

4.17 How do we guarantee the human right: Sufficient water for all?

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SUMMARY: *Enough water is a human right. That is the conviction of people in all regions of the world and motivates them to fight against attempts to privatise the water supply of cities and regions thus making water a commodity like any other commodity that can be bought by people who have enough purchasing power. Women in particular are losing out when the market dictates who will get water. In order to defend water as a human right it is urgently necessary to struggle for a water convention. It would oblige governments to respect, protect and fulfil this human right.*

Mai ni Mwoya – water is life. For thousands of years, this has been the experience of the Kikuyu in Kenya and of many other peoples throughout the world. Long before human rights were codified, people in many of the world's cultures regarded water as common good, to which every person was entitled. Withholding water from someone was tantamount to refusing them the right to life. This is mirrored in the world's religions, not least of all in the world religions of Judaism, Christianity and Islam, which arose in the arid, desert regions of the Middle East. In these religions as well as numerous religions in Africa, for instance, water the life-giving element is obviously held in very high regard. It is a sacred gift from God or the Gods and must be handled with care.

The explanation for the opposition to the privatisation of water supplies in the countries of the South lies not least of all in these ideas, which have matured over thousands of years. The drive to anchor the right to water as a human right ties in with these cultural and religious ideas and derives from them a substantial part of its cogency for people from the most diverse societies. Here we would like to cite Vandana Shiva, a militant in India for the rights of women and the preservation of a healthy environment, and a recipient of the Alternative Nobel Prize. In her view, holy waters lead us into the world beyond the market, a world full of myths and legends, full of belief and devotion, full of culture and religious ceremonies. Those are the worlds that enable us to preserve and share water, and transform shortage into surplus.

Water supplies – A task for the future

No-one thinking about the future of humanity can overlook water. Water has become a vital issue. As the UN General Assembly declared 2003 the International Year of Freshwater, Secretary-General Kofi Annan warned that the global water crisis had become the major challenge facing the international community.

The first major water conference held in 1977 at Mar del Plata in Argentina may be regarded as the starting point for a global water policy. For the first time the international community stressed that »All peoples [...] have the right

to have access to drinking water in quantities and of a quality equal to their basic needs«. Chapter 18 of Agenda 21, the Plan of Action of the 1992 Rio Earth Summit formulated and underlined this call in concrete terms.

Numerous UN documents of the past 30 years have stipulated that access to clean drinking water is to be guaranteed. The action plans of the major UN conferences of the 1990s too describe water as a key factor in overcoming hunger and poverty, and the lack of water as one of the greatest obstacles to development. Yet the water decade that began in 1980 under the slogan »Water for all« produced a sobering outcome. The number of people without sufficient water was reduced only marginally.

At the Special Session of the United Nations General Assembly in 2000 the international community set itself new and clear targets, the so-called Millennium Goals: the number of people without access to clean water was to be halved by 2015. This goal was confirmed at the World Summit on Sustainable Development (Rio+10) in September 2002 in Johannesburg. At the same time it was supplemented with a call to halve the number of people without sanitary facilities by 2015 as well.

Women's rights are human rights

The full tragedy of the global water crisis despite all the international declarations and statements is demonstrated primarily by the acute water shortage being endured by millions of women. In developing countries, fetching water is the work of women and children. Women are the world's water carriers. Travelling hours on foot, they carry home as much as 60 litres of water day after day for their family. A 65-year-old woman in Brazil's parched north-east has therefore spent roughly one-third of her life fetching water. Carrying such heavy burdens leads to chronic health problems. After such an expenditure of energy and time, there is no place left for school and education and, by extension, development and economic independence. Whereas women are water carriers, men are policymakers. It is the men who make up the water authorities and who decide about pumps, the location of wells and the distribution of water. But in the pursuit of the UN

Millennium Goals in sanitation, which are closely bound up with human dignity, women must also be able to formulate their demands, which are different from those of men.

Numerous action plans from UN conferences give capital importance to the principle that women's rights are human rights. Besides, gender equality is amongst the international community's Millennium Goals. Equal access for women to water and land are key factors in the fight against poverty and hunger. Equal rights for women is a solid basis for food security. An international water convention would give women in all countries a binding, powerful instrument with which to enforce and demand fulfilment of their rights – even vis-à-vis their own (passive) local and national governments.

The debate on the human right to water

The human right to water rests on the conviction that water is a public and common good, which as a life-sustaining element must be accessible to all people irrespective of purchasing power. This is no *carte blanche* to waste this precious life-sustaining element. Instead it is a mandate to humanity to handle this vital element carefully so that future generations too will have enough clean drinking water.

The concept of water as a human right by no means implies that it must be free of cost for all. What is crucial is for each society to be able to regulate that price autonomously. This ceases to be the case when the water supply system falls into the hands of multinational firms. To the extent possible, non-profit municipal supply systems too must charge a price that covers the costs of harnessing, treating and distributing water, and of sewage disposal. But the water prices are set as a function people's purchasing power rather than the operator's profit expectations. In South Africa, where the right to water is enshrined in the Constitution, every family is entitled to 6,000 litres of water free of cost per month. The wealthy therefore subsidise the supply of water to the poor through its price.

World Bank data has suggested that as much as \$180 billion will be needed each year if the UN Millennium Goals are to be attained for water. But that figure was sharply contested by the Chairman of the Water Supply and Sanitation Collaborative Council (WSSCC) at the 2004 annual meeting of the Commission on Sustainable Development (CSD) in New York. Were we to forego high-tech and high-cost projects, USD 10 billion per year would be enough to provide water and sanitary facilities for all. Already at the UN Social Summit in Copenhagen, the international community had put forward a concrete formula for the future funding of water projects: the 20:20 initiative. This initiative envisages that industrialised countries

reserve 20 of their development aid for basic social needs, including low-cost water and sanitation. Developing countries would match this by investing 20% of their budget in this field.

The international recognition of a human right to water increases the pressure on national governments and the international community to do more to realise the United Nations Millennium Goals, whilst making access to clean water for all a guiding principle. This human rights approach unequivocally settles the question of whether it is water for all, or water for all who can afford it.

No explicit mention of the human right to water is made in either the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights, or the International Covenant on Economic, Social and Cultural Rights. But it frequently arises indirectly for discussion, for instance because the human rights to food and health cannot be realised without an adequate supply of clean water.

There have been initiatives for some years now to anchor the human right to water in international law. »General Comment« No. 15 of the UN Committee on Economic, Social and Cultural Rights was a milestone in this regard, as it established the right to water and laid out its implications. »General Comments« by United Nations committees are not binding under international law, but do significantly influence the interpretation of international human rights treaties. In the debates on water supplies for the poor and for future generations, the Comment can become a significant point of reference.

»Water is a limited natural resource and a public good fundamental for life and health«. This is how General Comment No. 15 begins. States must therefore respect, protect and guarantee access to water at all times. The Comment comes out clearly against the a strong commercialisation of water: »Water should be treated as a social and cultural good, and not primarily as an economic good« (para. 11).

The Comment does not in principle rule out a private water supply system but subjects States parties to substantial obligations (XX): »Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance«. (§24).

Paragraph 27 stipulates: »Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided,

are affordable for all, including socially disadvantaged groups«. And paragraph 56 unequivocally stipulates: »Under no circumstances shall an individual be deprived of the minimum essential level of water«. In the light of WTO negotiations, the principle, whereby »Human rights law must take precedence over trade law«, is of paramount importance. General Comment No. 15 affirms the independent human right to water and formulates rules covering the do's and don'ts of observing this human right. However, as already mentioned, this General Comment is non-binding under international law. Further steps are therefore needed, more specifically an international water convention.

Water convention urgently needed

Yet creating a water convention would not signify the end of all problems. Formulating a water convention will surely be a highly demanding exercise. Other international treaty-making experience shows this all too well. Implementation within individual countries is in turn something of a feat. It is the nation-States themselves that are often reluctant to recall the commitments they assumed in signing the agreements. The wrangling over the Kyoto Protocol is an inglorious illustration of this.

But all these hurdles in no way alter the fact that a water convention provides the indispensable legal groundwork and political opportunity for a forward-looking water policy. A water convention is an international legal instrument in line with the spirit of good governance, based on law and not on might. It must form part of a world policy that is people-based and anchored in international law. The right of future generations to safe and sufficient water must be the guiding principle in drawing up the convention.

Only a convention can merge the three main streams of water into one mighty river. They are: development, environment and human rights. It would thus become a central tool for combating poverty and hunger and could do much to aid the implementation of the sustainable development model. Even if above-cited General Comment No. 15 on the right to water represents a milestone in water policy, crucial building blocks are still missing for the comprehensive protection of this life-sustaining resource. This does not solve the question of distribution amongst the various users of water. Given the conflict potential that resides in this increasingly scarce resource, rules of distribution are indispensable. Besides, the environmental approach needs to be reinforced, as no sustainable water policy is possible without it. The Committee on Economic, Social and Cultural Rights was itself aware that its Comment was not enough to realise the right to water: »States parties should ensure that the right to water is given

due attention in international agreements and, to that end, should consider the development of further legal instruments«.

A convention based on the right to water would bind individual States to align their national legislation with international law. In realising human rights, States have so-called »core duties«, which also come to bear on the right to water. These are the duty to respect, protect and fulfil a human right.

A binding agreement under international law with reporting and control mechanisms affords the people in individual countries a significant »means of pressure« on their own Government. A convention would also envisage judicial remedies for each individual. The strengthening of human rights has never been a linear forward movement. In addition to responsibility on the part of governments, international organisations and non-governmental organisations, it demands the untiring commitment of the local people.

A tool in the hands of the people

International law treaties on environmental protection have prompted governments to draft environment legislation and take environmental action that in the absence of international regulations, would not have occurred or would have come much later in individual States.

A supply of clean drinking water is essential to human survival. And this is among the core tasks of government. Only the government can guarantee decentralised, secure supplies, and that distribution is based on solidarity, that people have a democratic say and scope for monitoring. Where governments are reluctant or unable to discharge their obligations, countries should be given support in implementation by means of development co-operation. A water convention would be a common, coherent body of rules applicable to industrialised and developing countries alike.

Responsibility of civil society

Time is pressing and we therefore cannot procrastinate. We must do the utmost to ensure that water remains a public good, just like the air we breathe, for there is no substitute for either. WTO agreements (GATS) through which water is being converted into a run-of-the-mill, tradable commodity must be countered with a water convention. International law must ensure for all people on Earth a basic supply of water, access to clean drinking water, fair distribution and protection from water pollution.

Civil society and non-governmental organisations have a duty to hold governments to supporting a water convention internationally. Civil society and its non-governmental organisations have been extremely active

with respect to water in recent years. The fight against privatisation of water was a major topic at the World Social Fora in both Porto Alegre and Mumbai. Civil society has also been active at major international conferences such as that held in Bonn in December 2001, or at the World Water Fora. Water also occupied a permanent place on the agendas of the national and regional Social Fora in the various world regions. Numerous declarations, statements, protests and position papers have been published in that regard. It is now time to move forward to the commitment stage. The final declaration issued in January 2004 at the Peoples World Water Forum in Delhi (India) states: »We call for an international convention on freshwater under the auspices of the United Nations ...«.

Water ethics

Water needs a code of ethics. It must be inspired by the principles of precaution and mutual consideration and by the notion of justice and solidarity. It is water itself that teaches us the ethics. The following story should bear this out:

A wise man in ancient China was once asked by his disciples: »You've been standing for some time now beside this river, looking into the water. What are you seeing in it?«

The wise man did not reply. He did not remove his gaze from the constantly flowing water. At last he said:

»Water teaches us how we should live. Wherever it flows it brings life and distributes itself to all who need it. It is kind and generous. It knows how to smooth out rugged terrain. It is fair. Without hesitating in its course, it plunges over steep precipices into the depths. It is courageous. Its surface is smooth and even, yet it can form hidden depths. It is wise. It flows around rocks standing in its way. It is peaceable. But its gentle power works day and night to remove any obstacle. It is untiring. Irrespective of the number of turns it must take, it never loses sight of the direction toward its eternal destination, the sea. It is single-minded. And however often it is polluted, it endeavours unceasingly to cleanse itself again. It has the power to renew itself time and again. It is for all these reasons«, said the wise man, »that I am staring at the water. It teaches me true life« ♦

Translation: Richard Dunkley

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