



INVESTIGATING THE IMPACT OF CORPORATE COURTS ON THE GROUND – THE TRUTH IS OUT THERE!

CASE NAME:

TANZANIA V BIWATER

SUMMARY:

British water firm sues Tanzania for ending a failed water contract

STATUS:

Tribunal ruled that Tanzania violated UK investment treaty, although Biwater lost their claim for pay-out

AT STAKE: £10 million

DETAILS:

Case started 2006 using the UK-Tanzania bilateral investment treaty; decision reached July 2008



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Dar es Salaam town centre.

WHAT IS THE CASE ABOUT?

Throughout the 1990s, the water system in Tanzania's capital Dar es Salaam was struggling. Due to sustained under-investment, the network suffered from disrepair and poor coverage, with only 98,000 households of the city's 2.5 million population having a direct water connection by 2003.

Tanzania and its water sector were, therefore, in no position to refuse the debt assistance measures from the International Monetary Fund (IMF) and the World Bank offered from 2000 onwards. Yet as is typical of IMF and World Bank structural adjustment schemes, this debt assistance came with a range of conditions. These included heavy pressure to privatise Dar es Salaam's public water company DAWASA. While DAWASA retained ownership of its assets, a tendering process for billing, tariff collection, operation and maintenance was launched. Only one bidder came forward – City Water, a joint venture of Biwater (UK), Gauff (Germany) and Superdoll (Tanzania) – which was awarded the 10-year contract in December 2002.

This privatisation was a total failure. City Water ended up in severe financial trouble and struggled to generate income. The investment and upgrades that were initially promised were not forthcoming. Multiple consultants paid by the German government and World Bank concluded that the firm was not meeting its contractual duties. And by 2005, City Water owed around \$3.5m to the Tanzanian government.

In May 2005, Tanzania cancelled City Water's contract, which was subsequently transferred to a new public company.

CORPORATION'S COMPLAINT

In 2006, Biwater-Gauff (Tanzania), a subsidiary of UK firm Biwater (the lead company in the City Water consortium), initiated an Investor State Dispute Settlement (ISDS) case under the United Kingdom-Tanzania Bilateral Investment Treaty (BIT).

Biwater-Gauff (Tanzania) – referred to hereon as Biwater – argued that Tanzania's actions violated the terms of this Treaty by expropriating Biwater's property and prematurely terminating its contract.

Fighting the UK's privatisation push

The UK government was at the heart of Tanzania's botched water privatisation. The Department for International Development (DFID) paid free market consultants Adam Smith International £444,000 to conduct public relations work aiming to persuade the Tanzanian public of the benefits of privatisation. This included a pro-privatisation pop song that declared: "Our old industries are like dry crops and privatisation brings the rain."

Yet DFID's pro-privatisation policies also brought resistance. Throughout the 2000s, Global Justice Now, then known as the World Development Movement, was an outspoken critic of the UK's role in promoting water privatisation in the global south and campaigned to push Biwater to withdraw from this ISDS case.



Brighton & Hove WDM via Indymedia

April 2007: Campaigners from Brighton & Hove WDM protest outside Biwater House in Dorking, Surrey.

In July 2008, the tribunal ruled that Tanzania had indeed violated the Treaty. However, the tribunal found that there was no case for the £10m pay-out that Biwater were pursuing from Tanzania. This was because given the firm's financial difficulties, its value at the time the contract was terminated was "nil".

Both parties, though, were deemed to be liable for their own legal costs, and for the costs of the arbitration, to the tune of millions of pounds.

OUR VERDICT

While Biwater's attempt to force an ISDS pay-out from Tanzania failed, governments never really win ISDS cases brought against them. As is always the case, the debt-stricken Tanzanian government was saddled with a multi-million legal bill, which could have been used to invest in the public water system its people needed.

This botched privatisation should never have happened. The forms of privatisation pushed by the IMF and World Bank through conditional loans

are about enriching multinational investors at the expense of the poor. The performance of the Biwater-led City Water consortium is a testimony to what happens when our basic human right to water is put in the hands of unaccountable profit-driven private firms.

It's quite right that the Tanzanian government took a stand and scrapped this disastrous deal, signalling a victory for the global movement against water privatisation. Corporate courts provided a mechanism – totally detached from domestic legal processes – in which this victory for people power could be challenged by a multinational who had totally failed Tanzania and its people.

MORE INFO

Public backlash over private water deals, John Vidal in *The Guardian*, 2005:

<https://www.theguardian.com/society/2005/may/25/internationalaidanddevelopment.hearafrica05>

Investor-State Dispute Settlement (ISDS,) or 'corporate courts', gives corporations far reaching privileges and access to their own legal system to enforce them. This mechanism threatens society, democracy and the planet.

STOP ISDS!

 **Global
Justice
Now**