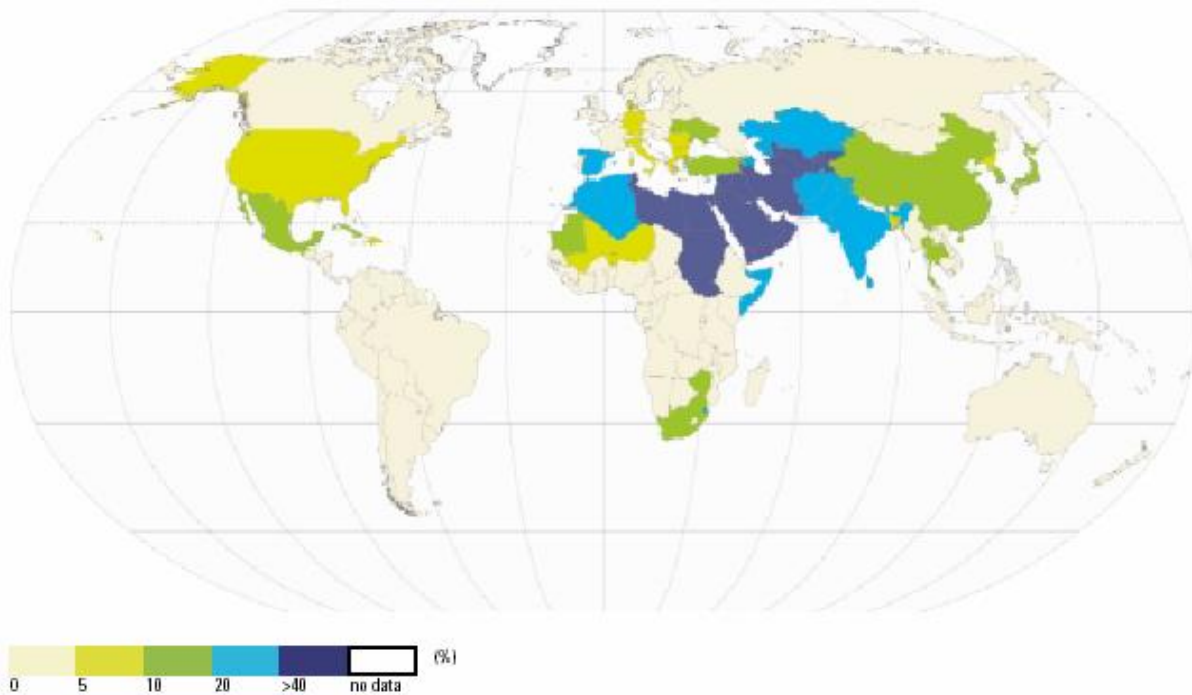
By sector, agriculture is by far the largest water user in developing countries. As seen above, agriculture still needs more water. However, with the increasing industrialisation of agriculture, benefits from huge public investments in irrigation are sometimes heavily concentrated on a few fortunate mono-croppers while wider societal benefits of water are lost, and ecosystems interrupted. This is particularly unjust when considering the inherent inefficiency of irrigation: in developing countries, only 40% of all water withdrawn from rivers, lakes and aquifers effectively contributes to crop production; the remainder is lost to evaporation, deep infiltration, or weed growth.

Poor irrigation practice poses a considerable threat to water quality and human health, and has led to water logging and salination of 10% of the world's irrigated lands, reducing productivity. Unfortunately, irrigation - especially *flooding irrigation* of some crops such as sugar cane and rice - is also associated with the spread of vector-borne diseases, including *malaria*, *schistosomiasis* and *Japanese encephalitis*. Agriculture's adverse effects on drinking water are also evident in many places. Runaway consumption of agro-chemical inputs affects water quality by contaminating groundwater aquifers. The same goes for quantities: water contained in shallow aquifers has played a significant role in sustaining livelihoods in developing countries, as it offers a primary buffer against the vagaries of climate and rainfall. However, as water resources come under increasing stress, proper management is often hindered on account of *groundwater's legal status as part of land property*. In many places capital-intensive agriculture may be tempted to overexploit groundwater. This may rob surrounding communities of safe drinking water; when near to the sea, overexploited aquifers are prone to saline intrusion. Excessive groundwater exploitation also causes injustice within the sector as it has adverse consequences on poor farmers. The resulting lower water levels require costlier pumping technologies to get to the water, which poor farmers cannot afford.

Currently, agriculture in North Africa, the Middle East and some parts of Southern Asia is increasingly drawing on deep, sedimentary aquifers - non-renewable water resources that are not recharged by nature. In some places, agriculture is moving into vulnerable ecosystems: in combination, developing countries have some 300 million hectares (comparable to the entire landmass of India) of more or less untouched *wetlands*. To exploit wetlands for crop production is

an increasingly tempting option in Sub-Saharan Africa, where peoples' access to productive land is limited. However, wetlands and their ecosystems are systemically vulnerable to drainage, and sustainable use requires governance of an institutional quality that might not be commonplace in affected areas.

Map 4.3 Agricultural water withdrawals as percentage of renewable water resources



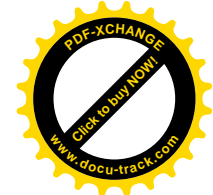
The importance of agriculture in countries' water balance is shown here. Whereas agricultural water withdrawals account for little of the total renewable water resources in the majority of countries, certain regions, such as north-east Africa and western Asia, are notable in that their agricultural withdrawals add up to more than 40 percent of their total water resources - and in the Near and Middle East, they represent a staggering 1,000 percent.

Source: Map produced for the World Water Assessment Programme (WWAP) by the Centre for Environmental Research, University of Kassel. Data source: AQUASTAT, 2002.

Making decisions about what crops to produce, particularly in monoculture production, may indirectly affect water access for surrounding claimants. Some crops and foods require much more water to produce than others; this 'virtual water' component of foodstuffs is *invisible in the products* but of considerable importance *to their production process*. To produce 1 kg of wheat typically requires 1 cubic meter water; paddy rice requires twice this figure, while *meat requires up to 20 times as much water*. The production of 1 kg of citrus fruits requires 1 cubic meter of water, 1 kg of fresh lamb requires 10 cubic metres (UNESCO, p203). When water is readily available, it might be politically wise to induce farmers to produce water-intensive crops or livestock, in particular if such production can help them improve their livelihood situation by fetching better market prices. In the context of water scarcity, however, such choices may be socially unjust.

4.3.2 Aquaculture as Offender²³

Aquaculture was to be one of the most spectacular growth stories in developing countries in the

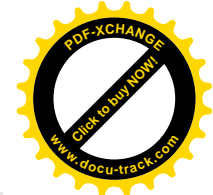


latter half of the 20th century. Having produced a total of 1 million tonnes in 1963, the total production of the Global South by 2003 was a staggering 38 million tonnes. This bonanza reflects the fact that much lesser investments were required to yield considerable productivity growth than was the case in agriculture and industry. Relatively good market opportunities in overseas markets and limited technology requirements were other factors. But a major cost remained hidden for a long time: the cost carried by vulnerable ecosystems and their dependants. While undue aquaculture intrusion into vulnerable ecosystems such as mangrove forests are commonly averted today, organisations protecting the water rights of the poor must remain alert, as the case in Box 4.5 illustrates.

Box 4.5 Lake Cocibolca: A Case for Central America's Water Tribunal²⁴

In 2002, Nicaraguan authorities gave the multinational company Nicanor (Mares Nica Noruega S.A.) a 20-year permit to set up and operate a large scale tilapia fish farm in Lake Cocibolca. The venture was co-funded with seed money from the Norwegian embassy, and allegedly co-owned by the nephew of then-president Enrique Bolaños. The permission was given with little regard to protests from civil society organisations and ecologists. Aquaculture is normally carried out in artificially created lakes or large tanks in the open sea because of the negative effects it has on the ecosystems of natural bodies of water. If located in a natural body of inland water, an appropriate and very costly filtering system is required so as to avoid unnatural alterations taking place in the water, but the permit did not require such measures. Civil society argued that the Lake Cocibolca, the largest body of fresh water in Latin America, is already under threat from all of Granada's sewage being pumped directly into the lake, the waste of nearby plants such as those for coffee and sugar processing, and pesticides and other agro-chemicals that are washed into the lake by the rains. Meanwhile, Nicaragua's other main basin, Lake Xototlan is one of the most contaminated water bodies in the world.

Today, Nicanor's farms generate millions of dollars in revenue from tilapia exports to the USA, and valuable tax income for the government. But people are more concerned than ever. Each tilapia is given 6% of its body weight in food every day; 27,000 kilograms of fish food are required to feed a half million kilograms of fish every day. The result is that huge amounts of faeces and waste are deposited into Lake Cocibolca. It is dubious whether the lake's ecosystem can cope with this, in part because of sheer quantity but also as the fish food used contains plenty of chemicals and hormones. The local government of the Island of Ometepe has denounced the damaging affects of Nicanor's fish farm to the central government. Vice Mayor of Altagracia Alcides Flores says: "We have attempted to take legal actions against Nicanor, but our attempts have been blocked by MIFIC [Ministry of Industry



and Commerce] and MARENA [Ministry of the Environment]." Flores explains how the inhabitants of the community San Ramon have been affected thus far by the fish farm which is located just thirty meters off shore from their village. "San Ramon has always been popular among tourists who visit Ometepe, but they are now put off from visiting the community because the place stinks of fish food and the view of the lake has been ruined by the extensive metal constructions used to house the fish."

Now, several civil society organisations, including Centro Humboldt, prepare a complaint to the Central American Water Tribunal (CAWT). CAWT is an international, autonomous non-judicial tribunal, located in Costa Rica, that works for social and environmental justice in water matters. It was created by a coalition of NGOs and a team of lawyers and scientists, and addresses disputes over water in Central America countries, emphasising the access to justice for stakeholders that are incapable of being heard in the formal court systems. In adjudicating disputes, the Tribunal seeks to enforce relevant human rights and environmental laws in a fair and transparent manner. While not having the authority to issue binding sanctions, CAWT's resolutions carry considerable moral and political weight; being found 'guilty' by the Tribunal is a potential PR disaster for companies and governments.

In its first session of hearings in 2000-2001, Centro Humboldt submitted a complaint against the gold mining company Hemconic SA and the Nicaraguan government, alleging that irresponsible operations had caused leaks of toxic chemicals into the soil, groundwater and waterways, presenting scientific evidence proving that cyanide and copper values in water were higher than permissible under the national law and international WHO standards. Eventually, CAWT ruled against Hemconic and the government, and resolved 1) to reprimand the Nicaraguan government for not protecting her inhabitants' right to water and health; 2) to compel appropriate authorities to make sure that harmful practices are halted; and 3) to order Hemconic to pay reparation costs to affected communities.

It remains to be seen how the Nicanor-case will fare in CAWT. But Jaime Incer Barquero, formerly Nicaragua's Minister of the Environment (1990-95) and now a member of CAWT, suspects that "central government is directly to blame" for the contamination being caused to the water of Lake Cocibolca because of its "mistaken policy of generating economic wealth from the unsustainable exploitation of natural resources."

Visit: <http://www.tragua.com/>; <http://www.humboldt.org.ni/>

4.3.3 Industry/Mining as Offender

Relative to its economic contributions to growth and productivity, the *volumes* of water extracted



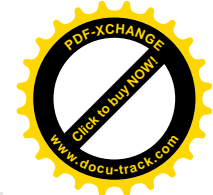
for consumption by industry are not unreasonable. What is unreasonable, however, is the extent to which industry negatively affects water environments by *disposing waste* and grey water into streams, canals, rivers and the sea, or into sewers that are discharged untreated downstream. An unfortunate pattern seems prevalent: while value-adding and well-behaving industries tend to locate to middle-income countries, low-income countries seem to attract industry which seeks to extract raw minerals and oils without having to concern itself much with environmental regulation. Mining companies in particular have a frightening track record. A recent study found that past mining activities in the Nakhon Si Thammarat province in Thailand had caused arsenic contamination of topsoil and groundwater, 50 to 100 times higher than WHO guideline values for potable water, in a radius of 40 cubic kilometres. Most affected people now have to buy very costly water from vendors.

Unfortunately, the effects of extractive industries on water are not always a consequence of industrial accidents; it sometimes seems a premeditated strategy to which governments themselves are accomplices. In June 2006, the Norwegian State Pensions Fund disinvested some US\$ 20 million from the mining company Freeport, citing that its huge copper mines in New Guinea daily discharge 230,000 tonnes of industrial waste, including copper, cadmium and mercury, into a nearby river that sustains the livelihoods of indigenous groups. When questioned about this practice, the company indicated no intention to change its practice, responding, “discharge into the river is the best alternative for waste management there is.”²⁵

Box 4.6 Cellulose Pulp Exports vs. Indigenous People's Water Rights

For hundreds of years, the state of Espirito Santo on Brazil's southern coast was covered by the Mata Atlantica, a dense tropical forest inhabited by indigenous communities and scattered smallholders. Today, Mata Atlantica is replaced by monoculture eucalyptus trees which feed cellulose manufacturer Aracruz SA, just south of the Doce river in the state's heartland. Aracruz is the world's biggest producer of bleached, short fibered cellulose pulp, producing more than 2 million tonnes a year. 90% of the produce is exported to the EU and USA, where it is processed into paper. Annual revenue exceeds US\$ 1 billion, making it the fifth largest hard currency earner in Brazil's manufacturing sector.

But Aracruz's operations require lots of water; three pulp mills consume a staggering 200,000 m³ water per day. This equals 2 million people consuming 100l per day, or the daily consumption of the entire populace of a 5 million strong city in Sub-Saharan Africa. Remarkably, the company has never paid anything for its water use. In fact, if it were to pay the commercial prices that common people are charged in adjacent cities, its annual water bill would stand at US\$ 88 million. However, this is not the major concern of surrounding communities. When Aracruz was planning the construction of her third pulp mill



in the late 1990s, it calculated that the minor river that had so far fed it, Rio Riacho, could not possibly provide all the water required for producing an additional 700,000 tonnes of pulp a year. The company approached the municipality suggesting that one dig the Canal Caboclo Bernardo which, by diverting water from huge interstate Rio Doce via the tributary Rio Comboios, would boost the Rio Riacho considerably. When the municipality applied for the requisite permission from state authorities (after a political process fraught with irregularities, and no meaningful public participation), it concurred with the company that the canal would benefit local communities by enhancing water access, health and irrigation potential.

This was not to be the case. Permission was granted and the canal was constructed. The intervention caused serious problems: the Comboio river rose and flooded sizeable land under cultivation, and its water quality plummeted dramatically as pollution from interstate Rio Doce spread via the canal. These dual effects hit the Comboio Indians hard, undermining food production, fisheries and health. Meanwhile, the harbour of Barro do Riacho is silted up as the downstream mouth of the Rio Riacho now carries too little water to keep the Atlantic waves from piling up sand banks. Hardship for local fishermen has followed since they cannot get their boats to sea. The communities have joined the Network Against the Green Desert, which advocates for solutions to the problems caused by eucalyptus monoculture and cellulose production, including reparations to affected people. One of the senior member organisations in the Network, FASE, a partner of NCA, has worked in order to scientifically document the effects that Aracruz's operations have on safe freshwater access for the poor in Espirito Santo. FASE and the Network have campaigned for voluntary company action for some years already, and may eventually try to take the company and local authorities to court. Meanwhile, socially responsible institutional investors such as the Norwegian State Pensions Fund hold stocks worth millions of dollars in the company, and NCA will work to ensure that these compel Aracruz to clean up its act.

Visit: <http://www.fase.org.br/> and <http://www.desertoverde.org/>

4.5 Applying the Advocacy Planning Framework to Key Issues

4.5.1 Failing to Include Civil Society in National Policy Making

Issue: Your organisation fears that the water rights of poor and vulnerable people will not be properly reflected in national water policies, as relevant civil society organisations are poorly included in policy making processes.



Analysis and Research: The first task may be to identify the key political processes that govern national water policies. You are likely to find that while some important issues are decided on by *central government authorities* (e.g., budget priorities, large-scale water infrastructure development, legal framework for utilities' modes of operation and performance requirements), others are decided on the level of the *individual basin* (sector user quotas, dam management, protection of ecosystems, extraction permits). Your research may subsequently document how specific deliveries of particular importance to your constituents (such as *safe drinking water, livelihood security and sanitation/health*) are affected when their voices are not heard through the participation of civil society. It may be wise to advocate for extending the mandate of *existing civil society forums* (such as those already involved in PRSP design at both regional/basin and national level) so you should identify these and their potential interfaces with water policy formation.

Objectives and Targets: A smart objective would typically be to ensure that your organisation 'is granted access to X [specified] policy making forum' within a set time frame. *Targets* typically comprise the cabinet ministers or parliamentary committees (in case of budgets and laws) mandated to make the final policy decisions, delegate authority to and compose the specialist bodies that govern water etc.

Approach and Messaging: If public participation has hitherto been insufficient, then this is probably in part because your organisation and her peers have failed to voice their claims clearly, and demonstrate their relevance to politicians. *Soft confrontations* revealing the extent to which current decisions fail to uphold the entitlements of the poorest and most vulnerable, combined with *mobilisation* of the poor themselves (e.g. mass petitioning of target, or other social manifestations), may prove effective. Your message may stress 'broken promises': poor people are left voiceless, despite commitments that governments have made toward public participation.

Allies and Resources: Unless you are one among many organisations with solid knowledge of a range of water issues, it may be worthwhile to claim participation in alliances that concentrate on a particular sub-issue (e.g. safe drinking water, sanitation and health, irrigation etc).

4.5.2 Undue Concessions in Trade Negotiations

Issue: Your organisation fears that the government is under pressure to subject the water services sector to international trade law, thus trading away capacity to uphold poor people's right to safe water at affordable prices.

Research and Analysis: It is often difficult to access information about 'the state of play' in international trade negotiations, which are clouded by secrecy, sensitivity and tactical uncertainty. It may be necessary to set out by approaching the target so as to even get a general idea about the negotiating status quo. A key point is to elicit information about the government's policy position



and how this is 'translated' into a mandate for negotiators. Good research should provide tentative answers to the following questions: What water right commitments, in domestic or human rights law, are binding for the government? Which countries abroad are demanding that your government subject the water services sector to international trade law? Does the negotiating mandate allow trade diplomats 'to sell out' water services against rich country concessions in other trade areas (e.g. agriculture)? If so, who are the domestic winners and losers of such trade-offs? A main challenge in research is, furthermore, to substantiate the claim that people stand to lose from a liberalisation commitment within water services, and you may need expert assistance.

Objectives and Targets: Your objective would typically be to 'ensure that the government does not cede to foreign demands for domestic water services to be enlisted on the GATS schedule.' Your target can be the minister for trade, but it may be just as smart to target a health or development minister whose responsibility it is to protect the water rights of poor people, and who may be embarrassed to see his reputation 'traded away' by diplomats in Geneva. You may have to change targets underway, or even take aim at multiple targets.

Approach and Messaging: National trade policy formation is under considerable pressure from many stakeholders, domestic and foreign, and it may be hard to attract your target's attention. Even in such an issue as trade liberalisation of water services, in which few if any domestic actors have any positive stakes, you may come up against domestic adversaries that want the government to trade a GATS concession against improved access for agricultural exports in rich countries' markets. When choosing an approach you consequently need to be loud and clear, but cautious. If your target is a health or development minister you may want to set out with a *dialogue-based* strategy, but be ready to take a more confrontational stance if he proves unwilling to spend political capital on the cause. In terms of messaging, you may stress that the government has 'human rights obligations that are in conflict with a GATS commitment' and urge the government to exploit this fact in negotiations.

Allies and Resources: This is a crucial dimension when advocating for pro-poor trade policies. It is very common for *national parliaments* to be 'sidelined' in domestic trade policy formation, and you may exploit this 'governance gap' by forging partnerships with individual MPs. While you help them with relevant information and feed them perspectives from the grassroots, MPs may raise 'parliamentary questions' directly to the target, thus eliciting key information and creating awareness. *Global advocacy allies* may also help provide your government with negotiating leeway by 'shaming' the rich country government that placed the GATS demand in the first place. In 2005, NCA and other Norwegian CSOs successfully cajoled the Norwegian government to withdraw all of her GATS demands to developing countries in environmental services (water), education and energy.



4.5.3 Big Business Offenders

Issue: Your organisation suspects that a major upstream company threatens poor people's access to safe water by undue discharge into/extraction from a major watercourse.

Research and analysis: Alongside meticulous documentation of the effects on poor people and scientific testing of water qualities and quantities, identifying the national laws and policymaking processes that govern corporate water extraction and discharge should lay the foundation for your advocacy. Key analysis questions also concern the nature of the company offences: Is the company operating in *violation* of permits granted by the government, or in observance of a permit that is as such irresponsible? If the former is the case you should petition the government to press criminal charges against the company. If the latter is the case, then the government itself is as much an offender as the company, and the responsible authority should be held to account either politically or in court. In any case, research must provide proper guidance as to how the affected people may be granted access to justice.

Objectives and Targets: In general terms, your objective should be to ensure 'that malpractice is halted and that authorities take action to grant reparations to those affected' within a set time frame. As noted above, your primary *target* should be the governing authority, not the company. While the company itself is liable (and should be confronted morally so as to attract public attention and support to your cause), it is legally accountable to the authorities that issue its formal 'licence to operate', not directly to the local community.

Approach and Messaging: If the company operates in violation of its permit you may want to 'shame' the company directly, while initiating dialogue with the key target, the governing authority. If the permit itself is the problem, you may want take a more confrontational stance towards the governing authorities. Under human rights law, governments are obliged to protect 'the individual from third party interference in the enjoyment of the right to water' (see UN's General Comment no. 15/2002, box 4.2 above), and this should be reflected in your messaging: while the company is the perpetrator, the local authorities are responsible for enacting proper laws, enforcing them and granting justice.

Allies and Resources: As in the case with corruption, enticing media to act as a 'proxy' may be a particularly helpful strategy when revealing big business offences. You may offer a journalist (e.g. in a national newspaper or radio station) exclusive access to your research, and invite her to come and talk to people affected. Media may carry out research of their own and reveal more about the offences. This increases the pressure on your target.



PART IV

ADVOCATING FOR JUST GOVERNANCE OF TRANSBOUNDARY FRESHWATER

5

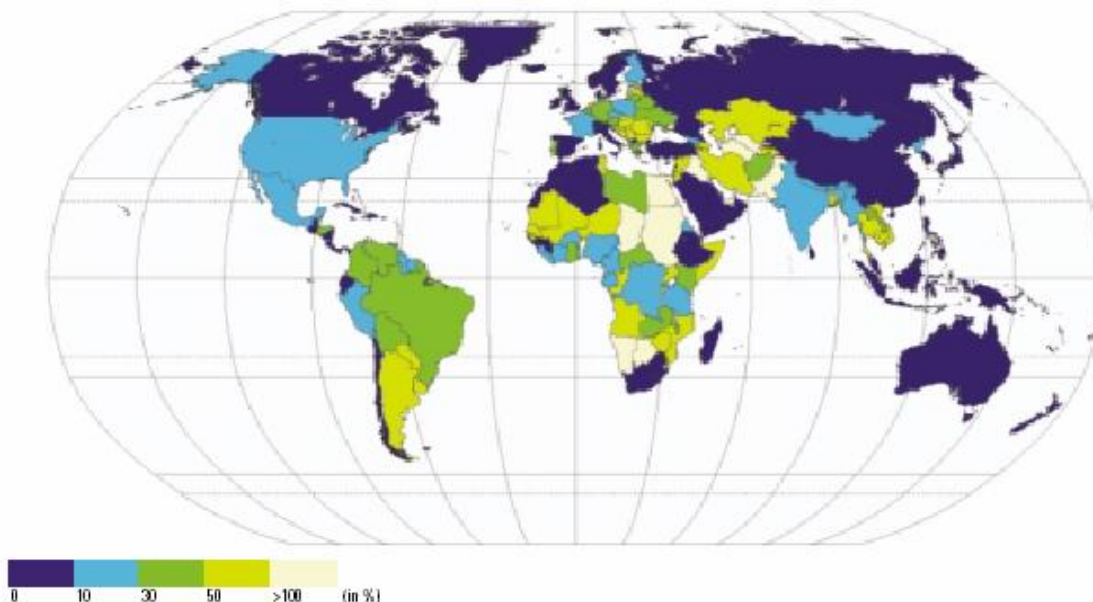
Transboundary Watercourses

5.1 Overview

5.1.1 A Global Grid of Interdependencies²⁶

Many developing countries are reliant on *watercourses that cross international borders*. These cannot be governed according to the principles of national sovereignty alone, since actions of an upstream country may determine the extent to which countries downstream have access to enough and safe freshwater. *268 major freshwater basins* across the world have 'transboundary' status, and 145 nations have territory within transboundary basins.

MAP 5.1 COUNTRY DEPENDENCE ON WATER RESOURCE INFLOW FROM NEIGHBOURING COUNTRIES



This map illustrates the current state of affairs with regards to countries' reliance upon water coming from neighbouring countries. This is an important consideration when assessing a given country's water supply and its quality. A good part of Africa and the Middle East depend upon foreign water resources for more than half of their own water, as does the southern tip of Latin America.

Source: Map prepared for the World Water Assessment Programme (WWAP) by the Centre for Environmental Research, University of Kassel, based on information from Water Gap version 2.1. D.

Of these, 21 nations lie entirely within one or more basins, and another 12 have more than 95% of

their landmass within transboundary basins. This grid of interdependencies is further complicated by the fact that many major basins in the developing world are shared not merely by a couple, but by *multiple* riparian states: the Congo, Niger, Nile, Zambezi, Amazon, Ganges-Brahmaputra-Meghna, Jordan, Lake Chad, Mekong, La Plata, Tarim and Tigris-Euphrates all have more than five riparian countries.

Transboundary watersheds comprise not only rivers: *many groundwater aquifers are transboundary in nature*, too (see Map 5.2). Aquifers are reserves hidden below ground; due to their isolation from pollution on the ground they hold excellent quality water, and play a crucial role in recharging rivers, wetlands and other surface sources, which in turn serve basic human needs, feed agriculture and sustain ecosystems. The transboundary behaviour of groundwater, however, is not well understood, nor do we know the quantities they hold. In many cases the aquifer may well receive the majority of water *recharge* from one side of a border, while the majority of *discharge* may be on the other. With currently insufficient levels of knowledge, it is hard to determine what practices actually conform to international legal principles such as ‘*equitable sharing*’ and causing ‘*no significant harm*’. These uncertainties are further complicated by the fact that impacts can be widespread but delayed for decades. The management and governance of transboundary aquifers is virtually non-existent, which makes involvement of NGOs a future agenda.

MAP 5.2 INTERNATIONALLY SHARED AQUIFERS IN CENTRAL/NORTHERN AFRICA



This map shows the distribution of several major transboundary aquifers underlying particularly water-stressed regions of northern Africa. Groundwater is an especially complex problem in terms of sharing the resource. The abundance of shared aquifers in this area underscores the importance of treaties and cooperative management.

Source: Based on OGS and UNESCO, 1997, in UNESCO, 2001.

5.1.2 Big Rivers, Big Rumble?

Given transboundary waters' prevalence, complexity and extreme importance, the extent to which transboundary water resources have actually *failed* to incite widespread inter-state conflicts is



remarkable: the last fifty years have seen only 37 acute disputes involving violence, and of these, only 21 were military acts, *of which all but 3 were between Israel and her neighbours*. By comparison, during the same fifty years, more than 200 treaties were negotiated and signed, and more than 1200 cooperative events took place (against a mere 500 conflict-related ones). History shows that most disputes are solved, even between bitter enemies, even while conflicts are erupting over other issues between the riparian states. The Indus River Commission survived two wars between India and Pakistan. Both the Senegal River basin and surrounding interstate relations have been under considerable stress since decolonisation. Nevertheless, her riparian countries have cooperated extensively. Based on the founding Convention of 1972, the 2002 Senegal River Charter obliges riparian states to cooperate toward 'optimal satisfaction of usage requirements', such as those of agriculture, inland fishing, forestry and ecosystems, hydroelectric energy production and provision of water for urban and rural populations.

Why are inter-state water wars so rare? First, an upstream riparian state has no *reason* for going to war at all, since it is her use of water that may affect the other riparian countries negatively, through for example the construction of dams for hydroelectric energy production, diversion of river courses, pollution etc. Secondly, a country would be inclined to take up arms *only to the extent that it sees a reasonable chance of military victory*. Thus, a structural prerequisite for water war seems to be that regional *military hegemonic power is also a downstream state*. But most hegemonic powers typically have a wide repertoire for securing their interests *vis à vis* neighbouring countries: instead of fighting a costly war - subsequently having to retain control upstream river management by means of perpetual occupation to ensure flow and quality - they may just as well use a combination of deterrence and economic enticements. Indeed, this seems to have been Egypt's tacit strategy in the Nile basin (see Box 5.4 below), spurring increasing regional integration and inter-dependence. Many experts now conclude that interstate war over transboundary water is *strategically irrational, ineffective, and economically unviable*. Water seems to be too important, too sensitive and too costly to access by means of violent coercion.

Transboundary watercourses are nevertheless highly contentious and capable of instigating serious conflicts - if not *between* states as such, then between adversaries across state borders, or within them. In fact, the somewhat fortunate 'fear of water wars' may lead some states to govern water unjustly, turning a blind eye to rights violations and subduing expression of legitimate concerns, for fear that these may hamper diplomatic interests. Indeed, as seen from the Ganges-Brahmaputra (see Box 5.1 below), transboundary water governance may be a considerable ethnic irritant, fuelling nationalistic fervour and political extremism. Political authorities may be tempted to close decision making processes to public participation altogether. This strategy may prove short-sighted, however: sooner or later, communities affected by interstate negotiations over transboundary water will feel the effects; having been excluded from decision making processes, they may react more fiercely than they would have had they been properly allowed a modicum of ownership of the outcome, though participation.

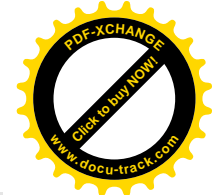


Box 5.1 The Dangerous Ganges-Brahmaputra Stalemate²⁷

The Ganges-Brahmaputra basin feeds down from the Himalayan Nanda Devi range, incorporating India, Bangladesh, Bhutan, Nepal and China as riparian states. The river has economic, social and spiritual importance for a staggering 500 million people, being essential to production of energy, industry, agriculture, navigation and others aspects of life. The High Himalayan countries and China sit at the uppermost part of the river, but do not rely on it to the same extent as India and Bangladesh. In fact, more than 90% of the Ganges' course is within India, before it flows into Bangladesh, joining the Brahmaputra and Meghna rivers on its way out into the Bay of Bengal.

The main point of contention relates to India's diversion of the river at the Farakka Barrage, completed in 1974: Farakka lies just a few kilometres into Indian territory, but it allocates or diverts almost the entire flow of Ganges along either the Hooghly system within India, or Bangladesh's Padma system. India's original reasons for regularly diverting the river along Hooghly were to flush out the port of Kolkata (Calcutta) which is becoming silted up, so as to ensure navigational, fishing, domestic and religious use deemed necessary for the livelihoods of millions in that city. But the Hooghly diversion route also ensures large swathes of India's West Bengal with enough water for human consumption, agriculture and industry during the dry season. For the south-western part of Bangladesh, however, the diversion constitutes a sizeable problem: the large-scale reduction of sweet water outflow is impeding downstream navigation and increases salinity in groundwater reserves and wells; fisheries and water-reliant agriculture, including production of jute and rice, have suffered immensely; so has public health. In the dry season as many as 30 million people are adversely affected. These problems, in turn, have created scores of environmental refugees (who, paradoxically, have fled across the border to India).

As early as 1975, just one year after the Farakka's completion and four years after Bangladesh had won independence from Pakistan with considerable support from India, Bangladesh publicly criticised the Farakka policy as violating her lower-riparian rights to the flow of the Ganges. Despite a run of agreements (the latest in 1996) and the establishment of a Joint Rivers Commission, there still is no permanent and satisfactory solution to the problem of water allocation at Farakka during the dry season. Over the years, Bangladesh has repeatedly appealed to the international community for support in upholding her rights, to much dismay from India. The Non-Aligned Movement, Islamic League, United Nations and The World Bank have all expressed their concern on various occasions, without putting much clout behind their statements. Both countries have churned out suggestions as to how the dilemma may be solved, but consistently dismissed each other's suggestions as unworkable.



India has stressed that Bangladesh should invest (as much as India did) in a *comparable barrage* on the north-eastern arm of Brahmaputra and divert some of the ample supplies into Bangladeshi Ganges, instead of mobilising cheap international sympathy to force India to do the job. Bangladesh, on its part, suspects that India is continuing with bilateral talks just to get its unilateral aim imposed on a smaller riparian state, away from the heavy international scrutiny of multilateral involvement. Consequently, Bangladesh is trying to draw Nepal into negotiations. The Bangladeshi vision of a solution has been that of setting up *water storage centres* in the Indian and Nepalese highlands, along the Himalayan stretch of the river, which may store excess water from melting and the rainy season to be released during drought.

Given the severe consequence of water scarcity during unabated droughts on both sides, it is no wonder that emotions run high. The promise of Bangladeshi politicians is to have India reverse practices it took up even before Bangladesh had won independence, practices which have caused hardship for millions, and still do. India's leaders are equally compelled to not let diplomats trade away the water of the West Bengalis. Thus, the nature of the river's benefit is seen as *zero-sum: what one side wins, the other loses*. In Bangladesh, it has been suspected that the complacency of the country's founding father, Sheikh Mujib Rahman, in face of the water dispute with India was a contributing factor in his assassination during the military coup in 1975. Political fervour feeds on the water issue, and the government is routinely criticised for not pushing India harder. The nationalistic flanks of the two countries are also increasing tensions by throwing accusations across borders: Indians claim that Bangladeshi authorities are machinating a mass media propaganda campaign; Bangladeshis claim that Indian authorities are sheltering anti-government dissidents.

The status quo perpetuates violations of the poorest Bangladeshi people's right to water, health and livelihoods. However, a 'solution' that would prejudice the rights of other the equally vulnerable people in West Bengal would hardly be a solution. The rhetoric of the conflict seems to perpetuate the perceptions that West Bengal's poor people are pitted against East Bengal's poor, and nationalism preys on faith-based identity divisions between the two countries. This suggests that active inter-faith and transboundary advocacy alliances - stressing the need for a solution that upholds the rights of *poor people in the whole Bengal delta* (be it West or East), may provide decision makers with more leeway vis à vis domestic nationalists. Two circumstances, however, have precluded such efforts. Firstly, inter-faith organisations themselves seem to get carried away in the political fervour of the conflict; secondly, due to its sensitivity, the processes surrounding policy formulation in the two countries have remained closed-off to any meaningful public participation.



5.2 Norms, Governance and Public Participation

5.2.1 International Law Still in the Making

Recent years have seen increasing efforts to set up a multilateral normative framework for the governance and arbitrage in contestation of transboundary waters. The highest authority in adjudicating conflicts over transboundary freshwater is the International Court of Justice (ICJ). Article 38 of its Statutes lists two recent sources of international law: the Helsinki Convention (1996) for the Protection and Use of Transboundary Watercourses (comprising signatories from Europe, North America and Central Asian), and The UN Convention on the Law of the Non-navigational Use of International Watercourses, adopted by the UN General Assembly in 1997. The UN Convention reflects broad agreement among world states on key legal principles such as *'equitable and reasonable resource use'* and *'duty not to cause significant harm'*; it stipulates *measures for ecosystem protection, information sharing, institutional conflict resolution and the protection of resources during armed conflicts* (p 302). While the UN Convention has considerable authoritative weight it falls way short of ensuring just governance of transboundary freshwater:

- i) The convention is signed by a mere 16 countries (including Cote d'Ivoire, Namibia, and South Africa from developing country ranks), and is implemented in domestic law (ratified) by just nine, whereas 35 ratifications are required to imbue the UN Convention with international legal status.
- ii) Its text is vague and potentially contradictory. While the principle of *'no significant harm'* was instrumental in ensuring support from downstream riparian states (such as Bangladesh and Egypt), the principle of *'reasonable and equitable use'* was equally instrumental for upstream countries (such as India and Ethiopia). The final wording provides no clear guidance as how to resolve situations when these principles are in conflict as they commonly are.
- iii) Article 32 of the UN Convention allows riparian countries to decide amongst themselves whether or not to provide *access to justice across borders* (see further discussion below).
- iv) There exists no real enforcement mechanism to back up the convention. Its institutional home, The International Court of Justice, hears cases only with *the consent of all involved parties*; in its fifty years of existence, the ICJ has adjudicated definitively in only one case pertinent to international waters (in a conflict between Slovakia and Hungary over interventions in the Danube River in 1997).
- v) The convention addresses only those groundwater bodies that are directly



connected to surface water systems - that is, shallow and unconfined aquifers. Meanwhile, a number of countries - in Northern Africa and the Middle East in particular - are increasingly drawing water from deep transboundary aquifers.

5.2.2 Claiming Space for Public Participation

The principle that governments must ensure the general participation of her people in matters that affect them is heeded to the extent that the same governments can be held to account through democratic elections. But such general accountability, based on majority decisions in one form or another, must be complemented by an additional principle, namely, that *the greater the effects of a particular decision on a certain group, the more extensive the participation of that group ought to be*. In recent history of managing transboundary freshwater, governments have nevertheless been 'forgetful' about this due to the perception that rights protection and messy public involvement may be hard to reconcile with diplomatic sensitivities. But an upstream riparian state cannot legitimately intervene in a watercourse without paying attention to the concerns of affected transboundary communities (whose rights to water, health and livelihood are thus affected). This is true even if the counterpart riparian government - who should be accountable to these interests - accepts the intervention for diplomatic reasons.

The failure to involve affected communities may also prove *unwise for interstate relations in the longer run*. The lesser the scope for institutional involvement of affected people, the more likely it is that stakeholders will resort to hard-line confrontational strategies when they are eventually trampled on. International accords and institutions thus come under severe political pressure and may be reduced to 'dead letters' (as is the tendency with the Ganges-Brahmaputra agreements). Moreover, such participation is now a norm under international customary law. As seen in Chapter 4, Principle 10 of the 1992 Rio Declaration on Environment and Development and its implementing instrument Agenda 21 (Chapter 18) compels all signatory states to ensure full public participation.

As in the context of national water management, civil society organisations should scrutinise the extent to which the 'three pillars of participation' are provided for in policy and practice. Firstly, *access to information* is the cornerstone of public involvement. It includes the right of the citizen to obtain (freely, or at an affordable price) information on the *state of a watercourse* (e.g. its quality and quantity). Furthermore, the government must *actively disseminate information* about *proposed interventions* in the watercourse. Such rights and duties may be upheld through the setting up of watercourse websites, as is done by the Nile Basin Initiative and The Mekong River Commission.

Secondly, access to *meaningful participation* in policy making processes and implementation is the centrepiece of public involvement. The communities that are affected must at least be *consulted* (that is, given institutionalised opportunity to voice their concerns and opinions), and their concerns should *reflect in decisions*. In the context of interventions that can be decided within the jurisdiction of a single state, such participation is commonly offered through undertaking so-called



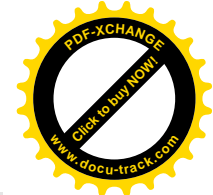
Environmental Impact Assessments (EIAs). In transboundary water management, however, such undertakings will commonly take place *after* the consent of other riparian states is granted. The problem being that transboundary affected communities are not considered or heard properly in the early processes of interstate negotiation (see Box 5.2 for an arrangement that might mitigate this problem).

Box 5.2 Improving the Governance of The Mekong River Basin²⁸

Public involvement can identify human rights problems in the planning phase of an intervention. If affected communities are not allowed to participate, negative public reaction to unaddressed issues can lead to major, possibly violent, protests. Most of the damage of the Mekong was historically caused by technocratic state interventions. Thailand's construction of the Pak Mun Dam on a tributary of the Mekong did not include affected communities in the planning at all. After its completion in 1994, these communities have steadfastly refused to accept the government's compensation scheme. During the early 1990's, downstream fishermen used to earn US\$ 440 per month. By 2000, as the impoundment of water had severely affected the natural migration of fish, the comparable salary of fishermen downstream had plummeted to US\$ 80 per month. Now, unexpected costs have increased the dam's overheads to such an extent that the cost-benefit analysis has been fundamentally altered.

After signing a 1995 Cooperation Agreement, The Mekong River Commission (MRC) - comprising Cambodia, Laos, Thailand and Vietnam and thus 70 million basin inhabitants - is now aspiring to become a *model case in ensuring public participation*. The highest authority of the MRC is the *Council* (of Ministers), which meets once a year. The *Joint Committee* consists of one member from each country (at no less than head of department level), and is responsible for the implementation of the policies and decisions of the Council, and supervises the activities of the MRC *Secretariat*, which functions as an executive board of management. The *National Mekong Committees* (NMCs) coordinate MRC programmes at the national level and provide links between the MRC Secretariat and the national ministries and line agencies. The principal implementing agencies of the MRC programmes and projects, however, are the line agencies of the riparian countries in the Lower Mekong Basin. They are served by the respective *National Mekong Committee Secretariats* (NMCSs) in each country. It is at the level of these NMCs/NMCSs - and directly vis à vis the basin-wide *MRC Secretariat* in Vientiane, Laos - that institutional civil society participation must be granted.

Civil society should strive to exploit such 'insider' advocacy opportunities. The political climate in the region is not very conducive to public, confrontational strategies such as



mobilising media and political parties, and considerable problems remain with regard to existing and planned interventions: Thailand plans to divert Mekong's headwaters from the northern Kok and Ing tributaries into the non-transboundary Cahophraya river, without much concern for affected communities; Vietnam recently completed the Yali Falls Dam on the upstream Se San (which feeds Mekong via the Sre Kong tributary). After commencing power generation in 1998, the irregular release of water has caused severe flash flooding, forced evacuation, human and livestock illness associated with contaminated river waters, loss of cropland and waning fish stocks. China - who (along with Burma) is not a member of MRC despite being an important upstream riparian - is not involving either her own population or other riparian countries in the ongoing building of a cascade of dams. *Man Wan*, the first of these completed, has left the Upper Mekong Fisheries in Thailand and Laos in ruins; river levels have become completely uncertain, and fisher folk can no longer read the water levels and select the right equipment.

Visit: www.mrcmekong.org

The third pillar of public participation is *access to justice*: affected people must be granted opportunity to seek redress - *to halt or adjust interventions, or claim appropriate compensation*. Unlike seeking access to meaningful participation, access to justice is sought *after rights violations have taken place*. In the case of transboundary water that feeds vulnerable ecosystems and livelihoods, actions taken *after the fact* may in some cases be too late. Still, civil society should advocate for mechanisms of redress and exploit these through litigation. Not only will this ensure some retributive justice for the poor, but it may also change the logics of the political game. Policy makers will realise that cost of 'quiet' interventions without messy participation may be high in financial and political terms (as was the case with Thailand's Pak Mun Dam, see Box 5.2), and that it is better to include stakeholders in the policy making processes preceding intervention.

In a democracy, access to justice should ideally follow from the *rule of law*: if people's right to water is reflected in law, then one expects this to be enforced by the state and upheld by courts. But laws might be ambiguous or contradictory as to *whose rights to water shall prevail in case of conflict*, law enforcement may be lax or arbitrary, and poor people's real access to impartial courts may be illusory. Such barriers to justice are certainly compounded in the case of transboundary waters. Could Bangladeshi communities possibly take a 'class action' suit to an Indian court, against India's government, on account of right-to-water violations caused by Farakka Barrage practices? Not today. But the 1997 UN Convention may provide the blueprint for such opportunities in the future. Article 32 of the Convention reads:



“Unless the watercourse States concerned have agreed otherwise, for the protection of the interests of persons, natural or juridical, who have suffered or are under serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse state shall not discriminate on the basis of residence or place where the injury occurred, in granting to such a person, in accordance with its legal system, access to judicial or other procedure, or a right to claim compensation or other relief, in respect of significant harm caused by such activities carried out on its territory”²⁹

The implication is clear: in order to ensure access to future justice for vulnerable communities living along transboundary watercourses, civil society organisations should advocate for the accession of riparian governments to the UN Convention, and compel them to refrain from exploiting the opening sentence of article 32 (*“Unless the watercourse States concerned have agreed otherwise... ”*), which may be invoked to block downstream communities’ access to justice.

5.2.3 Holding The Bank to Account on its Promises³⁰

As things stand today, some of the better opportunities for public participation in the management of transboundary watercourses flows from the involvement of the World Bank, itself a vindication of advocacy’s importance. The Bank’s commitment to public participation stems from occasions in the past when civil society organisations embarrassed it deeply by pointing to unacceptable rights breaches stemming from water-related projects that the Bank had financed.

Box 5.3 How the Bank Became a Fan of Public Participation

After the Sardar Sarovar Dam and irrigation projects in Narmada Valley in India sparked massive criticism in the mid-1980s, the Bank set up the Morse-Berger Commission to carry out an independent review of the projects. In 1992, the commission concluded that:

“We think that the Sardar Sarovar Projects as they stand are flawed, that settlement and rehabilitation of all those displaced is not possible (...) and that the environmental impacts of the Projects have not been properly considered (...). Moreover, we believe that the Bank shares responsibility with the Borrower [India’s government] for the situation that has developed”

In lending money to developments of transboundary watercourses, the Bank is now the fiercest supporter of Principle 10 of the Rio Declaration. The Bank now applies a series of ten procedural safeguards when considering a project so that its involvement will ‘do no harm’ to people or the environment, and that they deliver positive benefits to those affected.

Visit: <http://www.worldbank.org/>



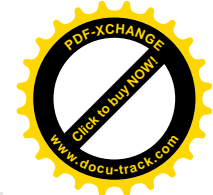
According to current policy, the Bank may only finance intervention in transboundary watercourses to the extent that the project has received “positive consent” from other riparians, or on the condition “that the project will not cause appreciable harm to other riparians”. And recent practice demonstrates that the Bank walks the walk: it helped facilitate the negotiations of the recently concluded Water Charter of the Senegal River (comprising Mali, Mauritania and Senegal), in which non-governmental representatives are ensured observer status in the official body that determines water allocations. The Bank was also instrumental in ensuring the first ever Transboundary Environmental Analysis for the Nile River Basin, in which civil society actively participated.

Box 5.4 The Nile Basin Initiative

The Nile is the longest river in world (6,700 km) and one of the greatest natural assets known to man. Throughout history, the Nile has sustained millions of livelihoods, an array of ecosystems, and rich cultural diversity over an area of what is today made up of 10 riparian countries: Burundi, D.R. Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Uganda and Tanzania. Together, these countries comprise 300 million people, 40% of Africa’s population. Today, the Nile is surrounded by the multiple challenges of extreme poverty, political instability, severe environmental degradation and disastrous livelihood losses (especially in the East African highlands).

The relationship between Egypt and Ethiopia is uneasy. Egypt is located in the flat desert lowlands and is totally dependent on the Nile water. While Egypt has relied on irrigated agriculture for thousands of years, Ethiopia - whose highlands catch 86% of all the Nile water Egypt uses downstream - has only sought to expand irrigation over the last 50 years. 2 million Ethiopians are chronically hungry; domestic food needs cannot be sustained by rain-fed agriculture alone. Ethiopia says it has the right to develop its irrigation infrastructure, referring to the principle of ‘equitable use’: the fact that Ethiopia has not exploited its fair share before now cannot condemn her to drought forever. But in Egypt’s opinion, such interventions would violate the principle of ‘not causing harm’.

In 1999, the Council of Ministers of Water Resources (NILE-COM) launched the *Nile Basin Initiative* (NBI), a basin-wide ‘framework’ through which all riparian states cooperate to govern water properly, fight poverty and promote development. The vision is to achieve sustainable development through equitable utilisation of, and benefit from, common Nile water resources. Currently, the World Bank helps NBI raise international funds for transboundary environmental action, power trade development, efficient water use for agricultural production and confidence-building and stakeholder involvement. While the Nile’s physical water cannot be distributed much differently from today’s practice without causing tremendous regional instability, the ‘virtual water’ values inherent in the products



that are produced by the river - food, jobs and energy - probably can. The World Bank hopes such cooperation will create synergies and positive interdependencies that help avert serious conflict.

Visit: www.nilebasin.org

After the Morse-Berger Commission, the Bank also set up an Inspection Panel to address complaints from claimants who established that they were adversely affected because the Bank policies or procedures were violated during the design, appraisal and implementation of a World Bank-financed project. So far, the Panel has received 28 claims, in almost all of them local citizens have alleged that they were not adequately consulted. However, the Panel may only “receive requests for inspections presented to it by an affected party in the territory of the borrower”, suggesting that the mechanism has limited value for an adversely affected party in a downstream riparian country. Invoking the Bank policy that it will only finance a project only to the extent that it “will not cause appreciable harm to other riparians”, civil society organisations that form transboundary alliances may nevertheless take transboundary cases to the Panel.

5.3 Applying the Advocacy Planning Framework to Key Issues

5.3.1 Harmful Intervention in Transboundary Watercourses

Issue: Your organisation suspects that the water rights of your constituents are violated by an upstream intervention a neighbouring country on a transboundary watercourse upon which they rely.

Or: Your organisation suspects that an intervention on a transboundary watercourse in the territory of your country is violating the water rights of poor people in the neighbouring state.

Research and Analysis: Alongside documenting the current/prospective effects on poor people on either side of the border, your research should identify the relevant public body mandated to govern the river, and provide tentative answers to the following questions: Why were your concerns not reflected - or not even considered - in the governing body's decision? Does it lack participation of civil society groups, and are there entry points for such participation? To what extent are there legal grounds and judicial mechanisms in place so that you may seek reparation on behalf of the affected people? Is the intervention funded by international agencies (as is almost always the case with dams), and do the circumstances of the case allow you to file a complaint to the World Bank's Inspection Panel?



Objectives and Targets: Given the complexity of transboundary issues you may have to set multiple objectives, such as, 'to halt actual intervention and ensure reparation'; 'to ensure that a legal framework for public participation and access to justice is established (including the government's accession to the UN Convention)'; and 'to gain actual participation rights in bodies for your organisation/alliance'. Equally, targets may be multiple and may comprise responsible cabinet ministers (both domestic and in neighbouring country), lawmakers, or governing bodies.

Approach and Messaging: Transboundary issues are often complicated by outflanking nationalist sentiments, and you should be careful not to feed such sentiments. Shy away from confrontational approaches, and if still necessary, limit them to litigation either in courts (as suggested in the UN Convention Mechanism) or to the World Bank Inspection Panel. For the same reason your messaging should downplay nationalist or ethnic dimensions, and focus on the extent to which 'poor people on both sides of the border' are adversely affected.

Allies and Resources: A transboundary alliance is indispensable. If the intervention is in the neighbouring country you *must* have a partner there to facilitate access to justice (Courts or World Bank Inspection Panel), and to downplay nationalist sentiments. If the intervention is on your domestic territory, the same needs on the part of neighbouring organisations make it imperative that you cooperate. You may also seek expert and financial assistance from overseas partners such as NCA.



6

Climate Change

“And now we face a crisis with unprecedented danger that also presents an opportunity like no other”

Al Gore, US presidential candidate-turned-environmental activist³¹

6.1 Overview

6.1.1 The Weather Does Not Work for the Poor³²

The biggest and most complex challenge facing the world’s transboundary freshwater is climate change. Rising temperatures are affecting freshwater access directly, by means of *evaporation* and *melt-down of ice mass*; and indirectly, by modifying transboundary weather systems so that they increasingly *cause too much rain* (where there is enough), *or too little* (where more is needed). Just as rivers, lakes and wells are affected by man’s actions, so is the climate. But climate systems are footloose and so complex in nature that it is hard to stipulate precisely *whose actions* are accountable for *which changes*. Therefore, it is also difficult to govern climate matters. Most people are tempted to think that ‘there is little we can do about it, anyway’, and go on with business as usual. This attitude, however, is a betrayal of the poor. It is when we view climate change through the prism of poverty that the gravity of the phenomenon becomes clear: 185 million people in Sub-Saharan Africa alone could die of diseases directly attributable to climate change by the end of this century. If allowed to continue unabated, climate change will throw 150 million people into the unfortunate status of environmental refugees.

While the evidence is still contested, most experts now agree that global warming is causing the increasing intensity and occurrence of floods and droughts. During the 20th century, world average surface temperature increased by 0.6 degrees Celsius, but as much as two thirds of the increase



came after 1975. Looking ahead, the UN's Intergovernmental Panel on Climate Change (IPCC) has warned that the 21st century will see increases of between another 1.5 degrees and 6 degrees. And IPCC is clear in placing the blame: rising temperatures are caused by huge leaps in emissions of so-called *greenhouse gases* - prominently *carbon dioxide* (CO₂), emitted from burning of fossil fuels such as oil, coal and natural gas - which trap energy in the atmosphere. In the summer of 2006, IEA predicted that in the light of current developments, CO₂ emissions may triple by 2050.

If the impacts of climate change actually were to hit those causing the changes, then the phenomenon would soon be addressed. Unfortunately, climate change does not work that way. The worst polluters barely feel the consequences, whereas non-polluters are facing disaster. Those most vulnerable to the vagaries of the weather are experiencing the most extreme changes. The already dry areas of Africa, the Sahel in particular, are likely to become dryer. Meanwhile the wet tropics, which already have their unfair share of floods and sea intrusion, will grow even wetter. Sea levels will rise and affect large swathes of Africa's and South Asia's coastlines, and the frequency and intensity of severe weather events will increase. The tendency from recent history is alarming: the number of reported natural disasters trebled from 1110 during 1970s, to some 2935 in the 1990s; the number of people affected by storms and floods increased from 740 million in the 1970s to 2,5 billion in the 1990s. Experts say that climate change cannot be blamed for the next *El Niño* that hits. But it may be to blame for the *increasing frequency* of hurricanes, and is certainly is to blame for the their *increasing intensity*. For vulnerable people, frequency and intensity is a major problem: the multiple cyclone floods that ravaged Mozambique in 2000-2001 destroyed a third of the country's crops; 350,000 lost their jobs, undermining the livelihoods of 1.5 million people.

6.1.2 Disease

Warmer weather and more rain is good news for the Malaria mosquito, which stands to spread into new habitats, including the previously cool highland areas of Tanzania and Uganda. Dengue fever, also carried by mosquitoes, along with Rift Valley fever and parasitic diseases such as deadly Visceral Leishmaniasis, will also spread with wetter weather. Hot, fetid conditions encourage the spread of Cholera, too. Meningitis, on the other hand, thrives in hot, dusty regions like the Sahel, and will increase as such regions stand to experience further drought. Christian Aid has estimated that by the end of this century, 185 million people in Sub-Saharan Africa alone could die of diseases directly attributable to water-related climate changes.

6.1.3 Droughts and floods

Non-irrigated, rain-fed agriculture accounts for about 60% of agricultural production in developing countries. But rain-fed agriculture is very vulnerable: given the high risks of yield reductions or loss associated with dry spells and droughts, small farmers are commonly reluctant to make productivity enhancing investments in nutrients, seeds and pest treatment. Meanwhile, they must put in huge amounts of labour to ensure efficient use of rainwater, including digging of ditches to exploit surface runoff, local catchments for harvesting of rainwater, and building of bunds and ponds for



storage. Some experts fear that the projected climate change effect on rain-fed agriculture will reduce Africa's crop yields by 10% within a generation, and much more in some places; Tanzania's production of key food security staples such as maize is expected to fall by 33%; in Sudan, food staples such as millet are expected to fall by between 20% and 75%, and sorghum by between 13% and 82%. Again, it is particularly disconcerting that this will hit those already at risk. Changes in rainfall are likely to affect the Horn of Africa where millions are already chronically food insecure. Along with the Horn of Africa, FAO has identified Zimbabwe, Malawi and Zambia as being the other African countries most at risk of drought and concomitant famine.

Climate change does not only affect weather systems and consequently rainfall; temperature increases also cause *evaporation* of water, and *meltdown* of major glaciers and ice caps. For the first time in living memory, glaciers on Mount Kenya are failing to grow back to their normal size after periods of drought and recessions, and now seem destined to disappear. Kilimanjaro has lost *more than 80% of its ice mass* in the last century. While the historical intervals of melting and repletion were benevolent to downstream communities, the current level of ice exhaustion forewarns future droughts; key reserves held in ice and glaciers now seem set to deplete altogether. This will have devastating effects on some of the region's most fertile lands across the border to Kenya; the city of Mombassa is expected to face serious water scarcity as the glaciers on Kilimanjaro feed the natural reserves of its drinking water, the Mzima Springs. Meanwhile, in the Himalayas, the combination of ice melting precipitated by rising temperatures and increasing rainfall are causing increasing volumes of water to cascade down the mountainsides and valleys, posing real dangers to the millions of people inhabiting the fertile but flood-prone lowlands in Bangladesh. During the floods of 2004, 80% of all crops were damaged or destroyed, and a staggering 30 million people lost their homes.

6.1.4 Conflict and refugees

When wells dry up, livestock dies and crops wither, existing competition and conflict will sharpen. Again, the Sahel region is at great risk. The many pastoralist (nomadic herders) groups and clans have a history of disputes and a main cause for deadly conflict - alongside small arms proliferation and general poverty - is now the drying up of wells, which makes traditional livestock routes unsustainable.

BOX 6.1 Climate Change Fuels Deadly Conflicts in Kenya

Sambarwawa, a valley in the heart of Northern Kenya's Isiolo district, has historically been rich in shallow groundwater reserves, and thus been a place where pastoralists congregate in times of drought. Each group of pastoralists is allocated a space on Sambarwawa's dry riverbed to drill a borehole for water. They are allowed to bring their animals to drink here once every four days during the dry season. 'It's a sort of cafeteria system to ensure



everybody has a chance to get water for their animals,' says local leader Wako Liba.

But the system has recently come under extreme strain, because of a decade of drought. By late 2005, some 10,000 herders with 200,000 animals had descended on Sambarwawa, many trekking more than 400km from the drought's epicentre to get their animals water. Although the village had not seen rain for a year, they knew they would still find water under the riverbed. But now the boreholes started to dry up too. 'As the water level dropped, I foresaw conflict', says Liba. 'Some herders started encroaching on boreholes owned by different communities. As one group pushed to water its livestock, another moved to restrict access to the few boreholes that had enough water'.

In December, as the drought intensified, the pressure led to killings. 'Gunshots reverberated the whole night,' Liba recalls. 'By the time I came down, seven people had died. There were dozens of injuries. Animal carcasses littered almost a kilometre stretch of the valley.' David Kheyle was queuing for water when fighting broke out. 'People were becoming impatient. Suddenly there was a scramble at the northern end of the valley... it was a free-for-all. But it later took on an ethnic dimension, when people aligned with their kin to defend themselves.' Over the next 40 days there were another four violent incidents, resulting in two more deaths. More than 3,000 animals were stolen in the confusion.

Arkan Athan Hussein, an 18 year-old herder, was injured and witnessed the killing of his friend, Abdi Maalim. 'Six armed people emerged from nowhere. They wanted us to help them drive their livestock to the watering point. We couldn't do that. The use of boreholes is restricted so we couldn't push through someone else's herds. As we resisted, one of them raised his AK-47 and shot Abdi in the chest and shoulder. As I fled, they shot at me.' Arkan's father tells that in the 40 years he has been coming to Sambarwawa, this is the first time that there has been such violence. Experts from the Africa Peace Forum and from the Intergovernmental Panel on Climate Change confirm that there is an established link between drought and violence, as droughts stiffen competition over scarce water and pastures.

Recent drought has also triggered violence between communities in Naivasha's Mai Mahiu area, 90km northwest of the capital Nairobi. In January and February 2005, 22 people were killed and many more hospitalised in fighting over a water point on Ewaso Kedong river. When farmers diverted water to irrigate their farms, Maasai pastoralists living downstream illegally occupied their land, stole livestock and destroyed water pipes in protest. The Maasai were desperate for water because the Kajiado district, where they live, had received less than 20% of its usual rainfall during 2004 and 2005. The violence took on an ethnic dimension, as gangs from different tribes staged revenge attacks, pulling Maasai passengers out of buses and killing them with machetes, spears and arrows.



In the Marsabit district on the Ethiopian border, Borana and Gabra pastoralists are feuding over access to water, grazing and land. On July 12, 2005, 56 people (including 22 primary school children) were killed in Turbi village. Another 2 people died in revenge attacks, as Borana passengers were pulled out of buses and murdered. Feuds are crossing borders, raising the fearsome spectre of war: in the spring of 2006, drought had caused serious conflicts between Kenyan and Ugandan pastoralists, while Ethiopian troops moved into parts of Northern Somalia to stop Somalis from crossing the borders in search of pasture and water.

Source: Excerpts from Christian Aid (2006): [The Climate of Poverty](#). Pages 29-30.

Visit: <http://www.christian-aid.org.uk/indepth/605caweek/index.htm>

The Red Cross says that nearly 60% of all current refugees, 25 million people, owe their displacement to climate change. IPCC has warned that by 2050, a combination of rising sea levels, erosion and agricultural damage caused by climate change could have driven 150 million people into the unfortunate status of environmental refugees.

6.2 Curbing Emissions, Creating Alternatives

6.2.1 Holding the Polluters to Account

Whereas the consequences of climate change affect poor people with disproportionate severity, the causes of climate change stem from rich countries. While poor people and countries are minor users of fossil fuel, *industrialised nations account for 80% of all carbon dioxide in our common atmosphere*. Within Africa, emissions are unevenly distributed, too: South Africa accounts for 40% of the continent's emissions, while North African countries and Nigeria together emit another 40%. 28 countries in Africa emit less than 0.1 metric tonnes per capita per year, compared to USA's 24 tonnes per capita per year. Thus, the average Sub-Saharan African citizen causes *200 times less* carbon emissions than the average American citizen. Yet, it is the health, livelihoods and basic rights of African children that are threatened by these emissions.

Even a modicum of decency suggests that the rich countries must assume the responsibility for cutting back global emissions. This recognition was partly reflected in the 1997 Kyoto Protocol. While 164 countries have ratified the Protocol to date, only 25 rich countries plus the EU (15) are required by 2012 to reduce greenhouse gas emissions below levels specified for each of them, listed in the crucial Annex B. But Kyoto will not deliver much progress: firstly, to substantially halter climate change, no less than a 60% reduction in 1990-level omissions is required, according to estimates by *Global Health Watch*. This places rich countries' average reduction commitments of a meagre 5% in a sobering perspective. Secondly, few Annex B countries actually deliver on their



promises: Norway, the richest country in the world, has committed herself to emitting just 1% above 1990-levels by 2012, but is now hopelessly behind schedule, currently emitting 9% above 1990-levels. Thirdly, the world's two worst polluters in per capita terms - USA and Australia - have indicated that they will not ratify the Kyoto Protocol as they refuse to surrender sovereignty over their 'way of life.' In the medium-term perspective, civil society organisations must advocate that, upon the Protocol's expiry in 2012, a new international agreement that sets more ambitious and enforceable targets, and one to which the world's worst polluters commit themselves, must be in place. Meanwhile, some of the bigger developing economies are fast becoming major polluters. While its emissions are still below world average in per capita terms, China is now the world's second largest overall emitter of greenhouse gases and, despite record economic performance over the last 15 years, still needs to see more energy-consuming growth as 150 million Chinese are still poor. India, with its 300 million people below the poverty line, is eager to catch up, too. But neither China nor India are signatories of the crucial Annex B of the Kyoto Protocol, and are consequently not obliged to cut back on their emissions.

While the challenge of cutting back the greed of the rich is a urgent matter of *when and how*, the questions as to whether developing countries should constrain their overall emissions are still about *if and why*: developing countries have barely started to use the huge amounts of energy required in order to lift their hundreds of millions out of abject and unacceptable poverty, yet alternatives to fossil fuels are not easily available. *Only 8% of Africa's rural populations have access to electricity*, leading to extensive burning of firewood for cooking, which contributes to further environmental degradation by cutting down the very trees that hold fragile soil together, prevent erosion and desertification, help consume CO₂ and provide medicine and building materials. But is it morally defensible to demand that developing countries must 'do as the rich countries say, and not as they do', and forfeit future carbon emissions? No. Christian Aid stresses that the rich countries must assume the responsibility for cutting their emissions to such an extent that there is space for both increasing carbon emissions from developing countries and stabilising the climate at the same time.

6.2.2 Avoiding the Oil Trap: Sugar and Sunshine?

Nevertheless, developing countries must strive to avoid becoming the junkies of fossil fuels that rich countries are, so as to not compound climate changes that affect transboundary water adversely. Fortunately, there are arguments for a switch to *renewable energy* that are economically and socially compelling in their own respect. The first argument relates to oil: oil is the main fossil fuel and provides 40% of the world's energy. But it is becoming prohibitively expensive. Experts forecast that the price of US crude for the whole of 2006 will average US\$ 68 per barrel, a huge increase from US\$ 25 just four years earlier, and almost double the price per barrel when world leaders formulated the *Millennium Development Goals*. Many foresee that the price will crash through the ceiling of US\$ 100 per barrel; Middle Eastern oil supplies are likely to remain sluggish as political turmoil, violence and a perpetual state of war seem set to continue.



For most of Sub-Saharan Africa, the consequences of high oil prices are already dire, even though the region is a minor consumer of the world's oil. If we optimistically assume that current demand volumes will remain stable, and further assume that oil prices will remain high, Sub-Saharan Africa must spend an *additional* US\$ 57.4 billion in the years 2004-2015 *just to cover the increase* of its oil bills. This amount of money could have bought vaccination and primary education to all the world's children, provided antiretroviral therapy and HIV education to everyone in such need, or financed the purchase of an insecticide-treated mosquito net to everyone in the world. And one would still have US\$ 18 billion left over to spend on providing freshwater for the poor. If there is any single factor that will have to take the blame for African countries' failure to reach the Millennium Development Goals by 2015, then it will be their continued dependence on oil imports. Another argument for these countries not becoming oil junkies is that renewable energy is inherently and easily pro-poor: it can be localised and provided 'off-grid', requires no building of huge power stations nor costly distribution infrastructure for distribution, and thus represents a 'fast track' to enhance the lives of nearly a third of the world's population that currently have no access to electricity. In fact, simple solar panel technology is perfectly capable of serving households and small business, completely off-grid, with no adverse social and environmental consequences whatsoever. The problem with renewable energy is that the required upfront investments are much higher than comparable investment in traditional energy: a diesel generator typically costs only half the price of a solar power generator. For poor people it does not help much that the latter pays for a lifetime's supply up front, while the diesel generator requires the continuous purchase of ever more expensive fuel. It is costly to be poor. Investment challenges could easily be offset by intervention: if the World Bank redirected only one year of its spending on fossil fuel projects to solar installations in Sub-Saharan Africa instead, it would provide 10 million people with electricity. All of Sub-Saharan Africa currently living without electricity could be provided with energy from small-scale solar facilities for less than 70% of what OECD countries currently spend on subsidising their dirty energy production every year.

Africa's untapped economic potential for renewable energy is actually enormous. Less than 7% of Africa's hydropower potential has been harnessed, and many are eager to exploit the potential. Now, it seems somewhat unwise to replace one type of energy production that harms poor people's access to safe freshwater (burning of costly oil derivatives) with another type that might do just as much harm (massive hydroelectric dams). So, in the short to medium term, one should rather emphasise energy alternatives that are pro-poor; in fact, biomass - bio-ethanol, in particular - has considerable pro-poor potential. More 20% of all of Mauritius' electricity currently comes from burning bio-ethanol, a sugar derivative. In fact, it is estimated that 16 countries in Sub-Saharan Africa could meet a significant proportion of their current electricity consumption by transforming their sugar into bio-ethanol. A comparable replacement of fossil energy may also be achieved by investing in public transport and cars that are fuelled by bio-ethanol.



6.2.3 Tomorrow's Promise: Concentrated Solar Power

The real, long-term promise, however, is still solar power. Today's curse in large parts of Africa - unbearably hot and dry weather - may eventually become a partial blessing. Today's solar technology derives energy from the *light* of the sun, and does not lend itself to the large-scale production required to power industry. This is changing with emerging technology that derives energy from the *heat* of the sun; *concentrated solar thermal power*. Such technology, requiring large inhabited land areas and sunshine to work, is currently being put to use in India, Egypt, Morocco and Mexico. According to Greenpeace, solar thermal power will be capable of producing electricity for 100 million people across the world within just two decades. In many regions of the world, tapping the sun's heat onto one square kilometre of land is alone enough to produce 120 gigawatt hours of electricity per year; the entire life span of this single solar thermal power facility will provide the same amount of energy as is contained in five million barrels of oil. One stakeholder explains that both technically feasible and affordable forms of renewable energy already exist and far surpass humanity's needs. If the deployment of concentrated solar power plants were to grow by 25% per year - which is technically, economically and logistically feasible - then within 40 years we could achieve much of what needs to be done to provide affordable, reliable and secure power for worldwide needs, and to stabilise the world's climate.

6.3 Applying the Advocacy Planning Framework to Key Issues

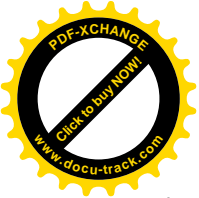
6.3.1 Harmful Climate Change

Issue: Your organisation suspects that deteriorating water quality /quantity in your constituent communities is attributable to climate change.

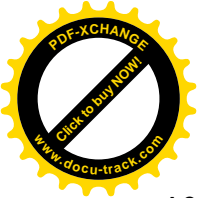
Research and Analysis: To elicit the political changes needed to halt climate change will take decades and require the concerted effort of thousands of organisations from across the globe. But to document the dreaded footprints of climate change in your community is no waste of time, even if the research may not yield results in the foreseeable future, nor will appear as more than a detail on a huge canvas. Documentation is like adding the voice of the people in your community to the quietly emerging roar of global civil society; there would, of course, be no roar were it not for the many individual voices.

Objectives; targets; approach and messaging: The perpetrators of climate change are not developing country governments (with some exceptions). Therefore, both objectives and targets must relate to northern governments. The best thing you can do is to inform, guide and engage local people about how to undo the injustice of climate change, and feed northern partners with documentation and popular narratives.

Allies and Resources: Without northern partners your concern cannot find its way to the relevant



target; and without your documentation, northern organisations cannot convince the target. So the only response to the dread of climate change is to form north-south 'alliances of necessity.' You may also form 'alliances of opportunity' with national research institutions and universities: while you can provide them with access to local communities and the raw data, they can collect and analyse this data properly. In either case, many northern organisations will be ready to help you with expertise and funding.



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The Sourcebook was researched and written by Simon Pahle on an independent consultancy assignment. Previously a Policy and Advocacy Advisor in NCA, Pahle is currently Research Fellow at Norwegian University of Life Sciences, Department of International Environment and Development Studies (NORAGRIC).



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