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Access to Basic Services for All Partnerships and Rights-Based Approach

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ACCESS TO BASIC SERVICES FOR ALL PARTNERSHIPS AND RIGHTS-BASED APPROACH

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ACCESS TO BASIC SERVICES FOR ALL

PARTNERSHIPS AND RIGHTS-BASED APPROACH

The rights to water, sanitation, energy, transport, waste disposal, housing, health and education are, directly for the last two or embodied in the expression “an adequate standard of living” for the others, recognised in the 1948 Universal Declaration of Human Rights. Fifty-five years later, at least two billion human beings cannot enjoy these rights, as they have not access to these basic services. This is a matter that PEKEA should study in analysing the failures as well as the success of both orthodox and non-orthodox policies designed to provide all access basic services.

Access to basic services for all is becoming, throughout the world, a political and economic challenge whose dimensions are changed by decentralisation. The solution to this challenge will shape “our common future”

This paper will not analyse specific examples - which remain to be done in a PEKEA perspective - but will, on the basis of consultations of several stakeholders (civil society organisations (CSO), local authorities, enterprises, governmental and UN officials), focus on conditions for these stakeholders to play fully their role in giving all access to basic services.

1. Elements for a definition of access to basic services for all

There is no commonly accepted definition of “basic services” and the expression “access for all” also deserves some clarification. The elements of a definition, as well as a few questions that should be addressed when setting access to basic services policies or undertaking action, are outlined below.

(Basic) Services

There is no universally accepted list of basic services. The list implicit in this note - water supply, sanitation, waste management, transportation, energy supply, health care, housing, and education – is an extensive one to which communication should also be added today. Some of these services could be considered as more “basic” than others; but, this depends on the point of view taken and it is a political decision to be taken by each country.

Basic here raises the same type of issues as in the definition of *basic needs*:

- For whom?



- For what? Sustainable development, human dignity, decent life?
- In relation to which goal?

In this text *basic* is related to decent life and human dignity as elaborated in the Human Rights Declaration, the Covenant on Economic, Social and cultural Rights and related General Comments.

Access implies:

- Availability. The service is produced, available and accessible.
- Affordability. The price paid by the users for each service has to take into account their financial resources.
- Adaptable. The supply of the service has to be adapted to the real needs of the population.

For all:

For all refers not only to every household or community without distinction but also to each individual within the household or community.

2. Access to basic services: a not fulfilled human right

The Universal Declaration of Human Rights recognises in article 25 that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”, and the right to social security. Similarly, article 26 recognises “the right to education”. Eighteen years later, Article 11 of the International Covenant on Economic, Social and Cultural Rights states that “the State Parties recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing, and to the continuous improvement of living conditions” Article 12 relates to physical and mental health and article 13 to the right to education. The Committee on Economic, Social and Cultural Rights has, in the following decades, expanded on the content of articles 11 and 12 and the obligations it creates on States parties to the Covenant in the General Comments 4, “the right to adequate housing”, 14 “the right to health”, 15 “the right to water”. These General Comments establish links with sustainable access to safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, refuse disposal, site drainage, emergency services and with costs of “getting to and from the place of work”. It can be said that the language used in articles 11 and 12 of the Covenant as well as in the General Comments 4, 14, and 15 confirm that access to the basic services is contained in the right of everyone to an adequate standard of living.

Also, of essential importance is respect for the principle of non-discrimination contained in the Universal Declaration: everyone is entitled to all “the rights and freedoms set for in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Despite the ratification of the Universal Declaration and its Covenant and despite the adoption of the General Comments by most countries, throughout the world, individuals, families, communities, and even entire cities remain without access to basic services for a variety of



reasons including: policy discrimination against the poor or in favour of the wealthy; ethnic discrimination; high costs of production and distribution, waste and abuse; lack of capital and operating funds; corruption, mismanagement, lack of foresight, lack of civism. Regardless of the reasons advanced, the poor are suffering from this situation that harms their efforts toward a dignified life and threatens our common future: lack of access to basic services is, at the same time, the result and cause of poverty.

3. Some common characteristics to basic services

The list of basic services, as given above, shows their diversity. Some may appear more essential to human dignity than others. Some require a stronger involvement of local authorities than others. Some are delivered through costly networks of infrastructures, while others do not require heavy investments, but have very high working costs. Despite their diversity, these basic services have in common some essential characteristics that will be highlighted below before moving to proposals that could improve access to each of them for all.

3.1. *Basic services are closely interrelated*

A deficiency in one or another service may affect access to, or benefits from, others. Housing conditions, sanitation, water quality, energy use, and waste disposal all affect public health. As a consequence, both population mortality and economic productivity are influenced. In a similar way, energy availability and affordability impact on transportation costs and water availability cost etc., i.e. basic services are interrelated. Consequently, well-planned integrated strategies would save resources and permit simultaneous progress in access to different basic services. This calls for the training of, and co-operation among, those responsible at the national and local level to design and implement policies and projects related to the production and the delivery of basic services.

3.2. *Access to basic services is affected by three major trends: urbanisation, decentralisation and privatisation.*

Urbanisation in the developing world is growing with an increasing number of the population living in slums or peri-urban areas, which increases the risk of non-delivery of one or several basic services.

Decentralisation of responsibilities from the national government to regional or local authorities is sometimes a deliberate action in order to give responsibilities to the level of management that is perceived as the most appropriate; sometimes it is the implicit result of the incapacity of the state to assume its responsibilities by lack of means or will. In the former case, decentralisation may improve access to basic services provided that adequate resources are accessible to local authorities and that they acquire the necessary management skills. In the latter, it may further deteriorate the living conditions of the poor.

Similarly, privatisation is sometimes a deliberate choice for more efficiency and quality in the delivery of services; sometimes it is a desperate remedy to the deterioration of the public supply of basic services and the lack of financing. Here again, if privatisation is well targeted, contracts



well conceived and monitored, it may lead to an improvement in service delivery for all. If not, the situation of the poor is likely to deteriorate.

3.3. Access to basic services for all requires investments that have to be financed from public and private, international, national, and local sources.

In the developing world, the quasi totality of road and rail infrastructure, electricity grids, water and sewage networks, urban transportation networks, hospitals and health centres were and are financed from public money. The amounts required to repair and maintain these infrastructures and to further extend them so that everyone has access to basic services exceed the capacity of the local and national budgets of most of these countries. In some, they could be met if priorities were reset taking into account the people's demands. The hope that the private sector would fill the gap has been exaggerated. With few exceptions, the private sector is not ready at the beginning of the 21st century to finance basic infrastructures as it did, in some cases, in Europe and North America in the 19th century, simply because the return on investments is too long and there are less risky opportunities. Rather, it appears that the private sector can be well placed for, and willing to, repair, maintain, extend eventually, and operate these infrastructures provided the tariffs paid by customers permit them to make profits. This means that most of the basic infrastructures will have to be financed by the state or local authorities on budgetary resources, foreign aid or loans from the World Bank or regional development banks.

Besides the heavy investments required, examples abound of small investments that improve access to, and use of, water, waste collection, sanitation, energy use, transportation, health conditions, sewage and that can be realised by households or local communities with help from local authorities, CSOs, or enterprises. Such investments are facilitated by incentive policies and micro-credits.

Nevertheless, small investments cannot serve as a substitute for investments in infrastructure, both are necessary and complementary. In a given country, responsibilities for their financing have to be shared between households, micro-credit institutions, local authorities, national government, public and private companies, donors, regional and international financial institutions, national and international CSOs. Each stakeholder has its own responsibilities in making basic services accessible and none can shift its responsibilities on another.

In this perspective, many issues deserve debate, analysis and exchange of experiences. For instance: transfers from the national budget to local budgets; local authorities; capacity to directly raise taxes, access to World Bank or Regional Development Banks loans and grants; differentiated tariffs; micro credit mechanisms.

4. Three policy priorities for the delivery of basic services to all

Reports, seminars and workshops offer hundreds of examples of failure and success in the delivery of basic services to all. The first lesson to be drawn from these concrete cases is that each case is unique: successes are not easily replicable and an approach that failed may succeed in other circumstances or in other times. Nevertheless, these examples are a source of inspiration



for decision makers and advisors. If the ideas they suggest are adapted to the local realities, they may prove extremely useful. They should be published and widely disseminated as requested in particular by local authorities in the interviews conducted and meetings attended in the preparation of this paper.

Keeping in mind the risks incurred in drawing general conclusions from specific examples, three broad recommendations will be proposed: to involve the poor, to develop partnerships, and to recognise the central role of local authorities.

4.1. Involving the poor

Traditionally, the people, particularly the poor, have not been included in assessing their own needs, although they frequently represent a large proportion of the urban population. This has often led to the construction of facilities that they do not use properly, about which they do not care and to which they are not ready to contribute. On the contrary, if they are consulted and believe that their situation could be improved, they will be willing to participate in construction - the local authority providing material and guidance - and to pay charges for the services which they are benefiting from.

Participatory approaches foster a sense of ownership and enhance accountability and transparency in service delivery. Such processes help invest the micro resources of individuals and the social capital of communities. Going a step further and following the report “Unleashing Entrepreneurship: Making Business Work for the Poor” of the Commission on the Private Sector and Development, it could be recommended to convert informal assets of the poor and of communities into clear property rights that could be used as collateral in obtaining small scale loans. This potentially promising avenue would require broad institutional reforms.

For involving people, particularly the poor, it is important to put in place appropriate laws and regulations as well as participatory processes and structures, complemented by capacity building initiatives aimed at offsetting the inhibitions of those social groups that have long been excluded and the distortions in power relations that exist both at the local and national levels.

4.2. Developing partnerships

As the international community, national governments, local authorities, enterprises, and CSOs share responsibilities in the delivery of basic services to all, it is natural to recommend that they develop partnerships. Indeed, many success stories highlight the importance of good co-operation between two or more of these actors. The virtues of partnerships are not challenged. First, partnerships imply the participation of the people concerned not merely as customers or consumers but as citizens and partners. Second, partnerships help in building capacities, in particular at the local level, as they oblige local or national authorities to design strategies, to discuss them with the partners and to implement monitoring mechanisms. Third, partnerships may bring institutional and technical innovations that may result in saving financial and natural resources. Fourth, they help in mobilising financial resources of the different partners in a more



coherent and efficient way. Fifth, they improve monitoring, as each participant expects its partners to deliver what they promised.

While recalling the virtues of partnership, their advocates also sound a note of caution. Partnerships are time consuming, simply because so many conversations are necessary to avoid misunderstandings and conflicts. A local authority should not, therefore, enter into too many partnerships. Partnerships cannot replace the responsibilities of governments. Partnerships, and this is the main difficulty, bring together actors who, by nature, have different time horizons, objectives and interests, which are a potential source of conflict. To work efficiently, partnerships require patience, a clear legal and institutional framework, training and monitoring institutions, similarly to what is needed for sustained pro-poor policies.

4.3. Recognising the central role of local authorities

Data collected by UN-HABITAT and UNDP allows inter-city comparisons in the access to basic services in relation to the resources they have. These data show that cities with similar level of resources – even within a same country – can be ranked very differently. Analysing the reasons for different achievements from one city to another, it can be concluded that, if the supply of basic services is vulnerable to international and national circumstances, local policy choices and management and the involvement of the stakeholders, particularly the people and CSO, directly affect access to these services. This demonstrates their central role in access to basic services for all in addition to the fact that basic services have to be delivered locally.

Various actors may contribute more or less to efficiency and equity, depending upon their relationship with other actors. In theory this may be a very complicated operations management problem, requiring linear programming to optimise inputs and outputs. In practice, it is a political problem that local authorities have to handle. For them to succeed, it appears again that they need a clear legal and institutional framework in which their rights and responsibilities vis-à-vis the citizens, the state and the enterprises are clearly established.

5. Three conditions for the implementation of these policies

The implementation of the three policy priorities sketched above would be difficult if the three following conditions are not met:

- Clarification of the rights and responsibilities of the stakeholders;
- Adoption of rights based approaches;
- Consistency between international obligations.

5.1. Clarification of the role, rights and responsibilities of the stakeholders

To conduct pro-poor policies, give a central role to local authorities, develop partnerships and secure the participation of the people and to mobilise financial resources – requires that the roles, rights and responsibilities of the different stakeholders in the delivery of basic services be clearly



incorporated in laws, rules and institutions at the national level. This is the strong view of those who have been consulted.

In the absence of clear rights and rules, CSOs may face insurmountable political obstacles in accomplishing their tasks and be forgotten when they should be consulted; local authorities may not enjoy the margins of manoeuvre they need to plan the development of basic services delivery to all, to implement it, and secure the necessary financial resources; enterprises may have difficulties in knowing who has the authority to pass contracts and settle disputes, and may be incited to corrupt practices.

5.2. *Importance of a rights based approach*

The first priority recommendation, “to conduct pro-poor policies”, is not controversial. It is part of the common prevailing wisdom, yet these policies are difficult to undertake and even more to sustain. In day-to-day life, governments are confronted with choices in the allocation of resources; they are subject to pressures so that, all too often, the needs of the poor are given less priority than those of the more powerful. Nevertheless, the spirit of the Human Rights and the Millennium Declaration is to conduct affirmative actions in favour of those who do not enjoy their rights, the poor in many circumstances, and to move from intention to practice whatever are the difficulties.

It is submitted here that a right-based approach would help to conduct sustained pro-poor policies in order to make basic services accessible to all. This would not call for the adoption of any new human right, as it has been shown above that all basic services are related to existing rights. Such an approach would acknowledge the existence of deficiencies in the provision of basic services to the poor and oblige the state to marshal all possible means to eradicate such shortcomings. It would give all stakeholders a clear sense of priorities, and provide civil society organisations with a solid base to remind national and local authorities of their obligation vis-à-vis the less favoured and eventually take legal proceedings. More specifically:

- *In terms of outcomes*, a rights based approach promotes the progressive universal realisation of accessible, affordable, adaptable, non-discriminatory and quality basic services necessary for promoting certain economic, social and cultural rights such as the right to health, the right to water, the right to adequate housing and the right to education.
- *In terms of processes*, a rights based approach promotes respect for certain civil and political rights in the process of service delivery and monitoring. Thus, a rights based approach promotes the right of everyone to take part in the conduct of public affairs (the right to participation), as well as the freedom to seek, receive and impart information that is relevant to understanding basic service delivery and influencing relevant decision making processes. Further, given the nature of human rights as legal rights, a rights based approach also promotes access to justice, equality before the law, courts and tribunals, and effective monitoring of service providers and service delivery among its essential elements.



Box 1: Element for a rights based approach

A rights based approach includes the following elements:

- ❖ *Identifying claims and claim holders* A rights based approach reconsiders the human needs of individuals and groups of individuals as human rights – which means they have a claim to certain goods and services. Thus, in the development process, individuals and groups are no longer passive recipients of aid but rather empowered holders of rights. In the context of basic services, these claims could be roughly described as claims to basic services that are:
 - Acceptable – services must be acceptable in both form and substance e.g. curricula and teaching methods in schools must be acceptable from the perspective of students and, where appropriate, from parents.
 - Accessible – basic services must be accessible to all without discrimination
 - Adaptable/quality – basic services must be adaptable to varying situations and should be of adequate quality
- ❖ *Identifying duty bearers* – under international human rights law, the duty bearers of human rights are national governments – however, in practice, duty bearers are much more specific – for example, particular ministries, and even individuals who have responsibility for ensuring acceptable, accessible, adaptable and available basic services. Similarly, in practice, non-state actors (such as corporations or NGOs working in basic service provision, occupying powers or rebel governments) have responsibilities to claim holders, which might be enforced through the state or directly depending on national laws and circumstances.
- ❖ *Identifying remedies* – everyone holds the human right to a remedy – guaranteeing this right is as important in the context of a rights based approach to service provision as it is in other areas (e.g. fair trial) – indeed, the right to a remedy is closely linked to accountability – one of the basic elements of a rights based approach to development that transforms human needs into human rights – without legal enforceability (justiciability) then rights are only wishes or promises. Remedies might be sought through the court system (e.g. a constitutional court) but given the nature of claim holders in the context of basic services (i.e. people who are poor or who suffer social injustice), then it is important to consider other means of accountability and redress – e.g. easily and cheaply accessible administrative tribunals, inspection units and so on.
- ❖ *Securing participation* – participation is another element of a rights based approach to development – participatory human rights include:
 - Right to take part in the conduct of political affairs
 - Freedom to seek, receive and impart information
 - Freedom of association
 - Freedom of movement



- Right to a remedy

It is important to ensure that decisions on essential services are taken through a consultative process so that the rights of concerned people are taken into account.

5.3. Consistency between international obligations

UNCTAD and the UNHCHR, both of which have developed constructive working relations with the WTO, insist on two fundamental issues. First, WTO rules should leave governments with sufficient space, or in other words enough margins of manoeuvre to discharge their development responsibilities and particularly in implementing policies to give the poor access to basic services. Second, and more essential, it is time to work on the reconciliation of the underlying principles of trade laws, i.e. liberalisation, with those of human rights that call for the protection of human needs and values that are considered fundamental to humanity.

Box 2:
Consistency in international obligations
Example of issues

Human rights standards overtly seek substantive equality, even where this means temporarily undertaking affirmative action programmes that give special treatment to some in order to realise the human rights for all. Non-discrimination under trade laws seeks equal treatment for nationals and non-nationals with a view to improving international competition. But, is this always realistic if the nationals referred to here are poor grass root enterprises and the non-nationals are powerful multinational corporations? Could this not run the risk of creating a level playing field of unequal players and consequently entrenching existing inequalities, discrimination and marginalisation? The partnerships advocated in this note provide room for complementary activities to avoid this situation arising.

Similarly, the adoption of the TRIPS Agreement meant that the balance between public and private interests, which was embodied in the *International Covenant on Economic, Social, and Cultural Rights*, could become skewed.

The call for more consistency in international obligations is certainly an invitation to academics, CSOs and UN bodies to undertake research and analyses on this issue, based on concrete cases. Yet, it is first of all a pressing invitation addressed to all governments to consider the implications of rules elaborated for a given domain in a particular institution on the other domains dealt with in other institutions, and particularly the implication of trade laws and intellectual property rights on human rights and the room left to government for conducting development strategies.

6. Concluding remarks



This paper draws heavily on a note its author prepared for UNITAR and UN-HABITAT with the aim that governments would adopt in the UN framework a declaration on access to basic services for all and guidelines for its implementation. This may or not happen.

In reproducing here the main elements of the note, I pursue a dual objective. First, governments will move only if they feel that access to basic services for all is essential to the realisation of the commitments they took in the Millennium Declaration to halve poverty by 2015 and that the lack of progress in access to these services threatens “our common future”. Arguments coming from academics and CSOs matter in this perspective. Second, the analyses made above are sketchy and based on consultations. Even if they are right, they have no solid academic ground. Similarly the priorities and conditions proposed are preliminary and deserve further debates. It seems to me that PEKEA should help to gather analyses of experiences as well as theoretical backing for policies conducive to permit all to access basic services.