The International Legal Framework for the Human Right to Water & Sanitation

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Why the Human Right to Water?

The Gloomy Arithmetic of Water:
- 880 million people lack access to improved water resources
- 2.6 billion people are without provision of sanitation
- 1.5 million children under 5 die annually of water borne diseases
- By 2050 one fourth of world population will live in countries with chronic water shortage, mostly in the ME, and Africa

The continuing Challenge – population growth

This situation generated extensive debate on
- Competing demands of different uses and users
- How to guarantee access of the poor and vulnerable
Global Population Growth

Historical View of Population Growth from 1 A.D. to 2000 A.D.
Projected Population Growth

Source: UNFPA
Outlines show those basins that are both in and approaching scarcity
Projected Water Scarcity 1995 - 2025

- **Stress**: 15%
- **Adequacy**: 48%
- **Scarcity**: 33%

Note: Estimates for 2025 are based on the United Nations’ low-range projections for Population growth (7.2 billion). Four percent of water is unallocated.

Examples of Water Consumption

- An average American uses 90 gallons a day
- A European 53 gallons
- A Sub-Saharan African 5 gallons a day
Main International Instruments

- General Comment No. 15 by the Committee on Economic, Social and Cultural Rights in November 2002 – unleashed the right
- United Nations General Assembly Resolution 64/292 of July 2010
  - 122 for 41 abstention, no negative vote
Operative Paragraphs

Paragraph 2 of GC 15

The human right to water entitles every one to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. (No reference to sanitation)

Para 1 of the UNGA Resolution and para 2 of the UNHRC resolution declared:

the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

UNHRC resolution reiterated para 2 of GC 15
The Committee and HRC relied on three analytical foundations for recognition of the human right to water:

- Derivation and Inference
- Centrality and Necessity
- Prior Recognition of the right
Committee and HRC relied upon derivation and inference of the right to water from

- Article 11 of the ICESCR – the right of every one to an adequate standard of living .... Including adequate food, clothing & housing & continued improvement
- Article 12 of the ICESCR – the right of every one to the enjoyment of the highest standard of physical and mental health
Centrality and Necessity

Committee and HRC argued centrality of water to the other rights under the ICESCR

- Article 1 (2) people shall not be deprived of its means of subsistence
- Article 3 of the UDHR – Everyone has the right to life, liberty and security of person

Many rights are interwoven around water and cannot be attained without water;

Right is essential for the full enjoyment of life and all human rights
Prior Recognition

Significant part of the argument on the human right to water is built on existence of right under other instruments

- Conventions and treaties
- Soft law instruments – Resolutions and Declarations
- Regional initiatives and plans
- Domestic Legislation – Constitutions and laws
Conventions and Treaties

- Convention on Elimination of all forms of Discrimination against Woman, 1979 (176 parties)
- Convention on the Rights of the Child, 1989 (192 parties)
- Convention on Elimination of all forms of Discrimination, 1965 (175 parties)
- Two Geneva Conventions Relative to the Treatment of Prisoners of War & Treatment of Civilians in time of war 1949 (150 parties)
- Convention on Rights of Persons with Disabilities, 2005, (111 parties)
- UN Watercourses Convention (not yet in force)
- ICESCR 1966 (148 Parties)
Resolutions and Declarations

- Resolutions of different conferences and forums
  - Mar del Plata UN Water conference
  - Dublin and Rio conferences
  - The five World Water forums
- UN General Assembly resolutions
  - The Millennium Declaration
  - International Decade for Action
  - Other resolutions – Right to Development, International Year of Freshwater
- Regional Commitments and Initiatives
  - Abuja, New Delhi, Sharm El-Sheiksh, Beppu
  - Protocol on Water and Health
Mar del Plata and Rio

Mar del Plata 1977
- All people have the right to have access to water in quantities and of quality equal to their basic needs

Rio 1992
- “…it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price…”
The Millennium Development Goals

- Eight development goals to be achieved by 2015
- Include reducing by half the proportion of people without sustainable access to safe drinking water.
- International Decade for Action
Normative Content of the Right

Availability
- Sufficient and continuous
- WHO Guidelines:
  - single tap: 50 liters pd; multiple taps 100 -200 lpd

Quality
- Safe and free from micro-organisms
- Problem of both developing and developed countries

Accessibility
- Physical accessibility
- Distance traveled to fetch water
Affordability

- Should this mean free water?
- Arguments against free water
  - Managing demand
  - Controlling wasteful uses and misuse.
  - Sustainability of resource and utility

Targeted subsidies
- South Africa (constitution), Chile, France and Armenia
State Parties’ Obligations

- **Obligation to respect**
  - Requires state parties to refrain from interfering directly or indirectly with enjoyment of the right to water

- **Obligation to Protect**
  - Prevent third parties from interfering with Enjoyment of right

- **Obligation to fulfill**
  - Obligation to facilitate, promote and provide
Core Obligations

- To ensure
  - Access to the essential minimum amount of water
  - Non-discrimination
  - Physical access
  - Personal security
  - Equitable distribution
- Adopt and implement national water strategy and plan addressing the whole population
Conclusion: Challenges to the Human Right to Water & Sanitation

- Multiple Challenges related to implementation
- Legislation
  - To reflect country’s international obligations
- Financing
  - Delegation of services, and the state obligations
  - Role of non-state providers (private sector)
  - Full transparency in planning and implementation
  - Role of international financial institutions
- Management
  - Participation of users
- Affordability
  - Pricing, Free Water, & the issue of Subsidies
THANK YOU