

## **Getting Access Right: Human rights and household water rights in Ghana.**

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### **Abstract**

*Ghanaian civil society actors, rather refer to a globally defined Human Right to Water than to existing local rights. The political discourse around drinking water in Ghana is shaped by a neo-liberal agenda and three major targets: poverty alleviation, cost-recovery and equal access. Despite this, there is more than one policy approach; various water right regimes co-exist. The paper shows what role right-based discourses play in the negotiations of access. The paper suggests that the global definition of the Human Right to Water was fuelled by the debates on the privatization of metropolitan water supply as well as by the need for more efficient legal tools to stop water pollution. The data indicates the context-dependency of policy concepts, such as rights, access, privatization, or the price of water.*

### **Keywords:**

Human Right to Water – Water Rights – Privatization – Civil society– Ghana

## **I. Introduction**

In 2002, the UN Economic and Social Council made the Human Right to Water explicit. Its comment 15 obliges covenants to proscribe any discrimination with the intention or effect of nullifying or impairing people's equal enjoyment or exercise of the Right to Water. Even though this seems to be the standard formula applied in the Human Right Agenda, the need and content of such Human Right is still debated. On hand, Ghana is struggling with the sufficient provision of physical access to household water; coverage of water facilities has to be improved. On the other hand, local right regimes already implicate a basic right to household water and thus provide institutional access. Civil society actors in the country fight against water pollution and the privatization of urban water supply by arguing with the Human Right to Water but rather seem to ignore legal realities on the ground. Therefore, the paper touches following questions: (1) which water rights are relevant in Ghana? (2) What role do right-based discourses play in the negotiations of the access? (3) How far do global drinking water policies travel to local

implication in Ghana? The political discourse around drinking water in Ghana is shaped by a neo-liberal agenda and three major targets: poverty alleviation, cost-recovery and equal access. But the way to reach improved access is worth looking at in detail. This is so because a country's water supply displays more than one policy approach and more than one water management system. Instead, various water right regimes co-exist (see figure 1). We want to focus on the regulation of access starting with the rural and then shifting to the metropolitan context. The paper is based on long-term field research using quantitative as well as qualitative methods carried out in the context of the GLOWA Volta research project (Rodgers et al, 2007).

**Figure 1 Regulation of access to household water in Ghana**

<b>Policy Category</b>	<b>(1) Unimproved</b>	<b>(2) Rural Improved</b>	<b>(3) Peri-urban Improved</b>	<b>(4) Urban/ Metropolitan GWCL</b>	<b>(5) Alternative supply</b>
<b>Water Policy</b>	None	NCWSP	NCWSP/ PPP	PSP	none
<b>Water Sources (Physical access)</b>	Natural water bodies Simple hand dug wells	Hand pumps	Piped water systems	Piped water systems	Water vendors Water tankers
<b>Regulation of Use rights (Institutional Access)</b>	Customary law	Customary Project law	Project law	PURC	Market
	Basic right to water	Basic right to water and ownership of facility	Water tariffs/ tolerated access	Water tariffs	Water prices

## **II. The Human Right to Water**

The Human Right to Water, understood as the right to access sufficient water, has not yet been explicitly established; instead, it manifests implicitly in already existing Human Rights. Its nature is of shadowy existence only (Scanlon et al., 2004). The list of advocates for an independent, stand-alone Human Right to Water grows longer, among them being water experts, legal experts, but also a number of globally acting organizations, and Ghanaian NGOs, such as Public Citizen, Humanist Watch Ghana, ISODEC Ghana and the National Coalition Against the Privatization of Water. Access to water is not regulated by the Ghanaian Constitution but some civil society actors call for an explicit Right to Water: *“Water is a basic right and as such it must be granted to all human beings and living species, and made secure for future generations. [...] Water belongs to all people and everyone has the right to it. [...] The right to water should be explicitly guaranteed under the Constitution of the Republic of Ghana.”* (homepage of Humanist Watch Ghana). In fact, article 5 of the “African Convention on the Conservation of Nature and Natural Resources” from 1968 already states that the thirty-nine African covenants (among them Ghana) shall establish policies for the conservation, utilization and development of water sources and *“endeavor to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures due regards to (1) water cycle [...]; (2) the co-ordination and planning of water resources development projects; (3) the administration and control of all water*

*utilization; (4) preventions and control of water pollution*". Parts of this document provide a strong allegory to the intended Human Right to Water.

Many African environmental legislation express the right to water in a rather implicitly, as is the case for the five riparian countries of the West African Volta River basin. Their constitutions summarize the right to water as right to a healthy and clean environment. The pollution of water through gold mining could in Ghana be categorized as violation against the Ghanaian Constitution and the Human Rights Convention.

According to the supporters, the explicit Human Right to Water will lead to a more precise definition of state obligations, and a specification of the possible violations. This may result in an easier integration and implementation of such right in national legislations. But it is also argued that sanction capability against violations will be enforced because the Human Right Agenda strengthens the individual's and civil society's position versus the state. "*The explicit recognition of water as a human right could thus represent one tool for civil society to hold governments accountable*" (Scanlon et al., 2004: 21).

### **III. Rural and peri-urban water rights**

The National Community Water and Sanitation Program (NCWSP) covers rural areas and small towns up to 50,000 inhabitants. The program targets the improvement of physical access by extending the coverage with water points. The minimum basic service considered by water planning experts is an all year provision with potable water of 20 l/c/d, 500 meters distance to the consumer, and not less than 300 people per water point. The success of the NCWSP is measured in terms of coverage as well as in the number of local water user committees. Official coverage statistics are not coherent in their data but show a significant positive trend in physical access (Fuest, 2006).

To evaluate trends in institutional access, one has to acknowledge that the situation is characterized by legal pluralism. Institutional access is defined by state law, customary rights as well as by project laws, which are defined by the NCWSP or donors.

According to customary law, household water was a common good almost everywhere in Ghana. Only Adagme society and Ga-speaking societies knew regulations for private appropriation (Ramazotti, 1996). The norm of non-exclusion is found everywhere in the country. Even though it displays some local variation, it is very robust in character. A crucial component of Ghanaian customary water right regimes is the basic right to water for primary uses. Another important component is the riparian doctrine, which allows landowners the use of water bodies, which are located on and next to their land (Eguavoen, 2008)

The Water Resources Commission (WRC) is authorized to issue administrative water rights or water licenses. Despite the fact that there was no legal mechanism created to deal with contradictions between customary and statutory water rights (Sarpong, 2004), the plurality of water rights is not necessarily problematic because domestic water usage does not require water licenses (WRC, 2001). Even though domestic water may be subject of water use permits, "*any water use resulting from the abstraction of water by manual means is exempted from these regulations*" (Ibid., 2001, Art. 9). The same regulation is valid, for the "*use for any purpose where the abstraction level does not exceed five liters per second*" (Ibid. 2001, Art. 10). The national claim for ownership is

of little relevance because it is a claim for public ownership and rather unknown at local level (Sarpong, 2004: 11). As a result, the state cannot refuse local water users the access to water. Instead, institutional access is regulated at local level.

Field investigation in Ghana's Upper East Region (Kassena-Nankana District) showed that the right to exclude from water was non-existent. Household supply in the research village merely depends hand pump-fitted boreholes, improved hand-dug wells, simple wells, and small reservoirs, and marginally also on river water and alluvial wells in the riverbed. Three local management options were identified: (a) the persistent management of non-improved water sources based on customary law; (b) the management of hand pumps according to NCWSP guidelines; and (c) the management of piped water systems according to NCWSP guidelines or in Public Private Partnerships (Eguavoen, 2008).

The ownership and access to natural water bodies were public. Special places were allocated for livestock watering and domestic uses to keep up water quality. The control of the water sources was with the council of elders of the particular village section, who performed a minimal management; this old practice could still be observed as one component of local water management.

Even though well ownership is private, the use right is not exclusive. In former times, well owners locked the wells to protect it from contamination, or to control fetching and water recharge periods but contemporary wells are never locked. Inhabitants from other compound houses may use the well. In former times, water users from distant areas joined this group in dry season, when their own wells had dried off. Nowadays, distant users are rare due to the good coverage of hand pumps. It is a matter of politeness to request the well owner for permission to use the well when using it the first time or when withdrawing large quantities of water. But the well owner has no right to refuse the request and to deny somebody access. In fact, water continues to be perceived as a common good. Well owners do not charge water users but they have to bear maintenance cost of the technical artifact.

The local perception of water as a common good also manifests in public livestock watering rights and the right to request water from another person, who is then obliged to provide water for drinking. The norm of non-exclusion is clearly informed by the semi-arid environment, which is characterized by a single source situation in advanced dry season, as well as by the homogeneity of the local population in terms of the diversified agro-pastoral livelihood and socio-cultural background.

The implementation of the water policies and management guidelines which accompanied the provision of hand-pumps led to institutional changes with regard to water user groups and the local water rights. Hand pumps, which were delivered in the 1970s by CIDA, in 1993 by the Catholic Dioceses and in recent years by the NCWSP were subordinated to a new management scheme. Instead of flexible water user groups, formalized pump communities were introduced, which display strict borders due to the registration of members. These member compounds determine a pump committee, which is officially in charge of the management and funds. Before entering a pump community, the member is obliged to pay an entrance fee. (Background of this local regulation is the NCWSP guideline that the users have to provide 5% capital cost of the water project to qualify. Because not all water users were able to pay their share, some community members paid the entire amount and later compounds may buy in the pump

community.) Water rights are closely linked to the membership in a pump community. Ownership, access and power over the hand pump are thus with the members only. NCWSP hand pump management manuals suggest the payment of a regular maintenance fee, called borehole fee. (The annual flat rate ranged from ca. 0.10 - 2.40 Euro per person/ 0.35-6.00 Euro per compound house. Most of the pump communities charged fees in the lower range.) According to pump management manuals, non-payment should be sanctioned with the denial of access to the hand pump. This has three consequences: (a) compounds less flexible in choosing their source of water than before. (b) Non-members would be excluded from access. (3) Members, who cannot afford paying the maintenance fee, would be denied access. This clearly contradicts the local norm of non-exclusion. To meet the local norm and respond to the institutions suggested by the NCWSP, use rights were negotiated and a hierarchy of use rights was introduced (for member compounds, non-member compounds, farmers). Use rights were not linked to regular payments. In case of pump break down, extraordinary use rights may be negotiated between pump committees for a limited period. Generally, institutional access became more regulated and thus more limited under NCWSP even though local water users established regulations, which opened up access for non-members (Eguavoen, 2008).

Under the NCWSP, small town water systems are managed by so-called Water and Sanitation Development Boards (WSDBs). Even though WSDBs are bodies of local voluntary laymen, which may employ trained technicians and operators, the piped water systems require professional management and cost recovery. Small town inhabitants are supposed to contribute 5% of capital cost for water project. But they do not acquire use rights by doing so (as was the case with the hand pumps). Water is allocated by the principle of water tariffs, which may have the form of flat rates, bucket fees, or tariff per water unit (see figure 2).

**Figure 2 Water tariffs in Zebilla, Upper East Region**

	Unit of payment	Monthly water tariffs in Old Ghanaian Cedis (ca. 10,000 Cedis = 1 Euro)
<b>Domestic water supply (metered)</b>	0-13,000 liters	1,440 per 1,000 liters
	14,000 – 45,000 liters	2,520 per 1,000 liters
	More than 46,000 liters	4,140 per 1,000 liters
<b>Domestic (not metered)</b>	Per house/ compound house/ alternate supply	36,000
	Per house with high level tank	72,000
	Per house/compound house/ daily supply	72,000
<b>Domestic (stand pipes)</b>	Per basin	3,000 per 45 liters
	Per person/ per month (flat rate)	4,500
<b>Commercial/ industrial (metered)</b>	0- 45,000 liters	4,500 per 1,000 liters
	46,000 – 450,000 liters	6,500 per 1,000 liters
	More than 451,000 liters	7,800 per 1,000 liters
<b>Commercial/industrial (not metered)</b>	Per house/ alternate supply	86,000
	Per house/ daily supply	160.000
<b>Construction work (domestic)</b>	Per room	50.000
<b>Construction work (commercial)</b>		1.000.000

Even though the water tariffs contribute to the maintenance fund, the cost of maintaining a piped system are much higher than for hand pumps. They include cost for constant resource input (diesel, electricity, and chemicals), office cost, as well as cost for the technical and administrative staff. The management is considered successful if use rights are linked to regular payments of the water tariffs. Household connections can be cut and people are refused access to standpipes, if they don't pay. In practice, communal management of many small town water systems is often far from being successful and efficient. One outcome of community-based management is the poor sustainability of small town water systems (Eguavoen and Youkhana, 2008). Another is the shift from water as a common good to economic good (Bacho, 2001). The same difficulties were observed in small towns, where water was managed in Public Private Partnerships. Similarly, this option neither guaranteed the success in terms of financial and system sustainability nor an improved water supply (Eguavoen and Youkhana, 2008).

When hand pumps are situated in some distance to rural market areas, or small town water systems provide only a limited water supply, the rise of several small water enterprises may be observed. These private enterprises may consist of water carriage from the water point to the consumer, the sale of drinking water sachets, the monitoring of stand pipes and charging of bucket fees as well as of the storage and release of water at times, when the water systems do not deliver water. Even though no water market as such exists, usually a fixed local price is attached to the water related service (eventually in addition to the water tariff set by the WSDB) (Eguavoen, 2008).

An insufficient water supply opens the door for private water vendors, who supply large quantities to households and businesses. This could not yet be observed in the research village but markets for household water have already established in other small towns, such as Bekwai in Brong-Ahafo region (Eguavoen and Youkhana, 2008).

Common components of African customary water rights in household water were identified (DFID, 1999). They include the general entitlement to water for primary uses, public rights to water livestock and a broad definition of primary water uses. They can be referred to as basic rights to water, what led to their perceptions as African Human Right to Water. There seems to be much evidence that private allocation rights are rather uncommon even though the facility may be owned privately. This implicates the limited possibility to exclude a person from household water. The common norm is non-exclusion. It is important to note here that water rights are but the legal framework and not necessarily the practice. Empirical studies conducted in Africa identified variables, which may constrain the access to water and water allocation practice. The variables were either socio-cultural and religious norms as well as non-normative variables, such as perceptions and preferences, conflict and rival relationships between social groups, as well as tension due to competing livelihood systems. Further, the individual status of the water user may play a role, as well as individual interest when coupled to power and authority. Hence, water allocation practice may be problematic or discriminating particular people even though the water right regime recognizes their entitlements to water. Water rights are not translated 1:1 but strongly inform the practice only – even in normal circumstances.

To summarize the importance of the declared Human Right to Water in the rural and peri-urban context is quite limited. It plays some role for the national water planning

of drinking water facilities because it binds Ghana to its international commitments. Not all these commitments are legally binding and entail sanction mechanisms. Whilst the state is able to coordinate facility delivery and physical access via its Community Water and Sanitation Agency, it cannot do much about institutional access. By national legislation, all people may access water without holding administrative water rights. By institutional set-up and project law of NCWSP, all water users should receive the opportunity to hold use rights (have access) based on communal ownership of hand pumps and piped systems. But the practical effect may be limited or even contra-productive when the crafted institutions get confronted with existing water right regimes and local practicalities.

If people are excluded from access to water due to social tension, conflict or the monopolization of water facilities by individuals, it remains unclear how a Human Right to Water would be able to help them due to the lack of information, the continuous importance of local norms and rights as legal reference, as well as the low degree of using the national executive system to make claims against the state or individuals who violate a water rights or the Right to Water.

#### **IV. Right-based discourses in metropolitan water supply**

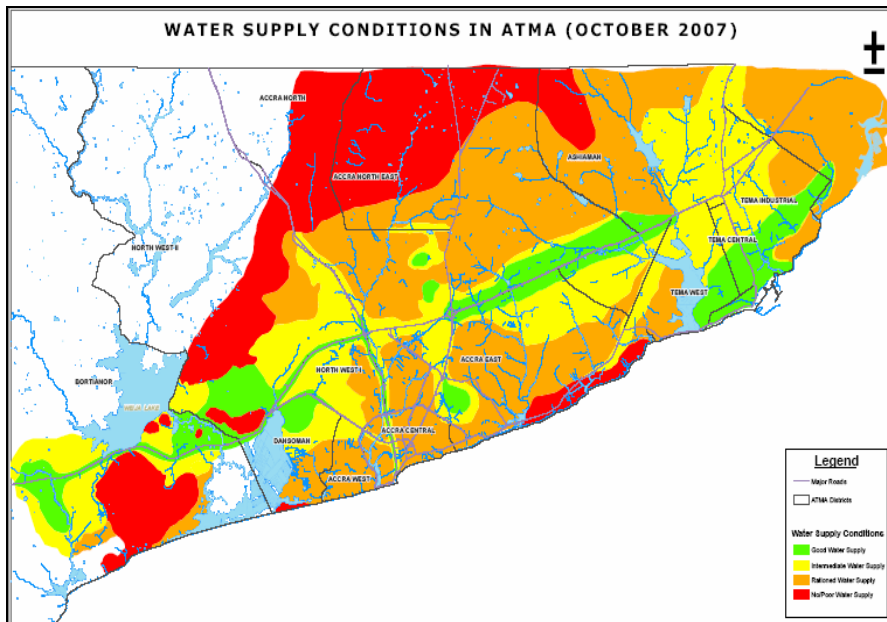
In the metropolitan Accra, the Right to Water is defined somewhat different than in rural and peri-urban context. Whilst industrial water pollution is not a severe problem in most rural areas, the pollution within a metropolitan area can be higher. Cleaning the polluted Densu River in Accra requires increasing costs. Even though the water from the Volta lake is less polluted, the transport of the treated water, which is located 60 km from Accra, also involves considerable costs. Thus, the Right to Water in this context is interpreted more precisely as the right to access drinking water for an affordable price.

In 82 urban areas, the Ghana Water Company Limited (GWCL) is the only responsible body for water supply. The GWCL neither earned sufficient surplus to sustain the existing pipe-network, to finance water-treatment capacities nor to invest in an extension of the pipe network. It is estimated that, over a period of 20 years, 1.8 billion US\$ are needed in order to expand, rehabilitate and renew the pipe system of urban areas. And it is clear that Ghana cannot afford these investments alone. The World Bank, being the most important donor in Ghanaian urban water supply, pushed for the leasing contract, a PSP option with a high degree of privatization with one single company leasing the water facility and being responsible for investments and management for a period of 20 years. Civil society resistance against the PSP was enormous. After two unsuccessful bidding rounds, the government changed the PSP policy from a 20-years leasing contract to a 5-years management contract. Insofar, the National Coalition against the Privatization of Water was a success (Bohman, 2006).

Access to water in the metropolitan area of Accra is constraint by technical, institutional as well as by social factors (van Rooijen et al. 2008). The map shows four different degrees of water supply conditions in Accra. Good water supply (green) is mostly concentrated around the GWCL distribution pipeline. Intermediate water supply (yellow) and rationed water supply (orange) dominate huge parts of the city. There are also huge areas with no water supply at all, especially in the newly build middle-class suburbs in the north. Although the highest burden of water supply lies with the recently

urbanized peripheral parts in the North of Accra, there are also significant shortcomings in a number of central areas.

**Figure 3: Greater Accra Metropolitan Area water supply network and burden of water supply**



Map: Produced by AVRL, Accra, 2007.

Rural-urban migration led to a situation in which the demand for water cannot be satisfied by conventional means of supply. In Accra, most parts of the city cannot be served by boreholes because the groundwater is salty. Therefore, a variety of water points are in place ranging from the GWCL pipe system to more informal, sometimes illegal self-laid pipe-systems; from the potable sachet water, to the water sold in buckets by private water vendors. Tanker operators are a reliable source of supply for bigger water quantities, but the price is higher than the GWCL tariff. Water tankers are used by at least middle-income households, or by commercial vendors that sell the water in poor areas (Yeboah, 2006; van Rooijen et al, 2008).

The Ghanaian Public Utilities Regulatory Commission established a GWCL ‘lifeline tariff; the first 20,000 liters per household are sold for a reduced tariff. The problem of the lifeline tariff is that most consumers in Accra do not have their own household connection. This is due to the high connection costs of approximately 800,000-1 million Cedis. It is also questionable if the GWCL has the technical, financial and operational capacity to supply ‘all’ habitants with one connection per household.

People who do not have a tap have to buy the water from other people’s taps. The PURC is aware of the problem, referring to it as the ‘compound-effect’: in poor areas, many households live together in one compound. One household connection typically supplies the whole compound, or even more people. The effect is, poor people pay a higher price for household water supply than middle-income households that have their own connection because they consume more water volume per tap, which is priced higher for the tariff system determines an increase (per liter) with higher water volumes. The lifeline-tariff is not favoring them anymore, because the consumed amount then usually



outnumbers the amount of water that is sold for a reduced price under the lifeline tariff. The lifeline tariff thus favors especially better-off parts of the population (van Rooijen et al, 2008). In Accra, water prices of different suppliers were recorded, which were four to eighteen times higher than the official GWCL tariff (volumetric water prices). In one slum area of Accra showed that the majority of people here pays almost 60,000 Cedis (around 4.50 €) per cubic meter of water, while poor people in areas with public pipeline infrastructure pay 30,000 Cedis (2,25 €). The official price for water from the GWCL is around 6000 Cedis (0.45 €) per cubic meter. (van Rooijen et al, 2008).

In May 2001, the Ghanaian NGO Integrated Social Development Centre (ISODEC) organized a national forum on water privatization. Many NGOs participated, and there were speakers from the World Bank and the Ghanaian government. The product of the conference was the foundation of the National Coalition Against Privatization of Water (NCAP), which was founded through the 'Accra Declaration on the Right to Water'. Sixty-two persons signed the declaration, many of them representing NGOs like ISODEC, TREND or World Vision International.

The arguments given in the declaration base mainly on four points:

1. Water prices would increase under multi-national corporations (MNC); poor people could not afford these prices. (*the poverty-argument*)
2. The supply situation would worsen under MNC, because their interest is to make money, not to expand the service. (*service deterioration-argument*)
3. Civil society and the public were not adequately informed about and included in the policy discussion. There is a need to further discuss reform options. Options other than PSP have to be taken under consideration. (*participation-argument*)
4. The process favors MNC. The PSP-policy is not in the interest of the Ghanaian people, but it is pressed on the country by foreign donors. (*sovereignty-argument*)

The coalition then started a professional campaign, and it was able to get considerable media coverage inside and outside the country. As stated above, it is unclear whether the NCAP was the crucial factor in the government's decision to abandon the leasing contract option and to implement the management contract option instead.

There are different international signals on how the water sector should be organized. On the one hand, there is the declaration to the Human Right to Water. On the other, the Dublin declaration states that water supply should be organized along the principle of cost-recovery, in order to be sustainable. Further, Private Sector Participation (PSP) is encouraged, in order to get necessary funds for investments. These statements are of high importance for the Ghanaian water sector: since currently 94 % of the state's budget for water is covered by foreign donors. Are these two targets, the human right to water and PSP/ cost recovery, two conflicting targets? In the perspective of the NCAP, they are conflicting:

*"... Water is a fundamental human right, essential to human life to which every person, rich or poor, man woman, child or adult, is entitled."*

*"The National CAP of Water seeks to promote public delivery, ownership and management through community participation to ensure equity and equal right to potable water and also advocate for constitutional reform to make water a right."*

[NCAP members believe] *"that the public sector is legally and constitutionally mandated and designed to represent the public interest. The essential purpose of the private sector on the other hand is to make profit"*

*not to promote the public good. Any public benefits arising from the private sector's activities are incidental not designed. As a result, the private sector cannot be trusted with the public interest."*

*"We reject (...) efficiency solutions that result in the violation of social and environmental rights and justice such as the rights of workers, women, children and the preservation of the natural environment."*

Source: Accra Declaration

The NCAP makes the case for equality against freedom: the (equal) right to access to water against the (entrepreneurial) freedom of multinational corporations to produce and sell water. Paradoxically, it could be possible that the right-based discourse effectively turns against water availability. Some local NGO activists of the NCAP interpret the Human Right to Water in the direction that water should be supplied for free. According to them, the common practice of illegal connections and unpaid-water is, for example, justified as a legitimate coping strategy of the poor. Whilst it is questionable if it is 'the poor' that have the capacity to get illegal connections (it is more likely that illegal connections are established and used by water vendors in poor areas, in partnership with bribed GWCL workers), the practice also contributes to the financial problems of GWCL, and subsequently to its poor performance including the lack of water treatment capacity and the poor pipe system. It is not clear whether the use of rights-based arguments in political negotiations leads to any improvement in the supply for the poor. Experience from other metropolitan areas rather show that a reliable public utility (possibly provided in a PSP framework) may lead to the overall decrease in water prices.

Economists argue that there is a trade-off between efficiency and equity. It is generally assumed that more market-based distribution systems tend to be efficient, but do not care about equity; while right/ power-based state administrations can redistribute resources, but, in doing so, tend to become more and more inefficient.

If this proves to be correct, the situation in Ghana seems so unsatisfying because the urban water sector was organized by a state company. GWCL was so inefficient that even the equity aspect, the strong point of this organizational principle, was not fulfilled in a satisfying way. Levels of inefficiency led to a massive informal private sector involvement and the emergence of water-markets on the micro-level, a situation in which poor people in slum areas of Accra had to pay up to 18 times the official GWCL tariff. From this perspective, state-monopolization on the macro-level led to alternative and diverse on the micro-level with great degrees of inequality.

The way out seemed to be the involvement of the private sector on the macro-level, taking over the GWCL and its assets and reforming the management of the company. On the other hand, irrespective to its validity, the assumed trade-off between efficiency and equity was also used in discursive negotiations. During a time in which international capital was looking for new investment opportunities outside the developed world, water markets were attractive. Experience has shown that the PSP in water supply in developing countries often didn't work at all (Braadbaart, 2005). Theoretically, sociologists argue that markets, in order to function, have some important prerequisites, as for example a functioning state and regulator. In developing countries, this is often not the case. That's why PSP sometimes had disastrous effects (Bayliss, 2002; Hall and Lobina, 2006).

But the civil society resistance did suggest few alternatives. The Right to Water does not help any household, if there are not the institutional, financial and personnel

means to deliver drinking water. Both the parties, the administration officials and donors pushing for PSP, as well as the NGOs campaigning against it, seem to have been discussing on different levels, without much possibilities for dialogue, not to speak of compromise. The urban water sector in Ghana has always been a state-monopoly, without significant participation of stakeholders like community organizations or other NGOs. Thus, there is no culture of stakeholder participation in urban water policy and supply. This is the more astonishing, as the GWCL has serious problems in dealing with poor communities, when it comes to the collection of bills, the fight of illegal connections, and, in general, doing its job. Here, community based organizations could help. Through the incorporation of NGOs at an early level of the policy process, confrontations could be prevented, and the feasibility guaranteed. The urban water sector is in a very bad state. It simply does not come up to minimal supply standards. In order to make it work, new institutional arrangements have to be found; arrangements in which civil society, community based organizations and local businesses play a central role.

It is not clear if the Right to Water had any impact on the 'material' supply situation in urban Ghana. But in the negotiation of private sector participation, and especially the coalition against water privatization, the concept of the Human Right to Water played a central role.

Today, PSP in water is in place: Two companies from the Netherlands and South-Africa won the bidding process for the management contract; since 2006 their newly founded Aqua Vitens Rand Limited (AVRL) is responsible for the management of the GWCL. It is not clear yet if they can come up to the high expectations for their staff consists in not more than ten management consultants, and they do not have the mandate to expand the water pipe network or to build new treatment plants. Furthermore, they have not the power to establish cost-recovery tariffs, which are subject to the decision of the regulating agency PURC. Both AVRL and GWCL say that the price is too low, but the government vetoes price increases in times of already historically high fuel prices and thus resulting enormous political pressure. AVRL/ GWCL are trying to reduce the unaccounted for water by cutting of illegal connections. The NCAP, although their main activities were directed against the leasing contract, still campaigns against this form of PSP, stating that the foreign managers earn too much. Indeed, it is clear that there must be internal mistrust and unrest if foreign experts become heads of a company, earning expat-salaries several times that much of the former management, let alone the comparison with the regular staff's salaries. Some donors are also skeptical about the outcome: *"This is no private sector participation, but simply a World Bank project. There is no risk involved for the private operator. When the operator leaves after the end of the contract, everything will be as before"* (personal communication of a head of a donor's water project. Accra, June 2007). It seems that the current arrangement is a face-securing compromise for the World Bank, which was not able to push through its initial agenda due to the retreat of the bidding companies as well as high pressure of Ghanaian civil society.

However, the private operator is currently engaged in increasing the revenue, through cutting off illegal connections, and establishing sound business procedures. Hopefully, the water supply situation will improve in urban centers of Ghana, but it is yet too early to judge the success of these attempts.

## V. Conclusion

In the urban water sector, the impact of the Right to Water has been limited to the discursive level. With the exception of the PURC implementation of a lifeline tariff, which has the tendency to favor middle-class households, the right itself had no conceivable impact on access or availability of water in urban areas in Ghana.

The implementation of abstract legal concepts takes time; from the creation of concrete legal texts that allow people to claim their right to the application of these rights by administrations and courts. But within the arguments of the NCAP, the Right to Water played a dominant role. The coalition played this card better than the PSP defenders, which could have argued that there are physical, financial, and human preconditions to the realization of a right, which could perhaps better be realized through the formal incorporation of the private sector. The coalition made the good argument that the way the leasing contract was conceptualized; it was not conform to the Right to Water, because it excluded public participation in decision making.

However, the current water crisis in Ghanaian metropolitan areas, especially in Accra, leads to the question whether formalized and properly regulated PSP could help. Poor people in Accra already depend on small or bigger local water entrepreneurs. If we take into consideration the significant investment being made Ghanaian small-scale water enterprises, we have to ask if there is no way of incorporating this human and financial potential, as against the incorporation of foreign multinational companies. On one hand, there are obvious difficulties with incorporating small-scale entities and to avoid monopolist supply. One firm can deliver to a better price than two or more firms, because of the considerable investments. On the other hand, as we have seen in the case of small town water supply, that there are models of incorporating community-based or small-scale entrepreneurs. However, the experience made with the management contract and the GWCL's operator AVRIL will inform the future discussion of the reform of urban water in Ghana in general, and especially of private sector participation in this field.

The empirical material indicates the context-dependency of popular policy concepts, such as rights, access, privatization, or the price of water. Whilst in the rural water sector, the impact of the Right to Water is of no relevance, it has been limited to the discursive level in the urban water sector.

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