

# Water: the Coca-Cola Company in Kerala

*Modus Operandi*

*August 2007*

In 2000 the Coca-Cola Company opened a bottling plant in Plachimada in the Kerala State of India on the invitation of the Kerala State government. In 2002 a sit-in started at the plant demanding its closure alleging the misuse by the Coca-Cola Company (CC) of local water resources. This protest was mostly the work of *adivasi* women (tribal people, therefore outside the caste system). The accusations being levelled at CC were an over-use of the groundwater, from the use of more bore wells than permitted by their license, as well as the discharge of toxic waste back into the ground water. The groundwater is said to have fallen from 45m to 100m below the surface. Complaints from local people where that the remaining water tasted and smelt bad, did not cook properly (food went bad quickly) and gave people stomach problems and rashes.<sup>1</sup>

This protest achieved its goal of attracting attention to the problem, in 2003 the district medical officer declared the water from the local aquifers unfit for consumption, an analysis showed a high level of dissolved salts in the water, something consistent with a rapid depletion of the water supply, and that the water was very hard making it unpleasant for washing and drinking<sup>2</sup>.

A BBC investigation for the radio programme *Face the Facts* in the same year looked at the 'biosolids' (solid waste from the CC factory) that was being distributed as a fertilizer, but had farmers complaining of poor crop yields and skin infections. The test performed on these 'biosolids' (as they are referred to by the CC) in Exeter University showed that they contained dangerous levels of cadmium and lead (both carcinogens) and worryingly tests on sample of well water showed that these toxins had made their way into the ground water supply.<sup>3</sup> A few months later the Kerala Pollution Control Board (KPCB) carried out similar tests concluding that the levels of cadmium and lead were not hazardous; the official who made this announcement was subsequently investigated under allegations of corruption. Despite this announcement the KCPB banned the use of the 'biosolids' as fertilizer.<sup>4</sup>

In April 2003 the local Panchayat, (the democratically elected local level unit of administration) Perumatty Panchayat cancelled CC's license to operate.<sup>5</sup> This decision marks the beginning of a legal saga, here pieced together from various news stories and other articles:

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<sup>1</sup> Corporate Accountability International *Coke in India: a not-so-silent spring* June 2008  
<http://www.stopcorporateabuse.org/cms/page1764.cfm>

<sup>2</sup> Christian Aid *Behind the mask: the real face of corporate social responsibility* January 21, 2004

<sup>3</sup> BBC Press Office *Face the Facts investigates Coca-Cola plant in India* 24 July 2003  
[http://www.bbc.co.uk/pressoffice/pressreleases/stories/2003/07\\_july/24/face\\_facts.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2003/07_july/24/face_facts.shtml)

<sup>4</sup> Rajeev, D *Everything gets worse with Coca-Cola* August 21 2005  
<http://www.corpwatch.org/article.php?id=12590>

<sup>5</sup> Surendranath, C *Coca-Cola: Continuing the battle in Kerala* July 10 2003  
<http://www.corpwatch.org/article.php?id=7528>

- **April 2003:** Panchayat refuses to renew CC license to operate, CC allegedly attempt to bribe the Panchayat President 300 million rupees to reverse this decision.
- **May 2003:** the Kerala State government stays the decision of the Panchayat not to renew the CC license.
- **December 2003:** Kerala High Court rules in favour of the Panchayat, with the reasoning that water is a public good, and that therefore the State has the obligation to protect the supplies of water for the use of the local people.
- **January 2004:** International Water Conference held in Plachimada, attracting international attention with the attendance of Indian environmentalists such as Vandana Shiva and the likes of Jose Bové.
- **March 2004:** Factory shut down on the orders of the Kerala government.
- **April 2005:** appeal by CC results in High Court allowing them to draw 500,000 litres of water a day, the Perumatty Panchayat is ordered to renew the license.
- **June 2005:** CC approaches High Court again, as Panchayat has refused to renew license; they are given 7 days to do so, otherwise the license will be considered *de jure* to have been renewed for a further two years. The Panchayat renew the license for 3 months.
- **August 2005:** Pollution Control Board orders closure of the plant due to pollution of waste.
- **November 2005:** CC once again approaches High Court to force the Panchayat to renew the license. The court orders Panchayat to renew license.
- **January 2006:** Panchayat renews license, imposing 13 conditions, the most notable of which is that the bottling plant does not use the local groundwater.

The current conclusion to this part of the story is that the plant has not worked since 2004. During this legal battle a total of five Special Leave Petitions (SLP) were filed with the Indian Supreme Court appealing the High Court decisions in favour of CC: one by the KPCB, one by the State government and three by the Panchayat; there does not appear to have been any significant ruling by the Supreme Court.<sup>6</sup>

### **Anti- Cola sentiment in India**

The original protest against the CC started by women from the lowest levels of society, those forced to walk further and further in order to collect water. Their protest was supported by local activists, by the members of the local Panchayat

<sup>6</sup> Shiva, Vandana *Building Water Democracy: People's victory against Coca-Cola in Plachimada* 13 May 2004

Venugopal, P N *Coca-Cola Moving out of Plachimada?* July 19 2008

<http://www.indiatogether.org/2006/jan/env-cokesaga.htm>

Shiva, Vandana *Les Femmes du Kerala contre Coca-Cola* Le Monde Diplomatique March 2005 <http://www.monde-diplomatique.fr/2005/03/SHIVA/11985>

The Right to Water *The Right to Water under the Right to Life: India* [http://www.righttowater.org.uk/code/legal\\_7.asp](http://www.righttowater.org.uk/code/legal_7.asp)

who used their position to try and put into practice the demands of the local people. The BBC investigation helped to bring the issue to world media attention, and the initial court ruling in favour of the Panchayat helped encourage other communities who felt that their water supplies were being adversely affected by CC as well as Pepsi bottling plants.

The support given to the anti-Cola movement in Plachimada by people such as Vandana Shiva extended the networks involved in the issue, and the full extent of the support can be seen in the attendance to the World Water conference in Plachimada, just after the World Social Forum in Mumbai. Among those in attendance were Jose Bové, Maude Barlow (a Canadian activist working against the commodification of water) as well as members of the European Parliament and activists from all over the world. This conference also had a platform where every Indian political party was present.<sup>7</sup> The extent and wide-range of the participants in this conference seems to be a strong indication of the support networks tapped into by the Plachimada adivasi's and their supporters.

There has been a very real impact from all of this on the Plachimada bottling plant and on CC more widely. The Plachimada plant has never re-opened, and there seem to be no plans to do so and since July 2005 the CC have been providing water to the local community by tanker.<sup>8</sup> Those in the anti-Cola camp see this as a tacit admission of guilt on the part of the multinational.

The issue widened from that of water use in 2006 when the Centre for Science and Environment, an NGO concerned with setting standards with regards to pesticide and chemical residues in food and drink released a report claiming that the levels of pesticides present in CC and Pepsi soft drinks were unacceptably high (read about the issue here <http://www.cseindia.org/misc/cola-indepth/cola2006/cola-index.htm>). The Kerala State banned the drinks from these two companies completely, whilst a number of other states banned their sale in schools.<sup>9</sup>

This ban was overturned by the Kerala High Court, but this has done nothing to boost the popularity of the soft drinks industry. Anti-Cola protesters have adopted the slogan 'Quit India' originally used by Gandhi in the struggle to rid India of colonial rule.

The anti-Cola fight has spread out of India, and concerns raised by the University of Michigan and others led to an independent investigation of CC's operations in India which published its final report in January 2008 ([http://www.teriin.org/cocacola\\_report\\_toc.php](http://www.teriin.org/cocacola_report_toc.php) or [http://www.cokefacts.com/PressCenter/TERI\\_Executive\\_Summary.pdf](http://www.cokefacts.com/PressCenter/TERI_Executive_Summary.pdf)). Very briefly the conclusions of this

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<sup>7</sup> Shiva, Vandana *Building Water Democracy: People's victory against Coca-Cola in Plachimada* 13 May 2004

<sup>8</sup> [http://www.cokefacts.com/India/facts\\_in\\_qa.shtml](http://www.cokefacts.com/India/facts_in_qa.shtml)

<sup>9</sup> Johnson, J *Giving the Goliaths a good kicking* August 12 2006 Financial Times Online [http://www.ft.com/cms/s/ea39f54a-299f-11db-9dcc-0000779e2340,Authorised=false.html?\\_i\\_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2Fea39f54a-299f-11db-9dcc-0000779e2340.html%3Fnclick\\_check%3D1&\\_i\\_referer=&nclick\\_check=1](http://www.ft.com/cms/s/ea39f54a-299f-11db-9dcc-0000779e2340,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2Fea39f54a-299f-11db-9dcc-0000779e2340.html%3Fnclick_check%3D1&_i_referer=&nclick_check=1)

report are that there are no pesticides in CC products; but suggests that there is overuse of the water resources and recommends the closing of a plant in Rajasthan.

Returning to Plachimada, the stance of the local Panchayat, in all of this is uncompromising, they want the closure of the plant, or at the least very limited operations and used all the means open to them to achieve this, including placing huge restrictions on the CC when forced to renew the license in the form of very short licenses (the two renewals ordered by the court were both given for a period of three months only) and imposing restrictions on the use of groundwater. The position of the state government is harder to identify, although they do eventually back up the Panchayat, it is suggested by the Venugopal and Suchitra, Indian journalists, that this support is half-hearted and a result of popular pressure. He backs up this claim by pointing out that on the committee investigating the ground water levels constituted after the 2003 ruling in favour of the Panchayat closing the bottling plant, the government representative has no hydrogeology qualification, and therefore would not be competent on the issue.<sup>10</sup> This point of view is to some extent contradicted by the stand that was taken against the sale of Pepsi and Coca-Cola by the state government in 2006.

### **Ownership of water: court judgments and their implications**

The two most significant rulings in this case study are the December 2003 judgment upholding the right of the Perumatty Panchayat to close the Plachimada bottling plant, and the April 2005 ruling that more or less overturns this.

The first judgment in 2003 was made by Justice Balakrishnana Nair, and rested on Public Trust Doctrine and Article 21 of the Indian Constitution. Public Trust Doctrine is part of common law, inherited from the English legal system on which the Indian one is based; it is the principle that certain resources are to be kept for public use, and that it is state responsibility to uphold this. The reasoning of the judgment in this case was that groundwater is a public resource and therefore it is the responsibility of the state to protect it. Going on from this the judge stated that any failure to do this would constitute an infringement of the right to life, as guaranteed in Article 21 of the Indian Constitution (<http://indiacode.nic.in/coiweb/welcome.html>). In support of this he gave the fact that Indian courts have consistently ruled that the right to clean air and water formed part of the right to life.

With regard to the Plachimada bottling plant the most significant part of this verdict is arguably that:

*“Even assuming experts opine that the present level of consumption by the second respondent is harmless, the same should not be permitted”*

The reasons given for this is that CC has no right to claim such a large share of a public good, and if they were permitted to do so, others would also be able to claim this right.<sup>11</sup>

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<sup>10</sup> Venugopal, PN & M Suchitra *Rain or no rain, water for Coke India Together* May 10 2005 <http://www.indiatogether.org/2005/may/env-plachmada.htm>

<sup>11</sup> 16 December 2003 ruling by Judge Balakrishnana Nair, cited in Shiva, Vandana

The April 2003 reversing this judgment does so on the basis of the report on the extraction of groundwater by the expert committee nominated by the court. Critics of this judgment bring up, among others, three aspects of this judgment that might make it ill-advised. Firstly the judgment in favor of the reopening the bottling plant is based entirely on the report provided on the state of the groundwater; firstly this report is open to the accusation of inaccurate estimation of water usage, badly justified choices in terms of defining rainfall trends and it does not fulfill one of the objectives set by the high court, that of assessing the quality of the water in the Plachimada area. Another question that might be asked about the expert investigation team is about who constituted it: it did not contain any representatives of the Panchayat or of Plachimada, and the geology report was prepared by the representative of CC on the team, and the team's work was paid for by CC.<sup>12</sup>

Secondly though the judgment is balanced in that it makes the right of CC to draw water dependant on adequate rainfall, and also places on them the responsibility of making sure that the local people receive adequate water. Though this is laudable, it does take away certain amount of control over the water situation from the Panchayat, who are the elected representatives of the people. Another aspect of this judgment with the potential to have far reaching implications is the reasoning that as a legal individual, a company has the same rights as an actual private individual, and therefore can draw water within reasonable limits out of their property without first asking permission. This, along with remarks to the effect that water is not such a valuable commodity (not a 'treasure-trove')<sup>13</sup> and questions the idea that the ground water under a person's land does not constitute part of their property<sup>14</sup> have far reaching implications on the ownership of water, and are at very best naïve in the context of water shortages faced across India.<sup>15</sup>

Thirdly criticism can be leveled at the fact that the opinion of an expert committee can decide a judgment, the implication behind this that it is at the time of the appointment of the committee that the Panchayat should have laid down its challenge, not in court when the report was being considered. There are also implications for local democracy the court presumes to know better than the locally elected body what the local community needs in terms of water supply and that the decisions made by a democratic body can be considered 'unjust'.<sup>16</sup>

One last point is that after the initial 2003 ruling, it is noticeable that all three of the subsequent cases resulting in ruling in favour of CC in this legal saga come

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*Building Water Democracy: People's victory against Coca-Cola in Plachimada* 13 May 2004

<sup>12</sup> Venugopal, PN & M Suchitra *Rain or no rain, water for Coke India Together* May 10 2005 <http://www.indiatogether.org/2005/may/env-plachmada.htm>

<sup>13</sup> *ibid.*

<sup>14</sup> para 43 of the judgment

[http://www.cokefacts.com/India/content/in\\_court\\_0605kerala1.pdf](http://www.cokefacts.com/India/content/in_court_0605kerala1.pdf)

<sup>15</sup> *Water Sovereignty* <http://www.navdanya.org/earthdcracy/water/index.htm>

<sup>16</sup> Upadhyay, *Videh Saving ground water or ground democracy?* *India Together* 1 July 2005 <http://www.indiatogether.org/2005/jul/vup-keralcoke.htm>

before the same two judges: Ramachandran and Balachandran.

### **The economics of Plachimada's water**

Economically speaking the closure of the Plachimada bottling plant makes very little sense. It entails the loss of half of the revenue of the Panchayat<sup>17</sup>, and the closure of plant removes reported \$50 million from the Indian economy in an area with low industrialization and where the agricultural sector is not keeping up with economic growth<sup>18</sup> as well as the loss of employment of those that worked in the plant.

If we look at the context in which it was placed we see that the Palakkad district, in which Plachimada is situated, is one traditionally considered to be the 'rice chest' of Kerala producing at one time 35% of the state's rice; and this in spite of being in a 'rainshadow' region where there is little rain. Since the opening of the CC plant agriculture has taken a down turn, and agricultural labourers have been forced to look elsewhere for work.<sup>19</sup> According to one article a small piece of land, which in 2000 would yield 50 sacks of rice and 1 500 coconuts in 2003 gave 5 sacks of rice and 200 coconuts.<sup>20</sup>

From this we can see that there is a definite and immediate economic benefit from the bottling plant, however the question asked by the actions in Plachimada, as well as other drinks plants is whether this economic benefit outweighs the unidentified cost in terms of environment, natural resources and local standard of living. If we take the situation as it was when the plant was initially shut down in 2004 the plant was being held responsible for lowering the as well as polluting the water supply. The impact of this was illness, loss of livelihood as well as hardship in the form of having to go further and further afield in terms of collecting drinkable water; for the local people, not benefitting from the wealth generated by CC the answer is clear: the costs far outweigh the benefits of hosting a bottling plant.

Moving out of the immediate context of Plachimada, Shiva believes that CC creates economic damage beyond that to agriculture immediately around bottling plants, pointing out that PepsiCo and CC are subsidised in all the Indian state where they have operations, including 2 million rupees in Kerala as part of the regional industrial policy, after the closing of the Plachimada plant. The other point made by Shiva is the impact of the use by the soft drinks industry of maize syrup as a sweetener. There are two consequences to this, the use of maize by this industry as well as in the manufacture of animal feed reduces the amount

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<sup>17</sup> Valley, P. J Clarke & L Stuart *Coke Adds Life?* The Independent July 25 2003  
<http://www.corpwatch.org/article.php?id=12740>

<sup>18</sup> Giridharadas, A *Indian Water case pits village against a giant* International Herald Tribune, July 22 2005 <http://www.ihrt.com/articles/2005/07/21/news/india.php?page=1>

<sup>19</sup> Christian Aid *Behind the mask: the real face of corporate social responsibility* January 21, 2004

<sup>20</sup> Valley, P. J Clarke & L Stuart *Coke Adds Life?* The Independent July 25 2003  
<http://www.corpwatch.org/article.php?id=12740>

available for human consumption (as a cheap basic foodstuff); and secondly has an adverse effect on those who farm sugar cane.<sup>21</sup>

The most important question that arises from the Plachimada case, is who water belongs to; this has already been mentioned in the context of the court judgments on this case, but its economic dimension is as important. If we accept the reasoning that access to water is part of the right to life, then we accept that water is a resource to be held in common. This is the theory of who governs water. However in practice it is the economic dimension of water that seems to who governs it.

In economic terms water has the potential to become a global multi-million dollar industry, and the privatization of water has made its way into the International Monetary Fund (IMF) and World Bank conditionalities for loans.<sup>22</sup> The Indian government is increasingly turning towards policies that define water as a private property, something from which revenue can be generated.<sup>23</sup> The fear is that the privatization of water in the Indian context could have huge impact widening already existing inequalities: access to water in India has caste geography, for example dalits (untouchables) will live on the outskirts of a village, with the least access to water. As well as this, in country of subsistence farmers, where 300 million get their water from communal pumps, and another 5 million from rivers, spring and ponds (reflecting class). Privatizing water will restrict and stratify access to it further, many World Bank projects, for example would allegedly remove communal taps and hand pumps on which so many rely.<sup>24</sup>

In many ways Plachimada seems can be seen as a precursor of things to come, as the lowest level of society reacts to a vital resource being taken away from it for the benefit of industrial development.

The closure of the Plachimada plant does not mean to say that industry is mutually exclusive to the lives of local people. Properly managed water resources, the implementation of things such as effective rainwater harvesting, and proper waste management should enable industry to cohabit with the local population where there are adequate water supplies. In this case the CC does not come across in a great light, and the information provided by their website (<http://www.cokefacts.com/>) on the issues covered here is at best biased, at the worst biased and misleading making their declarations and commitments seem more like public relations rather than concrete CSR. The CC has claimed throughout that they are being scape-goated unfairly as a large multi-national, pointing out that in the Plachimada area there is an Indian brewery that has not been the target of protests. The information available does not make it possible

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<sup>21</sup> Shiva, V *Soft Drinks, Hard Cases* Le Monde Diplomatique March 14 2005  
<http://www.mindfully.org/Water/2005/India-Coca-Cola-Pepsi14mar05.htm>

<sup>22</sup> Sainath, P *Thirst for Profit* India Together 14 May 2006

<sup>23</sup> Shiva, V *From Water Wars to Water Democracy* May 15 2003  
<http://www.navdanya.org/news/03may15.htm>

<sup>24</sup> Sainath, P *Thirst for Profit* India Together 14 May 2006  
<http://www.indiatogether.org/2006/may/psa-thirst.htm>

to answer this accusation, but the extent of the protests across the country against PepsiCo and CC would seem to indicate that it is the practices of these large multinationals that are bringing them into the line of fire.

In conclusion, the issue raised in Plachimada of who governs water supplies remains unanswered but of great importance for the future.