

Panel 33: Is the Right to Water and Sanitation Supported or Undermined by the New Mega Trade Agreements TTIP, TTP, TISA, and CETA?



Will TISA undermine the right to water and the right to food?



Characteristics of TISA

- international trade in **services**
- currently **under negotiation**
- negotiated by a **limited number of WTO member States** with the goal of future «multilateralisation»
- to impose a progressive and irreversible **deregulation** and to open up public services for **privatisation**
- **critical provisions and elements:**
 - standstill clause
 - ratchet clause
 - national treatment
 - negative list
 - restrictions on domestic regulation
 - annexes

Pertinent features of the human right to water (1/4)



I. INTRODUCTION

1. «Water is [...] a **public good** [...]»

II. NORMATIVE CONTENT OF THE RIGHT TO WATER

10. «The right to water contains [...] the right to **maintain access to existing water supplies** [...], and [...] the right to be **free from arbitrary disconnections or contamination** of water supplies [...]»

11. «Water should be treated as a **social and cultural good**, and not primarily as an economic good. [...]»

12.c.ii/iii «[...] Water, and water facilities and services, **must be affordable for all** [and] **accessible to all** [...] **without discrimination** [...]»

13. «[...] **the vulnerable members of society must be protected** by the adoption of relatively low-cost targeted programmes.»

16. «States parties should give special attention to [...] **refugees, asylum seekers, internally displaced persons, migrant workers**, [...].

Pertinent features of the human right to water (2/4)



In particular, States parties should take steps to ensure that:

(a) Women are not excluded from **decision-making processes** concerning water resources and entitlements [...].

(c) [...] **Access to traditional water sources** in rural areas **should be protected** [...]. **Deprived urban areas, including informal human settlements, and homeless persons**, should have access to properly maintained water facilities. [...]

(d) **Indigenous peoples' access** to water resources on their ancestral lands is **protected** [...];

(e) **Nomadic and traveller communities** have **access to adequate water** at traditional and designated halting sites;

(h) **Groups facing difficulties with physical access to water** [...] are **provided with safe and sufficient water.**»

7. «[...] Attention should be given to ensuring that **disadvantaged and marginalized farmers** [...] have equitable access to water and water management systems [...]»

Pertinent features of the human right to water (3/4)



III. STATES PARTIES' OBLIGATIONS

General legal obligations

17. «[...] the Covenant [...] **imposes on States parties various obligations** which are of immediate effect [...] such as [...] to take steps [...] **towards the full realization of the right to water.**»

(a) Obligations to respect

21. «The obligation to respect requires that States parties **refrain from [...]** engaging in **any practice or activity that denies or limits equal access to adequate water; [...].**»

(b) Obligations to protect

24. «Where **water services [...]** are **operated or controlled by third parties,** States parties must prevent them from compromising equal, affordable, and physical access to [...] water. To prevent such abuses **an effective regulatory system must be established [...]**»

Pertinent features of the human right to water (4/4)

(c) Obligations to fulfil

27. «To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: [...] (b) appropriate pricing policies such as **free or low-cost water**; and (c) **income supplements**. [...].»

International obligations

35. «States parties should **ensure that the right to water is given due attention in international agreements** [...] States parties should take steps to ensure that **these instruments do not adversely impact upon the right to water**. Agreements concerning **trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water**.»

V. IMPLEMENTATION AT THE NATIONAL LEVEL

48. «[...] The **right of individuals and groups to participate in decision-making processes** that may affect their exercise of the right to water must be an integral part [...]. Individuals and groups should be given **full and equal access to information** [...]»

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES

60. «[...] international **organizations concerned with trade** such as the World Trade Organization (WTO), should cooperate effectively with States parties [...] in relation to the **implementation of the right to water** at the national level. [...]»

Potential impacts of TISA on the human right to water (1/3)



Critical questions:

- Will the human right to water in its breadth, or the various entitlements of the right holders respectively, be fulfilled after **deregulation** through TISA?
- Will the human right to water in its breadth, or the various entitlements of the right holders respectively, be fulfilled after **privatisation** of water supply and water management services?

Potential impacts of TISA on the human right to water (2/3)



A) Privatisation of water supply:

- skyrocketing water prices
- decline of services
- decline in region-wide access to water, exclusion of poor areas from access to water
- decline in water quality
- dismissal of employees (up to 50 %)
- insufficient investments
- conflicts on operational costs, lack of financial transparency
- lack of integrated planning
- insufficient ecological sustainability
- problems of monitoring private management
- (+) more funds available for investments

Potential impacts of TISA on the human right to water (3/3)



B) Privatisation of waste management and sewage disposal services:

- threat of poisoning surface and ground water

C) Water resource management by transnational corporations:

- reduction of water availability for small-scale producers and for pastoralists by
 - diverting rivers for industrial agriculture and industry
 - extracting groundwater for industrial agriculture and industry
 - raising prices / privileging large-scale agroindustrial producers

D) Restrictions on domestic regulation:

- lowering water quality standards

Potential impacts of TISA on the human right to adequate food and nutrition



- Privatisation of water supply and water management services
- Privatisation of agricultural support services
- Unrestricted land acquisition by foreign investors
- Deregulation of financial services contributing to land grabbing and food speculation
- Prohibition of food subsidies
- Prohibition of import and export restrictions for agricultural commodities and food products
- Strangulation of policy spaces for the right to food and human rights in general

Human rights violations through the negotiation process



secrecy of the negotiation process

exclusion of stakeholders

human right to information

human right to participation

Participation

Accountability

Non-discrimination

Transparency

Human dignity

Empowerment

Rule of law

Demands towards the States

- full and timely **disclosure of all information** on contents, results and progress of negotiations
- **involvement of civil society** in decision-making processes
- comprehensive and independent **human rights impact assessments** of actual and intended contents of the agreement
- **moratorium** on the negotiations until human rights impact assessments are conducted and the public is properly consulted
- **cancellation of the standstill, ratchet and national treatment clauses** and of the precedence of the **annexes** over national exemptions
- **return** of the negotiation process **into the WTO framework** (and, ultimately, **incorporation of the WTO into the UN framework**)

Summary and Conclusion



The implementation of **TISA is very likely to undermine the human rights to water, sanitation and food** through various processes.

Water supply and water management are not suitable for privatisation if corresponding human rights are to be upheld.

An agreement concluded after a human rights violating negotiation process is not only undue, it is **void**.

We, our parliamentarians, and civil society as a whole must **resist TISA** in its present form in order **to preserve our commons** like water and land **and our human rights** to water, food, health, information and participation. ■