

No Water, No Life: On the Basic Human Right to Water

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Abstract

This article argues that the right to water is basic human right. It discusses the right in context of international human rights law, and details how the right should be interpreted in broad sense with reference to the right to an adequate standard of living and the right to food. The right is multidimensional, and entails both consumption and production needs. At the same time, the right to water is threatened by international conflict and contemporary climate changes. Thus, the right to water should thus be interpreted in a broader sense to include not only adequate standard of living and the right to food, but also entail for production needs.

Key words

Basic human rights, right to water, consumption and production needs, international conflicts.

Introduction

Water is a source of all life. This is a basic biological fact; the lack of water undermines survival and threatens existence, and the being of beings. Human beings, as with other organic life, cannot survive without access to water. Hence, water is the most basic of all human needs. Life, economic development, survival, and reproduction of life require water. If human rights are about securing basic human interests, water is a basic human right good and interconnected with the broader right to an adequate standard of living.

Water is also the source of death. Conflicts over access and control of water have deep historical roots, spanning millennia back in recorded history. And conflict over water resources most likely will lead to violent conflict and wars in decades to come. No wonder water has evolved as a key human rights norm. Hence, water is a resource that structures and restructures societies with huge conflict potential. The fight for water resources will likely be the battle inside and between countries in the immediate future, and for a long time.

This essay seeks to justify why the right to water is a human right and highly essential for sustainable development and anti-poverty efforts. In the first part of the essay, I draw on the assumption that if water is life, access to water constitutes a basic human right in the sense of basic rights spelled out by Henry Shue (1990)². In the second part, I explore briefly how conflict over water resources threatens peace and security, and the right to water in situations of conflicts about water resources. On both these two dimensions of water analysis - the normative rights, and the political conflict - the international community faces tremendous challenges of distributive justice, peace and security.

Water as a basic human right

Despite the centrality of water to human life pointed out, water has only recently evolved and been recognized as a human right in international human rights law. Access to water was not explicitly referred to in the early human rights treaties. While the right to water is closely interrelated to the overarching right to an

²Henry Shue, 1980

adequate standard of living, it is not explicitly referred to in article 11 of the UN Covenant on Economic, Social and Cultural Rights (CESCR) covering this right. Yet, as pointed out by the United Nation Committee on Economic, Social and Cultural Rights (the Committee), the right goods listed in the article of the CESCR (covering the right to food, freedom from hunger, right to housing and shelter) was not meant to be exhaustive but rather a provisional ‘catalogue of guarantees essential for securing an adequate standard of living.’³ This view gave scope for a dynamic interpretation by the Committee. In its interpretation of the right to an adequate standard of living in General Comment 15 of 2002,⁴ the Committee makes it clear that the listing of the rights to food, housing and clothing in article 11 was not intended to be complete. It adds that the right to water ‘clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.’⁵

General Comment 15 represented a breakthrough in an acknowledgement of water as a basic human right. The opening paragraph of General Comment 15 states that water-in different usages-is an essential public good that should be available to all, and which is conditional for other human rights. Comment 15 observes, ‘Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.’⁶ In this sense, the right to water is what Shue refers to as a basic right, that is, a right which enjoyment ‘is essential to the enjoyment of all other rights.’⁷ The right to access water is not just essential for other subsistence rights.⁸ It is basic for the fundamental right to life, and the human rights value of dignity.

The Committee observed that there are a variety of uses of water that require rights protection; as drinking water and part of basic nutrition; as essential for health and safe sanitation; and as a basic resource in agricultural activity. The latter usage is

³See International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11(1& 2)

⁴See United Nation Committee on Economic, Social and Cultural Rights General Comment 15 E/C.12/2002/11

⁵ Ibid para 3

⁶ Ibid para 1

⁷ Shue, 1980, p. 19

⁸ This includes right to food, health water among others

important in the context of agriculture in general, including subsistence or self-sufficient agriculture, typical for many African communities. Access to water is essential for the self-provision of food in small-scale rural, and peri-urban agriculture ‘gardening’ (domestic agricultural production in urban and semi-urban areas). Important from a gender perspective, self-sufficiency food production is regularly carried out by women in non-affluent societies. Hellum et al (2016: 35) note that ‘[t]he indivisibility of socio-economic rights is especially important for poor African women’s right to sufficient water for domestic and livelihood uses. Water-dependent gardening, cropping, livestock, brick-making, craft and small-scale enterprises are ‘...the mainstay of their diversified livelihoods.’⁹ In other words, access to water is a precondition for self-provision of food, and hence, the broader right to an adequate standard of living.

The right to clean drinking water was referred to in the UN Convention on the Rights of the Child of 1989. In article 24, paragraph 2 (c) the CRC links the right to clean drinking water to the right to health of the child, and article 14(2) of the UN Convention Against Discrimination of Women (CEDAW) states that women have the right to ‘adequate living conditions, particularly concerning housing, sanitation, electricity and water supply.’¹⁰ Other human rights treaties, for instance, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa,¹¹ states that State Parties should enable ‘women to access clean drinking water, sources of domestic fuel, land and the means of producing nutritious food.’¹² States ratifying these documents, in other words, have obligations to provide women, or broadly the cultivator, with the means of facilitating the fulfilment of their rights by self-provision.

Normative content of the right to water

Human rights documents often assume that human rights are “interrelated” without demonstrating the logic of this interrelatedness. The right to water illustrates how human rights hang together. The United Nations Committee on Economic, Social

⁹Hellum et al, 2016, p. 35

¹⁰ See UN Convention Against Discrimination of Women (CEDAW), article 14(2)

¹¹ Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa was adopted by the African Union on 11 July 2013

¹²Ibid., article 15(a)

and Cultural Rights General Comment 15 refers to the right to water as a right ensuring access to clean drinking water and food preparation (survival rights, including the right to life), and personal sanitation, hygiene and washing of clothes (health and related concerns).¹³ Access to safe water is therefore needed to prevent among others, malnutrition, starvation and diseases. These are all essential rights goods for state obligations under CESCR. The right to life and the related right to adequate food are basic rights that will not be secured without access to water. Hence, even if water was not explicitly referred to in the International Bill of Human Rights, it has been deduced by dynamic legal interpretation as conditional for other basic rights.¹⁴ Today, this interrelatedness demonstrates that the right to water is a *conditio sine qua non* for basic subsistence and rights.

To a large extent, the normative and instrumental operationalization of the right to water draws on the operationalization of the right to adequate food. In interpreting the right to food in UN General Comment 12,¹⁵ the Committee on Economic, Social and Cultural Rights stressed that the right to adequate food should not be understood in ‘a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients.’¹⁶ The right has to be interpreted contextually, that is, in nutritious, social and economic contexts. Food needs to be adequate and nutritious, and sustainable in terms of availability and access. In the terms of the GC 12, ‘sustainability’¹⁷ is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of ‘adequacy’¹⁸ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while ‘sustainability’ incorporates the notion of long-term availability and ‘accessibility.’

¹³United Nation Committee on Economic, Social and Cultural Rights General Comment 15, para 12(a)

¹⁴ The International Bill of Human Rights consists of the key human rights documents; the Universal Declaration of Human Rights (1948), the UN Covenant on Civil and Political Rights (1966) and the UN Covenant on Economic, Social and Cultural Rights (1966).

¹⁵See CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)

¹⁶Ibid., para 6

¹⁷Ibid para 7

¹⁸Ibid

A similar line of reasoning is applied in the interpretation of the right to water in General Comment 15. The Comment states that the right to water contains two rights dimensions, freedom and entitlement. The freedom dimension implies that the rights-holder has a right to ‘maintain access to existing water supply necessary for the right to water’¹⁹ and be free from “arbitrary disconnections or contamination of water supplies.”²⁰ This, indeed, is a burning issue, in particular in fast-growing urban centres in many parts of the world. The entitlement dimension implies that the State Party, the primary duty-holder, is obliged to secure people’s entitlements, which ‘include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.’²¹ It follows from this entitlement that the supply of water should be available at all times, and ‘sufficient and continuous for personal and domestic uses.’²² Water should be available regularly for drinking, sanitation, hygienic purposes and food preparation. It should be available in sufficient quality which includes being safe from substances that threaten health, physically and economically accessible for all, and without discrimination on social status, living environment, or other grounds of social differences. In today’s world, these requirements are often non-existent. United Nations estimates suggest that in 2022, 2 billion people were lacking access to safe water supply.²³

The scope of the right to water

A controversy of significant importance to many people living in poverty in rural and peri-urban areas around the world is the scope of the right to water. Is the right to secure water for personal and domestic use only, or is it broader and intended to ensure water for productive livelihood? While the World Health Organisation estimates that every person needs 20-25 litres per day as a survival minimum, water

¹⁹General Comment 15, para 10

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ According to the UN Sustainable Development Goals Report 2022, “The proportion of the global population using safely managed drinking water services increased from 70 per cent in 2015 to 74 per cent in 2020. Still, 2 billion people were without such services that year, including 1.2 billion people lacking even a basic level of service. Eight out of 10 people who lack even basic drinking water service live in rural areas, and about half of them live in LDCs. At the current rate of progress, the world will reach 81 per cent coverage by 2030, missing the target and leaving 1.6 billion people without safely managed drinking water supplies”, <https://unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf>, accessed 08.08.2022.

for productive livelihood would require much more, varying with climatic and other conditions and considerations. Some legal research argues that a narrow definition of water use is inadequate to address the legitimate subsistence demands that poor and vulnerable people have in many rural and peri-urban communities. Hellum *et al* (2015) argue that the right to water should be interpreted in broader terms.²⁴ Their approach suggests that taking the right to water seriously for rural and peri-urban people requires that we establish the interconnectedness of water to other basic human rights goods, such as the prevention of malnutrition which is actually the right to adequate food, prevention of starvation which translates to freedom from hunger, or right to life, and protection against preventable diseases, which translates to the right to health. The General Comment 15 is ambiguous on this issue. Hellum *et al*, however, refer to the Protocol to the African Charter on the Rights of Women in Africa,²⁵ which states that the State Party should ‘provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food.’²⁶ This Protocol, in other words, establishes a right to water for productive purposes and illustrates the link between state duty to provide and state duty to facilitate self-subsistence referred to above: The State has a duty to provide essential rights as well as sufficient and safe water, for self-subsistence farming in rural and peri-urban settings, and hence, facilitate self-provision of food. Rights self-provision requires state facilitation hence confers a duty to the state.

Accordingly, the right to water is conceived and defined ‘through its links to the right to life, the right to food, and the right to health.’²⁷ The right to water such defined is then not just a right to personal nutrition and hygienic use of water but should be interpreted to include the right to productive uses enabling self-provision by farming in rural and peri-urban areas. Although this may still be a contested interpretation of the scope of the right to water, a legal-dynamic and rights-interrelated interpretation of the right indicates that the scope of the right to water

²⁴See Hellum *et al.*, 2015

²⁵Protocol to the African Charter on the Rights of Women in Africa was adopted by the OAU in 1995

²⁶Ibid article 15

²⁷See Hellum, Ikdahl & Kamari-Mbote, 2015, p 44

should be enlarged to include uses for productive self-provision of vulnerable groups in rural and peri-urban communities.

From a broader and dynamic approach to the right to water, and seen within this that it is unfortunate that the otherwise important Sustainable Development Goal (SDG) 6: [e]nsure availability and sustainable management of water and sanitation for all is focussing on the narrower interpretation of water uses, that is, clean drinking water and sanitation.²⁸ From a human rights perspective, it is problematic that the SDG Goal 6 does not refer to water as a basic human right. Defining access to water as a human right would strengthen demand for state commitment to adequate and sustainable management of water resources, and would entail a right to remedy for those suffering from inadequate water resources.

Water conflicts and the human right to water

There is another important issue that makes water critical from a human rights perspective; the potential and actual conflicts over access to water. Access to fresh and clean water is increasingly scarce in many parts of the world. According to the Pacific Institute, water is one of the most critical resources in the world and is not resilient.²⁹ It is a source of violent conflict within communities and between countries around the world. While water is basic to the life of individuals, it is also critical for the survival of societies, economies, and cultures.

Conflict over water is not a new in human history. A ‘Water Conflicts Chronology’ developed by the Pacific Institute refers to conflict over water five thousand years ago, in the ancient Sumerian community.³⁰ In history, conflicts over water, including the destruction of water resources, have been used as a military tool in times of war, as a political tool of territorial and other control, or in developmental disputes. The potential of conflict over water arises not least from the fact that water resources are often shared between two or more countries. Levy and Sindel report that two-fifths of water flowing in all rivers is divided by two or more countries and

²⁸ See Sustainable Development Goals (SDG) 6
<https://www.un.org/sustainabledevelopment/water-and-sanitation/> accessed on 16.08.2022

²⁹ Pacific Institute 2021 Annual Review, June 2022
<https://pacinst.org/publication/pacific-institute-2021-annual-review/> accessed on 16.08.2022

³⁰ Pacific Institute, 2018.

that 20% of the world population live in these countries.³¹ Populous countries like India, Pakistan and South East Asian countries, as well as countries along the Nile River, belong to this category. Levy and Sindel also observe that between 1990 and 2007 there were 81 violent internal or international conflicts over water resources, lasting on an average of 4.6 years, a number unmatched by any other similar sequence of years in the 20th century.³² Conflict over water resources may also be caused by low rainfall, high population growth, rapid urbanization and industrialization. The overheated nature of contemporary globalization compounds the problem of the right to water. Changes are taking place at a speed that outpaces societies' capacity to govern and manage looming intra and inter-state conflicts. These, coupled with climatic changes are some of the agents leading to insecurity associated with access to water in times of drought and flooding.

Water conflicts undermining internal peace, or regional peace between countries represent contextual and material factors that threaten people's right to water. Water as a security and human rights issue is slowly being acknowledged, but the means and capacities to resolve local, national and even international conflicts are a matter of concern. The former UN General Secretary Boutros Boutros-Ghali is quoted as saying in 1985 that 'The next war in the Middle East will be fought over water, not politics.'³³ He was not fully right in this prediction, but the danger still looms as a possibility. Others have pointed out at the 'water nature' of the wars in Iraq and Syria. While ongoing wars, and regime instability, often are framed in religious terms, 'there lies a battle for the water supplies that sustain these deserted nations.'³⁴ According to Pearce (2014), referring to the Islamic State's warfare in the 2010s, '(t)here is a water war going on in the Middle East Behind the headline stories of brutal slaughter as Sunni militants carve out a religious state covering Iraq and Syria, there lies a battle for the water supplies that sustain these desert nations.'³⁵ It is evident that the politics surrounding water resources in areas of competition of

³¹ Levy and Sidel, 2011

³² Ibid

³³ Boutros Boutros-Ghali address to the United Nations University, 2011.

³⁴ See Pearce, 2014, 1

³⁵ Pearce, *ibid.*

water are conditioning people to access water, and hence secure this basic resource for human existence and survival of societies.

Conclusion and Recommendations

Access to water for consumption and production within a defined scope is a basic human right. Human rights are normative standards and legal norms for ensuring that fundamental human interests are protected. Human rights are also social ethics that offer guidelines for governing human relations and the structuring of social and political order. Although not much is developed in positive law, nor in international relations, the right to water is a basic value and norm that requires more practical and operational attention. The right to water as a human right can help steer national and international policies, frame debates about fair distribution of water and map out the international community's responsibility for such distribution. Yet, the normative power of the right to water is still far from secure in state compliance with human rights norms, or as norms of importance in guiding the regulation of international conflicts.

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