

Tanzania Sued for \$25 Million for British Water Company Failures January 2007

It is well known that one out of every six people in the world lack access to safe, affordable water and thousands of children die each day from preventable waterborne diseases. The World Health Organization predicts that increasing pollution and global water consumption will cause severe water shortages in 48 countries by 2025. Some of the world's largest corporations have identified these challenges as an opportunity to profit from water, calling water "the oil of the 21st century" or "blue gold".

While the international development community embraces the principle of a right to water, international financial institutions continue to require privatization of water utilities as a condition for critical infrastructure loans, undermining that right. The World Bank and the International Monetary Fund have wasted the past decade promoting privatization of water. Without much evidence, the institutions argued that the private sector could do a better job, promoted contracts to a handful of multinational companies, and turned a deaf ear to protests of affected communities.

The privatization of water in Dar es Salaam is just one of many such failed projects. Conditions imposed on Tanzania lead to the privatization of the water system in the capital city. And, after the project failed, an obscure investment treaty with Britain meant that the British company in charge of the project was able to file a claim with the World Bank for 'future lost profits' amounting to as much as \$25 million.

Biwater's claim against Tanzania, which will be heard in the little known International Center for Settlement of Investment Disputes with no appeals process sometime in April, illustrates the failure of this push to privatize water.

Dar es Salaam

Tanzania relies heavily on funds from international institutions. The government counts on international donors to fund more than one third of its budget. In the 1990's, with public debt spiraling, Tanzania negotiated partial debt relief with the World Bank. But when relief came, it included conditions to privatize the water system in Dar es Salaam.

Tanzania was unable to allocate sufficient funds for the financially starved water system, which was in need of an

Tanzania in Numbers

- Tanzania ranks at the bottom of the United Nations Development index – number 162 out of 177.
- Tanzanian life expectancy is 46 years.
- 38% of the population does not have access to an improved water source.
- The per capita expenditure on health care is \$29/person/year.
- 90% of the population live on less than \$2/day, 58% less than \$1/day.
- Even after debt relief, Tanzania's national debt is \$1.75 billion, or 16.1% of the GDP.

estimated \$600 million for upgrades and expansions. The government negotiated a \$61.5 million loan from the World Bank. Although only part of a \$165 million project, the Bank conditioned the funds on Tanzania signing a contract with a private operator. Tanzania was in no position to turn down the funds.

The World Bank loan prescribed a 10-year lease contract and directed that the chosen private utility raise 'customer tariffs'. While part of the rationale for privatization was increased competition, only one company came forward. With no other interested parties the contract was therefore awarded to City Water, a consortium led by the British company Biwater in 2003. Biwater's deal was outstanding.

The majority of the funds for the project were provided by international agencies in the form of loans to the government of Tanzania. Biwater was obligated to provide only \$8.5 million. Additionally, the company would not have to pay any taxes for the first five years of the contract. The company would not be subject to a cap on profits derived from reducing operating costs, minimizing unaccounted for water, or improved billing and collection. The risks were low – the financial rewards seemed ripe to the British company.

Incredulously, Biwater did not make it work. By 2005 Biwater owed the Tanzanian government \$3.25 million. The company had failed to pay the lease fee to the

The British think tank, Adam Smith International, received a \$1.2 million public relations contract by the British Department for International Development for advice to the Tanzanian government. More than \$500,000 was used to develop a song and video explaining the advantages of privatization. The text included the outrageous claim that: "privatisation brings the rain."¹

government. Moreover, Biwater had only provided \$4.1 million of the \$8.5 million it was contractually obligated to provide for the project. None of the investments had gone to extend the network to connect new users in the service area.² The company was unable to collect the increased water rates from consumers. In fact, it did a worse job at collections than the underfunded public agency had done previously. Biwater wanted additional funding for the project and wanted to lower the expected outcomes. The company also sought to add five years to the lease contract. Despite the favorable contract, Biwater was losing money.

The government and Biwater renegotiated the terms, but Biwater appeared unwilling to compromise on its demands. Instead of providing additional concessions, the government cancelled the contract.

Poor Neighborhoods Still Without Water

The poorest residents in Dar es Salaam were largely ignored when the contract was written. To make the contract attractive to international companies the contract defined service areas that excluded the poorest, largely unserved, neighborhoods. Instead Biwater was responsible for providing water in areas that were already receiving piped water, mostly middle- and high-income neighborhoods. To serve the poor that Biwater would not, approximately 2% of the total project cost was provided to three international non-government organizations which would work in the those neighborhoods. As a result, the wealthiest 20 percent of Dar es Salaam's population, living in the service areas, would receive 98 percent of the money involved in the project.³

Biwater's only obligation was to establish a fund to finance special projects for serving the poor. But the company never deposited any funds for the projects. Neighborhoods not served by Biwater were forced to depend on wells and informal water vendors reselling the Biwater supply. As the price of water increased under Biwater's management the cost of water for those without water connections grew exponentially. Those served by a formal water utility pay traditionally the least. But on average, those getting water from water vendors pay three to eight times the price of those connected to a formal network.⁴

As the contract faltered, the future of all water delivery in the city was thrown into uncertainty.

Biwater Seeks Compensation for Failed Investment

Making matters worse, Biwater sought compensation back in Britain. It filed an injunction in the British High Court against the cancellation of the contract which is still pending.

But it did not stop there. It used a 1994 investment agreement between the United Kingdom and Tanzania to file claims in a little known court under the World Bank: the International Centre for Settlement of Investment Disputes (ICSID). In its filings, Biwater claims as much as \$25 million in lost expected profits money Biwater might have earned if they had lived up to their end of the agreement

An ICSID panel will hear the case in closed-door proceedings in April 2007. The three judges for the panel were appointed by Biwater, Tanzania, and the World Bank, the entity that wrote the original contract. The investment treaty that allows Biwater to file claims against Tanzania does not allow Tanzania to file a case against Biwater. The international agreements establishing such proceedings have created an uneven playing field in favor of corporations over the rights of Tanzanians.

If the ICSID panel rules against Biwater, the company can seek compensation from the UK Export Credit Guarantee Department. If Biwater succeeds here, the United Kingdom is likely to reduce foreign aid to Tanzania to pay Biwater.

However these cases resolve, Tanzania is going to pay for the Biwater failure. This is the unhappy logic of our current global rule of private involvement – corporations can trample on people and nations, while governments, such as Tanzania, have little recourse.

Conclusion

The water contract in Tanzania was a flagship project and one of the most ambitious in Africa. But it quickly became a massive failure that should provide a lesson for policy makers in the World Bank, the International Monetary Fund and elsewhere.

The World Bank's focus on privatization wasted a decade that could have been spent improving water access for the poor. Instead, World Bank funds benefited large companies that were unable to meet the needs of the local population. The World Bank and IMF have been slow to change lending policies. In 2003 the World Bank established new rules that would further support corporate involvement in water projects by providing financial incentives. In spite of

proposed incentives, private corporations have not been anxious to get involved in new water projects in Africa.

It seems that the United Nations Development Programme has gotten the picture. The latest Human Development Report from the UNDP argues for a key role for public agencies to provide affordable water. It criticizes the view of privatization as the ‘magic bullet.’⁵ It furthermore presents how water delivered by private operators comes at a higher cost.

Our greatest challenge is to bring water to the 1.2 billion people across the globe who currently do not have proper access. Subsidies for water provision must be clearly designed to reach the poor, not to benefit richer parts of the population who usually already benefit from piped water services. It is time to abandon failed policies and stop pushing countries to privatize water services.

Sources

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Endnotes

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- ² OECD “Investor-to-State Dispute Settlement in Infrastructure Projects,” Working Papers on International Investment Number 2006/2, March 2006, p25.
- ³ Actionaid International “Turning off the taps - Donorconditionality and water privatisation in Dares Salaam, Tanzania,” September 2004, p2.
- ⁴ Kariuki and Schwartz 2005 (based on data from 47 countries) in United Nations Development Program (UNDP) “Human Development Report 2006 – Beyond scarcity: Power, poverty and the global water crisis,” Summary, p 21.
- ⁵ United Nations Development Program (UNDP) “Human Development Report 2006 – Beyond scarcity: Power, poverty and the global water crisis,” Summary, p 21.