

Water as a human right – implementation challenges

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I would like to start this presentation with some historical aspects. On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help capacity building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

Some years before, in 2002, the Committee on Economic, Social and Cultural Rights (CESCR) that was established by the United Nations to oversee the implementation of the Covenant on Economic, Social and Cultural Rights, presented a document (General Comment No. 15) at its 29th Session, in Geneva, during 11 – 29 November. This Comment re-interpreted Articles 11 and 12 of the Covenant and concluded that water can be considered a human right. Under Article 11, the General Comment noted that:

The adequacy to water should not be treated narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good and not primarily as an economic good. The manner of the realisation of the right to water must also be sustainable, ensuring that the right can be realised for present and future generations.

The timing of the publication of the General Comment, just before the Third World Water Forum, in Kyoto, in March 2003, was not coincidental. It was expected that the General Comment No. 15 would have direct impact on the direction and the level of the discussions at Kyoto, especially in terms of increased focus on water supply and sanitation, and also on funding availability for this sector. It was also expected that the decision that water is a human right might encourage national governments and international organisations to earmark funds to improve access to water supply and sanitation significantly. Not surprisingly, the World Health Organization noted in one of the publications distributed during the Kyoto Forum that “a right-based approach integrates the norms, standards and principles of the international human right system into the plans, policies of development”.

It should also be noted that the World Panel on Financing Water Infrastructure, which was chaired by Michel Camdessus, former Director of the International Monetary Fund, presented its report at the Kyoto Forum. It was thus not unrealistic to expect that the Camdessus Report and the resulting discussions at Kyoto, and thereafter in other appropriate international fora, may generate additional investment funds for the water supply and the sanitation sectors. The Panel was expected to “address the ways and means of attracting new financial resources”. The report was entitled Financing Water for All (2003), which gave the initial

impression that it would seriously address how new sources of investment can be marshalled to promote water infrastructural development, including universal access to clean water.

Unfortunately, the General Comment No. 15 had no perceptible impact during the Kyoto Forum in new investment funds for the water supply and sanitation sectors, or in terms of shaping the discussions as to what are the implications if water is accepted as a human right. In fact, the entire Camdessus Report mentioned only once the issue of human right to water and this too only in the initial part. This issue was not mentioned in any significant way in more than its 80 recommendations as to how human rights to water could be achieved, or what could be its financial implications in terms of operationalisation. The Report's main philosophy centred on the establishment of an 'enabling environment', within which the poor can pay for their access to water. The focus was on the needs of 'bankable' projects, including their 'commercial and funding' structures. The 'dream' of access to clean water would be realized only when appropriate and necessary financial mechanisms could be established in different parts of the world. It also concluded that the ideal long-term aim had to be "full cost recovery from users", although in the short term "some subsidy is inevitable" for poor isolated and rural communities where "affordability is a distant prospect." It pointed out that: "Tariffs will need to rise in many cases, but the flexible and imaginative use of targeted subsidies to the truly poor will be called for to make this cost recovery acceptable, affordable and so sustainable". It should be noted that this conclusion was very similar to the recommendation of the World Commission on Water, which presented its report in 2000 during the Second World Water Forum in The Hague.

At the risk of over-simplification, it can be said that neither the Camdessus Report nor the General Comment No. 15 had much impact either on the discussions and the results of the Kyoto Forum, or on the subsequent developments in the water supply sector. In fact, by early 2007, Camdessus Report had become mostly history without having any visible impact on financing of water infrastructure or in generating any new investments for the water sector. As far as the General Comment No. 15 is concerned, it probably had thus far a marginally better fate than the Camdessus Report in terms of its implementation, or its acceptance by the mainstream water profession. To the extent the discussions on water as a human right are kept alive, this is probably because of the professionals working in the human rights area (in contrast to the water professionals) and activist NGOs who are against water pricing and private sector involvement in terms of universal access to water supply and sanitation.

As the former World Bank President Wolfensohn has noted, to some governments who constitute the Bank's shareholders, "the very mention of the words human rights is inflammatory language". It should be noted that the word "rights" often has different meanings for different constituencies; knowledge and familiarity of discussions on rights vary widely between the different interest groups; and the discussions on water as a human right between its proponents and opponents have focused almost exclusively on domestic water use; other types of water uses are mostly conspicuous by their absence. Serious discussions of water as a human right in the overall context of water resources management is mostly missing at present.

It is fair to note that no person opposes the concept that all humans should have access to clean water. Similarly, not a single country opposes this concept either. The main issue thus

hinges around not whether water is a human right, but how to ensure that all humans have access to clean water and proper wastewater management within the social, economic, physical, and political conditions and constraints within which they live. The solutions and the implications for the problems to be solved are complex, and these are likely to differ from one place to another. The implementable solutions may even be different in the same location over time, thus making the solution even more difficult to identify and thus to implement.

The concern of some of the countries that are not in favour of promulgating the concept that water is a human right stem from the fact that they are unsure of the legal implications if they approve the overall philosophy. Some countries are worried that they will be sued for compensation because they will be unable to meet this universal obligation for some considerable time to come. Others are worried that human rights to water may mean free provision of clean water and proper wastewater management for everyone, which they simply cannot afford. Since this simply cannot be achieved within the foreseeable future, these countries prefer not to approve this concept until their responsibilities and accountabilities are clarified, as well as those of the consumers. Until this happens and a critical number of important countries decide to recognise this right, progress in terms of acceptance of the concept of water as a human right is likely to be slow.

It appears that the water profession and the governments currently feel that the declaration of the UN Committee that water is a human right does not make much practical difference since they have been working to achieve this universal goal for decades. In this sense at least, there is no real difference between the human rights and the water professionals because both have the same end objective. The water profession generally believes that declaring water is a human right will not necessarily ensure that more people will automatically have access to water. Declarations are easy to make. The problems invariably lie as to how the declarations can be translated into reality to improve the quality of life of the poor people in developing countries.

There are several fundamental problems that need to be resolved before there could be universal coverage to clean drinking water. Among these problems are the following:

- How to manage escalating water demands since in the developing world new sources of water are now not only becoming increasingly more and more expensive to develop but also may contribute to serious social and environmental disruptions.
- Water pricing has to be a part of the overall solution in balancing demand and supply.
- Investments required for construction of new water supply projects, wastewater collection, treatment and disposal systems and the modernisation of existing water supply and sanitation works in developing countries.
- The provision of water supply and wastewater management is primarily in the hands of the public sector in developing countries and are likely to remain so for decades. The overwhelming majority of these public sector institutions are not efficient and face continual political interferences. Under these conditions, even if the investments

required are somehow made available, the funds are highly unlikely to be used properly and efficiently. Thus, a major constraint to ensure universal access to clean water will be how to make the existing public sector institutions increasingly more and more efficient and then maintain their efficiency.

- Role of private sector. From around 2002, multinational private sector companies have lost their earlier enthusiasm in managing water supply projects in the developing world. The potential roles of the national private sector companies are mostly unresearched and unexplored, even though their roles are likely to be increasingly significant in the future. New types of models of public-private partnerships need to be formulated in the coming years, with national, or even regional, private sector companies, which could accelerate access to clean water in developing countries. Local or regional private sector companies can play an important role in water supply, the desalination of seawater or brackish water and wastewater management. In order to promote private sector involvement, the public sector has to become more aware of the aspects that the private sector can do better than the public sector, and where the private sector may have a competitive advantage. These aspects can be outsourced to the national private sector. This will require transparent and enforceable laws and regulations.

Research on water as a human right is very limited at present, especially in terms of its operational implications. The following research areas should be given priority:

- Water as a basic need or human right.
- Responsibilities of the various levels of the governments for the provision of water supply and sanitation.
- Water pricing and tariff structure that encourage water conservation and improve the financial conditions of the water utilities.
- How the public sector water companies can be made significantly more efficient, more involved, more transparent, with better funding.
- Type of legal and regulatory frameworks that are needed to ensure people have access to clean water and sanitation, irrespective of who provides the services: public or private sector.
- Water for the elderly.

Research in these areas is important to inform policies, mainly as more than 2 billion people lack access to clean water and more than 4 billion people lack access to safe sanitation services.