



INSTITUTE FOR AGRICULTURE AND TRADE POLICY

March 26, 2010

To: Ms. Catarina de Albuquerque,
Independent Expert on the issue of human rights obligations related
to access to safe drinking water and sanitation
ESCR Section, Special Procedures Division
UNOG-OHCHR, Palais des Nations
Geneva, Switzerland

RE: Response to request for input on human rights obligations in the context of private-sector participation in the provision of water and sanitation services (providing specific instance)

Dear Ms. de Albuquerque,

The Institute for Agriculture and Trade Policy (IATP) continues to be extremely grateful for the opportunity to share our views and experiences. We applaud you for taking this issue on board, providing a chance to both proponents and opponents of “private sector participation in the provision of water and sanitation services” an opportunity to present their views in writing to the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Thank you!

Through a case study below we will be engaging with three specific questions that you raise:

- Which obligations do States bear in the context of private sector participation in the provision of water and sanitation services?
- What should the regulatory framework put into place by States provide for?
- Apart from regulation, what additional measures, structures and institutions are necessary?

“Human rights obligations in the provision of water and sanitation services, in the context of private sector participation” is a dimension of privatization that has not received adequate attention in this process so far.

That is, we request your office to have a focus not only on human rights in situations where the private sector supplies water, but more broadly on the human rights obligations in the provision of water and sanitation services in the context of private-sector participation, irrespective of whether the private sector is directly involved in water provision or not. [If your mandate was broader we would have requested for a focus on these issues in the context of any investments whether private or public.]

Any private sector intervention has implications for water availability for other uses in the locality, including water for basic livelihood needs. In today's water-challenged world it is no longer possible, when water is diverted for new private and/or public investments, to ignore the human rights obligations related to access to safe drinking water and sanitation.

In support of this, we take note of the [submission](#) by the World Business Council for Sustainable Development's (WBCSD) Water Working group, on human rights obligations related to equitable access to safe drinking water and sanitation, dated April 13, 2007. Under section a) 1. General, they acknowledge that governments have an obligation to provide the necessary enabling regulatory framework as part of strong governance systems.

In this submission we would like to draw attention to some of the other points made there (not necessarily in the same order); we restate them below with some minimal amendments in *italics*:

- *IATP considers* that the right to water entitles everyone to a sufficient amount of accessible and clean water, including sanitation, to cover **basic** human *health and livelihood* needs.
Explanation: Right to life guarantees right to basic human health and livelihood needs, and thus right to water too must guarantee water to meet basic human health and livelihood needs.
Interpretation: Basic human health is directly dependent on a healthy environment; basic livelihoods (of close to a billion people) are directly dependent on thriving ecosystems.
Thus in order to protect right to water obligations, states should protect clean water in adequate quantity to protect the commons, maintain the environment and meet ecosystem needs.
- *Right to water should be a Universal Right, but when it comes to realizing the right to water* the discussion should avoid generalizing a global condition: each region and location is different, with different water availability, legal frameworks and stakeholders.
- The human right to water can only be put into practice if there are the resources *[including water resources]*.
- Business is part of society and has a need for water like other stakeholders, *and business has a responsibility for sustainable water use like all other stakeholders.*

From the above, it follows that in the context of private sector participation the State's obligation regarding right to water include putting in place regulatory frameworks that ensure that private sector participation in a specific locality does not impact local water resources negatively, nor does it affect other local resources necessary to ensure that human right to water can be put into practice.

Below (in a [short piece](#) that we put out on March 22, 2010), we look at how a community in the South Indian State of Kerala, has been deprived not only of its drinking water, but also of water for meeting their other livelihood needs as a result of bottling operations of a Coca-Cola subsidiary. As a result of sustained pressure from the community, in June 2009, the Government of Kerala [constituted a high level committee](#) to study the nature and extent of losses suffered by the people of Plachimada as a result of the operation of the Coca-Cola plant there. Earlier this week this expert committee set up by the State [suggested legal steps](#) to realize Rs 216.26 crore (approximately \$47.5 million USD) as

compensation from Coca-Cola for the “multi-sectoral” loss caused by its bottling operations in Plachimada.

I have edited the piece to make it directly relevant to the questions on right to water.

[Bottling Water, Boxing in Communities....](#)

Since 2000, IATP has been promoting the human right to water through multiple venues, including a focus on the United Nations (Right to water, as we define it, is the right of people and ecosystems to have access to safe water to remain healthy). Effectively, we insist that every person has a right to access water in quantity and quality necessary to meet their basic needs—water for cooking, drinking, washing, sanitation and for meeting basic livelihood needs.

In practical terms, what does the right to water mean?

- Ensuring that water supply systems are democratically governed; it means that not only those living in legal residential areas but also those in informal settlements are entitled to water services.
- Ensuring that rural residents, and those who are not covered by piped water-supply systems, do not find their water sources are being diverted, polluted, contaminated or depleted.

In order to address the water needs of the poor around the world, a right to water campaign needs to address not only the domestic water needs, but also the water needs of the ecosystems that sustain a large majority of the water poor. Thus, we define the right to water broadly as pertaining not only to current populations, but future generations as well.

The connection between this work and the proliferation of bottled water use around the world was made starkly clear to me in mid-2002, while on a visit to my home state Kerala, in India. A little over 10 years ago, Coca-Cola arrived in the Plachimada village, promising employment and local economic growth while building a 40-acre bottling plant: Hindustan Coca-Cola Beverages, the bottling arm of Coca-Cola, began operations in March 2000. The factory was located between two housing colonies of poor landless laborers belonging to lower castes and indigenous groups. Their water woes began soon after the opening of the facility: water from the plant was dumped outside without any treatment, affecting their water quality. It was not long before farmers in the surrounding areas were affected by water depletion and other environmental problems including land and water pollution.

At the time, [the Statesman](#) reported on the situation of Shahidul Hameed, a small farmer in the region. Before the factory started operations, his “little patch of land in the green, picturesque rolling hills of Palakkad yielded 50 sacks of rice and 1,500 coconuts a year. It provided work for dozens of labourers.” By the summer of 2003, Hameed “could manage only five sacks of rice and just 200 coconuts. His irrigation wells have run dry, thanks to Coke drawing up to 1.5 million litres of water daily through its deep wells to bottle Coke, Fanta, Sprite and the drink the locals call without irony, “Thumbs Up.” But the cruelest twist is that while the plant bottles mineral water, local people—who can never afford it—are now being forced to walk up to 10 kilometres twice a day for a pot of drinking water. [...] The disruption in life because of depletion of groundwater and contamination by pollutants has forced villagers to picket the factory for the past 470 odd days,” [the Statesman reported](#). The vigil started on earth day in 2002!

Plachimada is about 120 miles from my home.

On my second visit to Plachimada, I decided to take an overnight journey by train and to spend a couple of days in the village, where local people had been sitting on a dharna (vigil) for over two years: demanding that Coca-Cola shut down the plant, compensate them and leave the region. Several organizations from and around the region had come together under the name Plachimada Struggle Solidarity Committee in support of the Coca-Cola Virudha Janakeeya Samara Samithy (Anti Coca-Cola Peoples Struggle Committee)—the backbone of the struggle.

Mailamma, one of the Adivasi leaders of the campaign whom I had met during my previous visit, took me to the well in her courtyard. Monsoons were already here; unlike the previous time when the water was no longer at the bottom of her well. In fact, we could draw some water using a make-shift bucket in less than a few minutes. It was crystal clear, but it still had a horrible bitter taste. I had to spit it out.

According to tests conducted by various groups, the water contained too much dissolved salts to drink, cook with or even wash in. Fortunately their fight against Coke over the previous two years had yielded some minimal results: The government had ordered the company to stop drawing water, and subsequently the company had suspended its operations. Moreover, villagers were being supplied with water twice a day.

To the right, you can see a picture of “waiting pots” with Mailamma in the background pointing to the pots.



Another photo below shows a water supply tanker parked in front of the bottling plant.



But they have not been as lucky when it comes to water for other livelihood needs. The villages around the Coca-Cola factory have many large farmers with relatively big land holdings (varying between 10 to 35 acres). These have been the primary source of employment for the majority of landless adivasis and low-caste people, who account for close to 40 percent of the population. In addition, most people keep goats, chicken and other small animals as a source of livelihood. The bottling plant’s operations have affected the livelihoods of the farmers, of the laborers who work in these farms, and those who keep small animals.

In a landmark decision on August 9, 2006, the state government of Kerala imposed a ban on the production and sale of colas (both Coca-Cola and Pepsi) in the southern Indian state. Ten days later the Adivasi Samrakshna Sanghom leaders Velur Swaminathan and Mailamma [called off the vigil](#) that had lasted 52 months and had brought national and international attention to the small village.

Less than a year later Mailamma passed away. The bottling plant has been shut down for good but the campaign for justice continues. Plachimada Struggle Solidarity Committee and Adivasi Samrakshna Sanghom have been continuing their demand for compensation for the losses suffered as well as for the damages the bottling plant has caused in the area as a result of its reckless operations.

In June 2009, the government [constituted an expert committee](#) to study the nature and extent of losses suffered by the people of Plachimada as a result of the operation of the Coca-Cola plant there. It’s as if the call issued by the community earlier this year, on the third anniversary

of Mailamma's death ("A Call to struggle.. for water.. for life"), is beginning to get some response.

On March 18, 2010, the Petitions Committee of the Kerala Assembly, which looked into the environmental pollution and water shortage caused by the plant, [wanted the government](#) to take steps to get compensation from the multi-national giant for the losses suffered by villagers. Today, in a setback to Coca-Cola, the High Level Committee set up by Kerala Government [suggested legal steps](#) to realize Rs216.26 crore (approximately \$47.5 million USD) as compensation from it for the "multi-sectoral" loss caused by its bottling operations in Plachimada.

It is fitting, even if coincidental, that such a recommendation by the State should be issued on World Water Day!

As is evident from the case above, it is imperative that the definition of right to water be extended to include water for basic livelihood needs as well. This will primarily entail the establishment of measures to protect naturally available water for customary practices (including but not limited to the practice of low-input subsistence agriculture, fishing, foraging, grazing of animals, etc.) through introduction of appropriate regulatory frameworks, but also can entail institutionalized interventions to support these livelihood practices so as to enhance the well-being of its practitioners. Thank you!