



Wasser in Bürgerhand Water in Citizens'Hands

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To the OECD
Ms Asiza Akhmouch
Via email (Aziza.AKHMOUCH@oecd.org)

Berlin, 12 January 2015

Comment on OECD Draft Report on „Stakeholder engagement for inclusive water governance“

Dear Ms Akhmouch,

Wasser in Bürgerhand (WiB, which stands for Water in Citizens'Hands) is a network of German citizens' groups which locally and nationally aim to secure that water is a public good and that water and waste water management are public. All of our member groups have been working for years on that issue, some are or were heavily involved in referenda against privatization plans such as in Hamburg or privatizations such as in Berlin. All German referenda in the past have shown overwhelming successes in favor of public services. As a nationwide group, we bring together the expertise of some highly experienced water specialists and have also been monitoring the water and public services policies of the EU intensely. For more information on us, please see our website www.wasser-in-buergerhand.de.

Due to time constraints – as being citizens volunteering on water governance – we could not take part in the Paris meeting. We thus thank you for the possibility to comment again on your draft report on water governance. While we cannot – also for time reasons – make a full assessment of the report, we are alarmed by several aspects that we could look at.

General Comment on the role of private operators

WiB is very concerned that the OECD report is not or at least not sufficiently critical of the role of private operators, in what ever form they may be involved in water supply or waste water removal. In number 91 and 92, the OECD is praising the involvement of private operators, saying that “Co-production approaches can generate creative policy responses enabling governments to provide better public services in times of fiscal constraints“.

Contrary to this, WiB is almost only aware of failed water and waste water privatizations, with broken promises on service improvement, prices and maintenance. This is the reason for many remunicipalisations over the last years.¹ One example is Berlin where Veolia and RWE were

¹ See for example www.remunicipalisation.org or the report by Public Services International Research Unit (PSIRU), Multinational Observatory

bought out of the ongoing contract in the last two years. Now, the citizens have to pay for the profit guarantee that was enshrined in the PPP contract despite constitutional court rulings against this, and have to unwind a very complex corporate structure that was designed to allow for the privatization of a formally public operator and seen at this time as innovative.

Many official reports and studies have proven the problems with PPP in general and in the water sector: In Germany the regional (“Länder”) courts of auditors as well as the Federal Court of auditors have assessed several times that PPP contracts in general are not cheaper for the public.² The Portuguese Court of Auditors last year uncovered profiteering specifically in the water sector.³ An academic assessment which demonstrates that private provision is not cheaper than public is the study “Is Private Production of Public Services Cheaper than Public Production?”⁴. In the UK, the House of Commons in its 2011 evaluation made clear that the promises of PPP do not hold.”⁵

The problems with private operators have been also massive in developing and emerging countries. For example, Corporate Accountability has demonstrated this in a report.⁶ Further evidence is the wave of remunicipalisation in many developing and emerging countries’ cities such as Cochabamba with the (in)famous “water war” against Bechtel and others, Buenos Aires⁷, or Dar es Salam⁸. There are also many reported problems with other former “flagship” projects such as in Jakarta or Manila where people struggle for public water.

WiB has no reason to believe that contract design or adjustments to PFI, PPP and however you may call it will ever remedy their flaws. This is because the model is inherently wrong from a public point of view, and will also never create a functioning market. The pertinent flaws across models include secrecy – as the information is normally deemed a “business secrets” – as well as profit guarantees and insolvency risks – even though they are often hidden behind well-sounding words and “sharing” agreements.

The misleading role of private operators, with the example of Suez

WiB is also very concerned that private companies operating and financing water infrastructure seem to be treated by the OECD as if they were stakeholders in the same sense as citizens and/or consumers are (see e.g. the list in the Executive Summary, Nr. 3). However, the private operators are the ones who affect the citizens with their operations. Therefore, they actually should not be equally treated as stakeholders. There is a severe conflict between the “stake” that the private companies have and the “stake” that citizens and the public have. The report does not at all reflect and discuss this severe conflict of interest.

and Transnational Institute (TNI) (2014): Here to stay: Water remunicipalisation as a global trend. <http://www.tni.org/briefing/here-stay-water-remunicipalisation-global-trend>.

² See the report of the German Federal Court of Auditors at http://www.gemeingut.org/wp-content/uploads/2011/12/Gemeinsamer_Erfahrungsbericht_zur_Wirtschaftlichkeit_von_OEPP.pdf.

³ <http://www.epsu.org/a/10267>.

⁴ Germà Bel, Xavier Fageda, Mildred E. Warner (2010): Is private production of public services cheaper than public production? A meta-regression analysis of solid waste and water services. *Journal of Policy Analysis and Management*, Volume 29, Issue 3, pages 553–577. <http://onlinelibrary.wiley.com/doi/10.1002/pam.20509/abstract>.

⁵ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1146/114602.htm>

⁶ <http://www.stopcorporateabuse.org/resource/shutting-spigot-private-water-case-world-bank-divest>.

⁷ Buenos Aires – Collapse of the Privatization Deal <https://www.foodandwaterwatch.org/global/latin-america/argentina/buenos-aires-collapse-of-the-privatization-deal>.

⁸ Romilly Greenhill and Irene Wekiya: Turning off the taps. Donor conditionality and water privatisation in Dar es Salaam, Tanzania. Action Aid. <https://www.actionaid.org.uk/sites/default/files/turningoffthetaps.pdf>.

To illustrate the bias that results from this wrong equal treatment of “stakeholders”, we would like to point to three boxes in the report, number 6, 19 and 54: It seems to us that in these boxes, the OECD has just copied information from the private operator as “good practice examples” – without having thoroughly checked the information for its correctness and appropriateness. Given that Suez has a massive conflict of interest in commenting on the report its information should not just be copied in the report like this. It is in our view absolutely insufficient to only mention where the information comes from but it needs to be checked, and not used in case the information is misleading as we think it is. We would like to explain our concerns in the following:

South Australia (Box 6, provided by Suez)

If we understand correctly, the “alliance” is a partnership where the price is not agreed before as otherwise there can be no loss taking of the private operator. However, we fear that this will lead to even more severe conflicts during the contract implementation. Given that price adjustment is a controversial issue in many privatization projects even when the price was agreed before, the alliance will very likely face even more controversial discussions, with a high risk that the final price will not be in the interest of the citizens. There are obvious risks which have been also highlighted by the anti-corruption commission of New South Wales⁹ or the Singapore University¹⁰ regarding Australia. Both emphasize the risks of corruption and capture by the contractor, and both say that the alliance approach could only really be justified if a project is complex, high risk, involves state of the art technology, and R&D, none of which is true for water operations. We also have reason to believe, that the real control in such an alliance will in fact lie with the private operator, given for example experiences in Berlin with even a minor share of the private operator. A public entity is just not free to negotiate anymore as soon as the project has started, given the high cost of a project failure.

It is also worth noting that the South Australia water supply was privatized for 15 years up to 2011, to Veolia, but that the contract was not renewed, after controversies over price and performance, including a 'great stink' for some weeks. To believe, that such problems can be prevented by better contract design is, at best, naive.

United States (Box 19, provided by Suez)

The experiences with private operators in the United States, including the example of the city of Bayonne, are much worse than the box states. Various cities in the United States have remunicipalised their water supply in the last years. The reasons have been disappointing performances by the private water operators. Already in 2010, a report from the NGO food & water watch found that customers in New Jersey municipalities with private water systems paid on average 64 percent more than others in the state.¹¹ A 2014 report by the NGO Corporate Accountability International and Public Services International found that in the United States, privatizations of water supplies “all too often, promised cost savings fail to materialize or come at the expense of deferred infrastructure maintenance, skyrocketing water rates, and risks to public health”, and that “private water contracts can pose substantial economic, legal, and

⁹ www.icac.nsw.gov.au/component/docman/doc_download/1299-direct-negotiations-guidelines-for-managing-risks-in-direct-negotiations.

¹⁰ www.keyongjian.com/wordpress/wp-content/uploads/2013/11/2012-p1.pdf.

¹¹ food & water watch (2010): Has Water Privatization Gone Too Far in New Jersey? An independent analysis of New Jersey's expensive and troubling experiences with private water companies. <http://documents.foodandwaterwatch.org/doc/PrivatizationInNewJersey.pdf>.

political risk to local officials and the communities they serve.”¹²

In Bayonne, according to information provided to us by the colleagues from the U.S. NGO food & water watch, the concessionaire charges customers 11 percent for financing improvement projects, based on the discount rate used in the formula for the revenue requirement adjustment event in the contract.¹³ The Bayonne Municipal Utility Authority’s long-term debt had carried interest rates of between 3.0 percent and 5.7 percent.¹⁴ Ratepayers would thus save money if their governments tap municipal bond markets instead of privatizing their water and sewer assets. Bayonne’s concession contract with Suez’s United Water and KKR enabled the city’s utility to retire debt accrued over the previous 15 years as the city used the utility as a cash cow to pay for city functions unrelated to the water and sewer services. The company will recover the funding with interest through rate hikes.

Water system concession contracts allow concessionaires to pass on all major financial risks to consumers. They can adjust customer rates to account for most major events that increase utility costs, practically guaranteeing investor returns. Bayonne’s concession contract, for example, has 13 different types of a “Revenue Requirement Adjustment Event,” including whenever revenue is less than “required revenue,” “the occurrence of an Adverse Event” and “any Unforeseen Event.”¹⁵

In Bayonne, public officials even misled the public about the financial implications of the concession contract. Both the former mayor and the former utility authority director, who were in office at the time of the contract signing, promised that after an initial 8.5 percent hike, water rates would remain the same for the next four years under the deal. Suez’s United Water never corrected these claims. Water rates increased by 8.5 percent in December 2012 when the deal began, and then they increased by another 4 percent in January 2015 – about two years earlier than many expected. Because of the previous claims by public officials, four out of five Bayonne council members, as well as the local newspaper, were surprised by the 2015 increase.¹⁶

A French colleague of us also pointed to the fact that this contract is far from innovative but resembles the contracts that have been formerly usual in France as “Délégation de Service Publique”(DSP). However, such contracts have been prohibited in France by the “Sapin law”. Now, such high entry payments as in Bayonne and contracts longer than 20 years are prohibited as they too often turned out to be disadvantageous to the public.

France (Box 54, provided by Suez)

As the same French colleague advised us, indeed, as the also box also says, the economic model of water and sanitation based on water billing volume has no future, whether the services are managed by public or private. However, the problem is more severe when water and sanitation services are delegated to private companies like Suez since the water bill has so far covered the

¹² Emmanuele Lobina (2014): Troubled Waters. Misleading industry PR and the case for public water. Corporate Accountability International. www.stopcorporateabuse.org/sites/default/files/resources/troubledwaters_webres.pdf.

¹³ Bayonne Water & Wastewater Concession Agreement. Schedule 2 § 5.1(a).

¹⁴ Bayonne Municipal Utilities Authority. Audits of Financial Statements Years Ended March 31, 2012 and 2011. September 10, 2012 at 30 to 39.

¹⁵ Bayonne Water & Wastewater Concession Agreement. §1.1 at 18 to 19.

¹⁶ Lin, Jonathan. “Bayonne MUA announces final number for 2015 water rate increase.” *The Jersey Journal*. January 6, 2014, http://www.nj.com/hudson/index.ssf/2015/01/bayonne_mua_announces_final_number_for_2015_water_rate_increase_4_percent.html; Lin, Jonathan. “Water rate increase catches 4 of Bayonne’s 5 council members by surprise.” *The Jersey Journal*. December 25, 2014, http://www.nj.com/hudson/index.ssf/2014/12/water_rate_increase_next_month_a_surprise_for_four_of_bayonnes_five_council_members.html.

cost of the service but also provide a profit. To maintain their profit, private companies try to invent new contract models, first by getting paid not anymore based on consumption but e.g. for reducing the loss rate. And second, for the provision of environmental services. However, for the private companies, the protection of the environment is not an aim in itself but only a way to make profit. With the environmental service, they can even intervene in the great cycle of the water that is currently considered more profitable than the small water cycle (water and sanitation). Suez was paid according to the achievement of objectives in 16 contracts in 2013.

The Terrana example from the box is an agricultural cooperative whose purpose is “ecologically intensive agriculture” – which is an oxymoron as intensive agriculture can not be ecologically sustainable. Environmental services in agriculture are mainly undertaken by Suez by protecting areas which they have bought before and lease them to organic farmers. This is a very profitable operation for Suez. It seems much better, however, to give this money to farmers directly, as it is the case in Munich where the public water company supports organic farming in the source areas directly. This is a benefit for local people and not for the shareholders of a multinational.

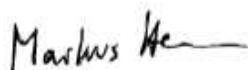
Our French colleague is also concerned by the “Brottes law” quoted by Suez. While the idea behind – with local authorities setting appropriate thresholds – sounds good, well fixing the thresholds is very complicated: The authority needs to know the actual cost of the service and the users (consumer habits and social profile). Fixing bad thresholds can lead either to users paying too much (social injustice) or to too little funding for the maintenance of the infrastructure. Local authorities do not always have the technical competence to set thresholds. Therefore, they often use private delegates who calculate thresholds allowing them to earn more money than with the old pricing: This is the case of Suez. Finally, while the Brottes law rightfully prohibits water cutoffs even when the user does not pay his water bill, Suez was sentenced for cutting water from one user in Soisson.

Final comment

We would like to underline that the current report does not represent our views. This does not mean that we are not grateful for the opportunity to comment, we really appreciate the OECD's efforts with this, and there are also parts of the report which we support. However, that a report which actually should serve the interests of the real stakeholders, the citizens, is so much prone to the interest of private operators, their financiers and both their shareholders, is unacceptable to us.

If you have any question, please feel free to contact us.

Yours sincerely,



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(on behalf of Wasser in Bürgerhand)