

IMPLEMENTING THE RIGHT TO WATER IN FRANCE

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Abstract : Nearly every person has access to drinking water and to sanitation in France but there are still exceptions to this individual and collective right (low water quality, lack of proper sanitation, high prices, etc). The issue consists in designing measures to remove such exceptions as far as possible. Various recent French laws institute non-tariff measures, tariff measures and control measures. Most of these measures are taken at local level because water supply and sanitation and the fight against poverty are mainly a local or regional responsibility.

IMPLEMENTING THE RIGHT TO WATER IN FRANCE

The French policy concerning the right to water is that everyone should have access to drinking water and sanitation and that water service should be paid entirely by users. The water law of 1992 states that water is part of the common heritage of the nation and that its use is for all. This was amended in 2006 in the new water law (loi sur l'eau et les milieux aquatiques n°2006-1772 du 30 décembre 2006, LEMA) of which article 1 states:

« Dans le cadre des lois et règlements ainsi que des droits antérieurement établis, l'usage de l'eau appartient à tous et chaque personne physique, pour son alimentation et son hygiène, a le droit d'accéder à l'eau potable dans des conditions économiquement acceptables par tous. »

(Within laws, regulations and established rights, the use of water is for all and every physical person has the right of access to drinking water for nutrition and hygiene at affordable price).

This right to water for all is limited to a small quantity of good quality water at a price that each person is able to pay.

This paper describes the extent to which France is implementing the right to water for all. It should be remembered that great progress has been achieved over the last 50 years as only 10% of dwellings had showers or baths in 1954 and only 27% had toilets inside the dwelling (to day, the rate is 97%). It should also be remembered that such progress took time and was achieved with considerable support from public money.

A. THE PROBLEMS TO BE SOLVED

1. The water supply and sanitation sector

Water supply and sanitation are traditionally the responsibility of local governments (municipalities). 4.4 billion m³ of drinking water are billed each year (11.3 billion €) of which 3.8 billion m³ is sold to 20.4 million domestic users (each user is metered but there may be many households with a single meter). Over 29 000 companies provide water service to 36 700 municipalities. Of these there are 4790 water supply companies and 4208 sanitation companies which are “délégataire de service public” (i.e. run by a private operator under contract with a public administration) (most figures are taken from the booklet “Les services collectifs d'eau et d'assainissement en France, BIPE/FP2E, oct. 2006). As a whole, private operators manage 74% of water supply and 52 % of sanitation but all investment remained in public hands.

2. Access to water supply and sanitation

In France, nearly everyone (99 %) is now connected to water networks. There are still 114 remote villages (out of 36 000) with no water network and some 200 000 people (out of 62 million) are not supplied with water from a public network (they use water from private wells, mineral springs and small streams). To achieve this result, municipalities have borrowed money and obtained subsidies from regional and central governments as well as grants and loans from water agencies. A national fund (FNDAE) has provided for many years grants covering the additional cost of water investment in sparsely populated rural areas. It was financed by a tax on piped water (solidarity between rural and urban areas) and was recently abolished. Each water agency now organizes solidarity between users by redistributing to them water abstraction and pollution charges they collect. They are also called upon to finance actions of common interest taken at national level.

Water quality is very good in cities (over 2000 inhabitants). However about 5.8 % of the population (3 million inhabitants) are still supplied with water that does not fully meet water quality requirements (microbiological limits). Nitrate pollution caused by husbandry and agriculture is affecting drinking water in many French regions. 6.8% of the population in France still drinks water with a relatively high pesticide content (restriction on use of such water occurred for only 0.2% of the population)(See “L’eau potable en France 2002-2004”, Min. Santé, 2005).

Sanitation is extensive because wastewater from 87 % of the population is treated in collective or individual facilities. Nevertheless, in 1999, 1.5 million inhabitants were connected to sewerage but without wastewater treatment (4000 municipalities dispose of their waste water directly) and 1.3 million inhabitants have neither sewerage nor wastewater treatment.

Additional investment in sanitation is needed and will cause an increase in drinking water prices. France is about to be fined by the Court of Justice of the European Communities for repeated failure to implement water directives, in particular in Brittany. Furthermore, people not connected to collective sanitation will have to improve their individual sanitation systems and therefore incur significant expenditure in the coming years.

3. Water prices

Water pricing in France is based on the principle that “water has to pay for water”, i.e. that subsidies should not be seen as a major source of financing. Water utilities are organized by municipalities and are financially autonomous. Municipal budgets in all but the smaller municipalities may not provide financial support to water utilities. The total turn over of water utilities for domestic purpose is 11.3 billion € of which 552 M€ are provided by French “départements” and regions and financed by general taxation. Taxes collected on water, mostly VAT, amount to 675 M€. Thus the principle “l’eau paye l’eau” (water pays water) is fully implemented.

Water prices (covering water supply, sanitation and taxes) are on average at 2.77 €/m³; they are relatively low compared to water prices in nearby European countries. In 90 % of the French municipalities, the actual price is between 0.95 and 3.7 €/ m³ (the total spread factor is 7). An average household spends about 1 € per day for water, i.e. 0.8% of the average net income, for 330 litres of drinking water. Poor households with a net income of 550 € per month may have to spend as much as 5.5% of their income on water.

In the French context, water could probably be considered as being “too expensive” if its price exceeds 3% of the net income of the household. This is the case for approximately 1.6 million households (out of 62 million inhabitants) who have a total net income below 33 € per day (and spend 1 € on water per day (330 litres of water per day at 3 €/m³).

Although water may be relatively expensive for the poor, most of them do pay their water bills and non-payment cases for poverty reasons are relatively rare. As expected, delays in paying water bills are more frequent in poor households. In 2004, an opinion poll showed that water was considered “too expensive” by 79% of the total population.

B. THE SOLUTIONS PROVIDED UNDER FRENCH LAW

In France the “right to water” is a legally recognized individual right since December 2006. It is closely linked with the right to a decent housing (a legally enforceable right since March 2007) and to the right to a decent life. Everyone has the right to be connected to nearby water supply networks if available and everyone has the right and even the obligation to be connected to nearby sanitation networks if available. But that does not mean that everyone is supplied with drinking water at home nor has access to a sewer.

France is a contracting party to the International Covenant on Economic, Social and Cultural Rights and, therefore, has to take into account General Comment N°15 on the right to water and, in particular, the core obligations under the Covenant. However, the direct application of the Covenant under French law is very limited. In general, French courts decide against water disconnections made by utilities but such decisions are not made on the basis of international or human rights law.

France has subscribed to the Millennium Development Goals and to the Johannes-burg Plan of Implementation and is increasing its support for increasing development aid concerning water. Because of the sizable number of people in France not having access to water of a sufficient quality, it has introduced in a 2004 law the undertaking to halve by 2008 the proportion of people without access to drinking water in France.

As a EU member, France has to meet the requirements of water directives (water framework, drinking water, urban waste water, nitrates, pesticides, lead, public participation, etc.). It is improving its water quality to meet EU standards and sanitation. However the European Court of Luxembourg has sentenced France for

persistent non-compliance with EU requirements concerning drinking water and sanitation.

Various recent French laws specify individual rights related to water in various circumstances. They institute non-tariff measures, tariff measures and control measures. Most of these measures are taken at local level because water supply and sanitation and the fight against poverty are mostly a local or regional responsibility.

While the right to water is in force for at least 95% of the people, there are millions people in France for whom access to drinking water is a problem, mostly because of low water quality but also because of non-affordability of water prices. While such problems do exist, there are not too frequent and rarely very acute: serious water related diseases are very rare and few people suffer from absolute lack of water.

1. Non-tariff measures

Access to water is a problem for those people living without a connection to a water supply (section 1.1). For people living in a decent housing the water issue is purely economical because they may be too poor to pay for their water consumption and risk to be deprived of water supply (section 1.2). In addition, there are still people connected to a supply of water of poor quality (section 1.3).

1.1. Physical accessibility

a) Homeless people (at least 86 000 people living on the streets).

Everyone can freely obtain drinking water at public fountains. However public fountains and public wash- houses, which used to be available in every village are often out of order and not available anymore because of lack of demand. Many municipalities provide water, toilets and showers for homeless people for free. They also provide free tickets for access to public baths and some of them even provide free facilities for washing and ironing. Charitable organizations also help the homeless to access water.

b) Squats, slums, barracks, shacks, caravans, illegal settlements (over 100 000 people).

Access to water is difficult for illegal occupants because water utilities are often not authorized by the mayor to provide water to unauthorized dwellings (in particular mobile homes or barracks on non constructible land plots). In this case standpipes can be installed in the street or nearby and agreements for payment of water used in squats can sometimes be made with the municipality or utility.

c) Travelling peoples (mostly French-born gypsies) (300 000 of which 100 000 are moving constantly and 100 000 are moving occasionally)

All sizable municipalities have to provide parking areas for camping cars and caravans of nomads and to provide water and toilets in these areas. This new requirement is supported by generous state subsidies to overcome local discontent. Because of local resistance to create dedicated parking areas, nomads often settle elsewhere and have to fetch water from more distant sources.

d) Low quality housing

Although housing has been much improved over the last 50 years, there are still over 400 000 substandard dwellings. A recent law forbids landlords to rent apartments without toilets, hot water and showers or baths (In 2002, there are 303 000 people without either a bath or shower and without inside toilet, 253 000 people with an inside toilets but without a bath or shower and 429 000 people without an inside toilet). Furthermore sanitary equipment in rented apartments may not have leaks when the tenants move in and, if this is not the case, the leaks should be fixed by the landlord.

e) Water savings

Efforts are being made to reduce leakage of water networks and inside each dwelling and to enhance water savings. Individual water meters in apartment buildings are promoted by law (recently it became mandatory for all new buildings) in order to enhance early repairs of leaking taps or toilets, and savings in water use. The new water law is promoting collection of rainwater to reduce the use of drinking water.

f) Disruption in water supply

In case of emergency, public authorities have to bring drinking water in trucks or distribute bottled water freely. Measures are taken to supply villages in which water wells or sources run dry because of lack of rain, and also to supply touristic areas when water shortages occur.

g) Access to drinking water outside the house

Free drinking water is provided to all users of public buildings, hotels and restaurants, theatres, etc. Water, individual toilets and showers are mandatory in schools and at work. There are also many public fountains with drinking water and more are being installed in Paris.

h) Access to water in case of non-payment

When people fail to pay their water bills, they run the risk of being disconnected. In France, it is not permitted to cut off water from families with young children, or disabled persons, or from poor families, which are receiving a housing benefit from "Fonds de solidarité pour le logement". It is also forbidden to cut off water on a Friday or a day before a holiday.

1.2. Economic accessibility

Access to water supply and sanitation networks is a right but water has to be paid for. The cost of connection to water supply and sanitation can be very high and has to be borne by the owner. As the cost of water is increasing because of investment to improve water quality and sanitation, water is becoming unaffordable to a growing number of people. The affordability issue is not uniform because the price of water is very different from one municipality to another. All domestic users are metered but for large buildings there is often a single water meter for many dwellings (in Paris 90 000 water meters for 2.2 million inhabitants).

The affordability issue is of concern to 3.6 million people with an income below 50% of the median income (657 € per month for a single person) or 1.6 million households. A total of 700 000 households currently have a plan for the payment of unpaid water bills. Over 50 000 households cannot pay their water bill and receive support from a public social fund.

h) Individual houses and flats with individual water meters

When water bills are not paid, inhabitants of individually metered dwellings face the risk of being disconnected. Under an agreement between utilities and public authorities, families with children and disabled persons may not be disconnected. Poor people with water in arrears have a moratorium for payment during a few months and are entitled by law to seek financial assistance from local social services. If they do not get such assistance, they are often cut off. Meters with prepayment (and automatic disconnection) are very rare.

i) Condominiums (collective water meters)

People living in condominiums usually pay their water as part of the overall running expenses of the building (approximately 15% of running expenses is for water). If they are too poor to pay their rent and expenses, they may receive a housing allowance and can ask for support from a dedicated housing support fund (FSL). This fund has provided 263 MEuros to 279 000 households in 2002 of which 79 000 households which had debts for rents and expenses. Some 84 000 households were expelled from their dwelling because of nonpayment of which 20 000 was with police help). Water supply may not be disconnected by the owner or the building manager to hasten payment of unpaid rent or building expenses.

If the condominium as a whole does not pay its bills to the water utility, it faces the risk of being disconnected from water supply. This is the case for about a few hundred buildings per year and is a source of public discontent because people who did pay their expenses are being penalized.

j) Supply of water in case of disconnection

About 2% of the users pay late because of income constraints. Losses for lack of payment are about 0.2 % of turnover of utilities. Disconnections of water users are still taking place in spite of social measures taken. According to official statistics, 20 000 disconnections of poor people per year are taking place from which 2000 disconnections last more than 24 hours. At present, to protect public health,

authorities may ask water companies to put a standpipe in the street for free use (e.g. for the supply of people without water and also in case of repair of the water network). In Paris there are at least 100 emergency standpipes (near squats) in addition to usual public standpipes.

When French courts have to decide on a water disconnection case for non-payment, they usually order the reinstatement of supply in order to protect health and human dignity. As court proceedings are slow and costly, NGOs prefer putting pressure on mayors with a view to reinstating water without delay or cost. Officials as well as utility managers dislike publicity concerning disconnections of poor households because they know that the public would not support such drastic measures.

In many municipalities, mayors have decided not to disconnect poor people any more, nor to allow water utilities to do it but will rarely admit it publicly so as not to encourage non-payment of water bills. In some municipalities such as Saint-Denis, the mayor has taken a decree to forbid water disconnection of poor people. In Paris, disconnection has to be authorized by the Mayor.

1.3. Adequate water quality and sanitation

k) Water supply

Water for human consumption (sources, wells, small rivers, etc.) is protected by a series of laws (civil code, environment code, rural code, local authorities code, European Union legislation). The European human rights court has adjudicated a case concerning rights related to provision of drinking water. The new water law has established a priority over other uses for water for human consumption.

Municipalities must define areas served by a water supply network; in theory, they are not obliged to build a network but any network must supply good quality water. Supplying unsafe drinking water has been sanctioned by courts. Unfortunately water supplied to people does not always meet drinking water standards because of agriculture pollution and because municipalities in small mountain villages have not implemented adequate measures for the protection of wells.

l) Sanitation

Municipalities have to build and operate collective sanitation networks in so-called "sewered areas" and to control individual sanitation equipment outside these areas since the end of 2005. However this deadline has not been met in many villages and serious problems will have to be faced because many individual sanitation systems are out of order.

2. Tariff measures

Financial and tariff measures may be taken to make water more affordable for everyone especially poor people. France has a system of forgiveness of arrears in place but no system of social tariff.

2.1 Lower taxation and subsidies

Water VAT is at 5.5% instead of 19.6%. There are still small investment subsidies for water supply in rural areas or for wastewater treatment plants, but on the whole, users collectively pay over 95 % of the cost of drinking water and sanitation.

2.2. Help with forgiveness of arrears

Poor people who cannot pay their water bills are entitled by law to request financial aid from the municipal social services or from the Solidarity fund for housing (FSL) to enable them to pay their water arrears. There are about 50 000 positive decisions per year implying a cost of 7.5 million € per year (0.12 €/inh.). The number of beneficiaries is relatively small because of lack of funds in some regions and also because the procedures are cumbersome. This aid system was introduced in 1996 but only reached its target in 2006. It would need to be improved and its funding should be enlarged. In a municipality (Aix-les-Bains), a water charge was agreed upon in order to finance a local water solidarity fund but was not introduced because of lack of legal authority.

2.3. Pro-poor tariffs

In general water tariffs consist of an annual fixed fee and a volumetric charge, i.e. a few Euros by cubic meter. In a minority of municipalities, there is no fixed fee in water tariffs (for example, in Marseilles) and a small number of municipalities are using progressive tariffs (e.g. Bordeaux).

In spite of the social tariffs introduced recently in France for electricity, gas, telephone and local public transport (reduced price for poor people), social tariff for water have not been authorized in the new water law. In particular municipalities have not been allowed to collect a water charge to finance a solidarity fund for water.

The new water law prohibits utilities or operators requiring security or warranties for future water consumption of new users.

2.4. Aid to water supply and sanitation in developing countries

France has provided official development aid for water supply and sanitation (over Euro 200 million per year during 1996-2002 or 3.3 €/inh. for bilateral aid). French development NGOs and French charitable organizations also support such actions. French utilities and basin agencies have given funds to improve access to water in developing countries but this was considered to be illegal. Hence a law was adopted in 2005 to legalize this practice. As a consequence, a small part of water charges (over 8 M€/year) will be used for other purpose than providing water and sanitation to users.

3. Control measures

Water prices are controlled by municipalities. Utilities have to report to the municipal council and to a consultative committee of users of public services. This committee must be consulted on any proposal to change the management system (e.g. to go “private” or to go “public”). Each year, there are about 700 decisions taken; in 96% of the cases, there was no change of system, in 3% of the cases, the change was in favour of delegated management (e.g. so-called “privatisation”) and in 1% of the cases in favour of public management (“régie”).

Enhancing competition between water companies helps to keep the price of water under control, in particular when the delegated management contracts reach their term. Numerous legal requirements have been set to avoid creating de facto monopolies or unhealthy competitive conditions. Violations of water contracts and related laws have led municipalities, or consumer groups to undertake numerous administrative proceedings, and occasionally uncover cases of corruption. Additional oversight mechanisms have been contemplated because of the oligopolistic market situation of the water sector but have not been implemented.

C. CONCLUSIONS

France is seeking to ensure that drinking water is available to all, even to the poorest persons living on its territory and has taken a large number of measures to reach this goal. The cost of ensuring access to water for all is very modest (at most a few per cent of the overall drinking water expenditure). As the price of drinking water will continue to grow, the issue of affordability will become significant. The new water law has addressed the issue of water poverty by requesting that water be affordable to all but such a law will need to be implemented in practice.

References : See the following reports : “Le droit à l’eau”, “La solidarité pour l’eau potable”, “De l’eau pour tous”, “The cost of meeting the Johannesburg targets for drinking water”, “De l’eau saine pour les plus pauvres”, “Pour un droit effectif à l’eau potable” , “The right to water in national legislation”, “La reconnaissance officielle du droit à l’eau”, on the site www.academie-eau.org.