

WATER AS A HUMAN RIGHT: THE UNDERSTANDING OF WATER IN THE ARAB COUNTRIES OF THE MIDDLE EAST

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ABSTRACT

The international community has affirmed the human right to water in a number of international treaties, declarations and other documents. Most notably, the UN Committee on Economic, Social and Cultural Rights adopted in November 2002 a General Comment on the Right to water setting out international standards and obligations relating to the right to water. Based on the UN concept of water as a human right for selected Arab countries in the Middle East (Egypt, Palestine, Jordan, Lebanon)¹ it is analysed if and to what extent these concepts are acknowledged. The paper aims to identify the scale of knowledge of and commitment to the UN concept in the region and is meant to identify the main areas of concern in each country regarding water as a human right. The paper summarizes the main challenges facing strategic and coordinated action towards the UN concept of water as a human right, identifies what types of processes and institutions needs to be developed to meet the challenges of the concept and provides best practise examples from countries that have shown innovation. Objectives and priority ideas for activities of NGOs are recommended

KEYWORDS: Human right, Lebanon, Egypt, Palestine, Jordan, UN Committee on Economic, Social and Cultural Rights

¹ Case studies have been done by Karen Assaf, Palestine, Bayoumi Attia, Egypt, Ali Darwish, Lebanon, Batir Wardam, Jordan. The project concept and coordination was done by Simone Klawitter on behalf on hbf.

INTRODUCTION: WATER AS HUMAN RIGHT

For human development access to sufficient water regarding quality, quantity and economy is vital. Today more than 1.2 billion people lack access to an adequate supply of water, more than 2.4 billion people lack access to adequate sanitation. More than 2.4 million people die annually from water related diseases due to an absence of a qualitatively safe water supply; most of them are children. (UN 2003, WHO 2003)

With population growths in many parts of the world, especially in urban areas, freshwater resources are affected by increasing pollution and overuse of existing natural resources resulting in a growing scarcity in quality and quantity of water. A raising competition among the different users and uses of water is the consequence.

The human right approach to water puts the peoples need first regarding water use and promotes human-centred water resource development based on a coherent framework of binding legal norms and accountability. It aims to empower individuals to achieve their full potential of and the freedom to take up opportunities in using water.

The human right concept

The term “human right” refers to those rights that have been recognised by the global community in the Universal Declaration of human rights, adopted by the United Nations (UN) Member States in 1948, and in subsequent international legal instruments binding on states. The consensus on human rights reflects a global moral conscience. (WaterAid 2003)

Although legal instruments at the international and national levels have recognized and confirmed human rights, the law is not the source of these rights. Human rights are not granted by any human authority or government, but are derived from the essential dignity and nature of humankind. The list of internationally recognized human rights covers all those rights essential for human survival, physical security and development in dignity. There is no hierarchy of rights and all rights should be regarded as being of equal priority. Denial of one right invariably impedes enjoyment of others, leading to the recognition by UN Member States that human rights are

indivisible, interdependent and inter-related (UN 1993, WaterAid 2003, Häusermann 1997)

The human rights approach is especially used to challenge the economic and social injustice, particularly toward indigenous peoples, women's groups, advocates of children, and disabled people. In summary, a human rights approach to development is one which (WaterAid 2003)

- puts people first and promotes human-centred development,
- stresses liberty, equality and empowerment,
- recognises the inherent dignity of every human being without distinction,
- recognises and promotes equality between women and men, between minority and majority,
- promotes equal opportunities and choices for all so that everyone can develop their unique potential and have a chance to contribute to development and society,
- promotes national and international systems based on economic equity, equitable access to public resources, and social justice,
- promotes mutual respect between peoples as a basis for justice and conflict prevention and resolution.

Human right treaties (covenants, pacts or conventions) are contracts signed by states which are legally binding. They impose mutual obligations on the states. Human rights treaties have been adopted by states worldwide and represent a global consensus about how individuals should be treated in accordance with their inherent rights and dignity. Six core human rights treaties do exist, which are confirmed in international law.² Lobbying groups have also adopted

² The six core human rights treaties are:

The International Covenant on Civil and Political Rights, adopted in 1966 and which entered into force 23 March 1976;

The International Covenant on Economic, Social and Cultural Rights, adopted in 1966, entered into force 3 January 1976;

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965, entered into force 4 January 1969;

The Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979, entered into force 3 September 1981;

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984, entered into force 26 June 1987;

The Convention on the Rights of the Child, adopted in 1989, entered into force 2 September 1990

human rights texts: The League of Arab States has adopted human rights treaties open to signature by their respective member states.

There are various mechanisms within the UN human rights system to submit complaints of human rights violations: procedures to bring complaints directly under international human rights treaties and special procedures for filing complaints guided by bodies. The Commission on human rights and the Economic and Social Council have established what are known as Special Procedures of the Commission on human rights. These are a number of additional procedures and mechanisms, undertaken either by “working groups” composed of experts acting in their individual capacity or by independent individuals known as “Special Rapporteurs”, “Independent Experts”, or “Special Representatives”. In 1997, the UN Commission on human rights entrusted an individual expert, Mr. El-Hadji Guissé, with the task of drafting a working paper on human right approach to water focussing on the promotion of the realization of the right of everybody’s access to drinking water supply and sanitation services.(WaterAid 2003)

The human rights approach in water related issues

The right to drinking water is defined as the right of every individual to have access to the amount of water required to meet his or her basic needs. This right covers access by households to drinking water supplies and waste-water treatment services managed by public or private organisations. There is a discussion ongoing if this right covers water intended for commercial, industrial or agricultural uses as well. (UN 2002a)

The human right on water has been explicitly recognised in several international human rights treaties³, especially in the *International Covenant on Economic, Social and Cultural Rights*⁴ and other international binding laws and regulations⁵. To monitor the

³ The human right on water is also protected in times of conflict under the Geneva Conventions.

⁴ ratified by 146 countries

⁵ According to the European Council on Environmental Law, water is above all a social good, that is, a resource that forms part of the common heritage of humanity. Water is also seen as an economic good of great value, but which cannot be treated as a mere commodity like other consumer goods. The Council stresses that access to drinking water must not be subject to market forces dominated by the profit motive.

implementation of that treaty an independent expert committee, *The Committee on Economic, Social and Cultural Rights* was established. This committee was responsible for elaborating the content and obligations attached to the right to water in its General Comment No 15, “The right to water” (articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights*). The Committee defined the right to water as follows: (UNHCR 2002)

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”

Significantly, the Committee stated that:

“The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.”

Doing so the Committee recognized that water itself was an independent human right. The right to drinking water means that all persons, without discrimination, must have access for their basic needs to a sufficient quantity and quality of water supplied. The basic need for water must be economically affordable especially for the poor, and not dependent on if a public or private entity supplies the water. States must take all necessary measures to enable the poorest people to enjoy the human right on water, e.g. introducing subsidized water prices.

Governmental obligations with regard to the human right on water can broadly be categorized in obligations to *respect, protect, and fulfill*.

Box 1: Categorization of governmental obligation with regard to the human right on water

Respect. The obligation to respect requires that States Parties refrain from interfering directly or indirectly with the enjoyment of the right to water.

Protect. The obligation to protect requires that States Parties prevent third parties such as corporations from interfering in any way with the enjoyment of the right to water.

Fulfill. The obligation to fulfill requires that States Parties adopt the necessary measures to achieve the full realization of the right to water.

Source: WHO 2003, UN 2002b

The General Comment No. 15 affirms that (WaterAid 2003):

“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”.

Hence, it is recognized that this right has already been recognized in a wide range of international agreements. Regarding the normative content of the General Comment it is stated that the right to water comprises both:

(1) “Freedoms” - such as the right to be free from interference through, for example, arbitrary disconnections or the contamination of water supplies, and

(2) “Entitlements” - including the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

Furthermore it is stressed that water should be treated as a social and cultural good, and not primarily as an economic good. General Comment No.15 reaffirms the margin of discretion allowed to States Parties under international human rights law, at the same time stressing that states are obliged to utilize:

“All appropriate means, including particularly the adoption of legislative measures in the implementation of their Covenant obligations.”

States obligations regarding the right to water and acknowledgements of constraints due to the limits of available resources are recognized as well but it is clearly stressed, that :

“States Parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water”

The General comment calls for guidelines on the three main areas in the implementation of the right to water at the national level, does not identify details on how to do so. These three areas are as follows (WaterAid 2003):

- The formulation, implementation and monitoring of legislation, strategies and policies;
- The identification and application of suitable, sufficiently disaggregated indicators and benchmarks for monitoring States Parties compliance with their obligations and progress towards the full realization of the right to water
- The provision of access to effective judicial or other appropriate remedies at both national and international levels for any persons or groups who have been denied their right to water

Furthermore international obligations concerning the right to water are outlined. These include (WaterAid 2003):

“Positive” obligations of States Parties - for example, to ensure that the right is given due attention in international agreements, or the special responsibility of the economically well developed States Parties to provide aid and international assistance to poorer states parties, and “Negative” obligations, such as refraining at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water. The General Comment also stresses the fundamental importance of ensuring access to adequate sanitation and States Parties obligation to progressively extend safe sanitation services,

particularly to rural and deprived urban areas, taking into account the needs of women and children. Non-state actors obligations are stressed as follows (WaterAid 2003):

- Co-operate effectively with States Parties in relation to the implementation of the right to water
- Incorporate human rights law and principles into both policy and action; for example, the right to water should be taken into account in any lending policies, structural adjustment programmes or development projects
- Give priority to the most vulnerable or marginalized groups of the population in the provision of aid and the distribution and management of water and water facilities

Defining water as a human right leads to a broader basis for advocacy work for the water needs of human beings. Utilising the right to water means: (WaterAid 2003)

- Paving the way for translating the right to water into specific national and international legal obligations and responsibilities;
- Raising attention towards water management all over the world;
- Identification of minimum water requirements and allocations for all;
- Setting priorities for water policies centred around the water needs of human beings;
- Catalysing international agreements on water issues and, thus contributing to resolutions of watershed disputes and conflicts between different users
- Emphasising the governmental obligation to ensure sufficient access to water and sanitation.
- Providing a basis for lobbying towards water needs on the basis of political commitments

All human rights are indivisible. They are inter-related. A lack of water and sanitation clearly has an impact on the enjoyment of other human rights, such as the rights to education, health and work, which form an essential basis for poverty elimination and human development as well. Recognizing water as a human right creates the political will to solve the water crisis, lowering poverty and raising

health by establishing a partnership between the human rights and the water sector community.

METHODOLOGY AND ANALYTICAL FRAMEWORK

The analysis methodology consisted of the following components:

(1) *Country case studies following a common reporting framework* for each of the four countries: Strategic and coordinated action for each of the four countries was framed by common analytic components. The framework is presenting reporting principles and specific content to guide the preparation of the country reports and hopefully represents the main aim of the projects to identify the scale of knowledge of and commitment to the UN concept in the region. Analysing the water sector, strength and weaknesses regarding the criteria of the water as a human right concept were identified.

Box 2: Common reporting framework for country analysis

<p>The national water sector National macro-economic setting, development objectives and water policies Water resource assessment: Base and potential Analysis of demand and supply of water Regulatory framework of water law Institutional settings and process Principal stakeholders, their roles, interests and conflicts Meeting the UN concept: The national understanding of water The national water policy and the Human right concept of water Evaluation of UN criteria Areas of concern and opportunities List of NGOs List of donor activities of governmental and non-governmental organizations References and further information</p>

(2) a *country survey* focusing on criteria of the UN concept for water as a human right: The General Comment 15 on the right to water sets the criteria for the full enjoyment of the right to water to guideline an evaluation as follows:

- Availability of sufficient and continuous water supply
- Quality of water

- Accessibility of water and water facilities and services: Physical accessibility of water, Economical accessibility, Non discrimination against marginalized areas or groups, Information on water issues

(3) a *synthesis report* summarizing the results of the country studies.

ANALYSIS OF THE UN CRITERIA

The following chapter analyses the UN criteria given in the Comment and intends to identify the main shortcomings regarding the human right concept. For detailed numbers and figures as well special issues please see the country case studies which are published at www.boell.de.

The criteria of the UN concept

(1) Availability:

Regarding physical access the Comment states that “*a water supply is sufficient and continuous for personal and domestic uses, such as drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene*” if it follows at least the basic access defined in the WHO guidelines (Please see 0). It needs to be taken into account that some individuals and groups may also require additional water due to health, climate, and work conditions. (UN 2002b) Regarding the WHO guidelines for each of the countries, it can be stated that there is a lack of information to fulfill the needs for an evaluation of the WHO guidelines.

(2) Water quality:

Water is often also scarce in quality. The water supplied must be safe regarding water quality for domestic use aspects as well. The Committee refers to the WHO Guidelines for drinking water quality (WHO, 1993) which are meant to guide governments to develop national water quality standards to be sufficient to fulfil all human beings needs.

(3) Accessibility:

Regarding the Comment water and water facilities and services must be accessible to every human being. It identifies four overlapping dimensions of accessibility, defined as follows (UN 2002b):

(a) Physical accessibility:

“Water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services.”

WHO Guidelines for water availability mentioned above are serving as the guiding document in assessing that criteria as well.

(b) Economic accessibility:

“Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights.”

In general, water service is affordable, when not more than 2% of the average family income needs to be spent for water. (AWWA 2000)

(c) Non discrimination against marginalized areas or groups:

“Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.” (UN 2002b)

Governments are obliged to take steps to remove any de facto discrimination that could impede enjoyment or exercise the right to water. They have to give special attention to those individuals and groups who have traditionally faced difficulties in exercising the right to water, e.g. women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.

(d) Information on water issues:

All states are obliged to make information about water freely accessible, *“including the right to seek, receive and impart information concerning water issues.” (UN 2002b)*

MAIN CONCERNS AND DEVELOPMENT OBJECTIVES REGARDING THE UN CONCEPT

The UN concept for water as a human right was used as a tool for analysis using the criteria given within the concept. The main concerns and development objectives regarding the UN concept in general and evaluating the country studies which has been identified are as follows:

(a) Indicators and benchmarks

Indicators can provide a broad, yet succinct, description of the condition of a water sector. They can describe and track changes in key aspects as well as in the sector configuration and conditions. The UN concept lacks a coherent system of indicators to evaluate a water sector. Often problems arise in certain areas, which are difficult to access by the suggested WHO guidelines making it difficult to identify inequalities and discrimination faced by people, which impede their development. A comprehensive indicator system and corresponding benchmarks could help to overcome these shortcomings.

(b) Information lack

Good and accessible information is the basis for making decisions about water resources. To evaluate the water sector detailed information are needed. Information and data availability varies from country to country. Most concerns exist regarding data accuracy, reliability, consistency and deficiencies.

(c) Poor governmental commitment to the human right concept

Water governance refers to a range of political, social, economic and administrative systems that are in place to regulate the development and management of water resources and provision of water services at different levels of society. Effective water governance is a prerequisite to fulfil the human right on water. Regarding the governmental commitment to the human right concept it can be stated that there is no single legal norm in any of the countries evaluated serving as a binding instrument for the human right on water although national governments are obliged to fulfil international commitments on human rights. Governmental obligation to fulfil international law regarding water in general depends on political interests and economic viability.

(d) Low awareness of people of the right on water

People are in general not aware of their right to sufficient water supply in quality and quantity. People often simply do not know about their right. Education and empowerment could serve as a way out and a starting point for political engagement.

Stakeholders such as NGOs play an important role in encouraging dialogue among people towards their awareness of the right to water.

(e) Growing awareness of water problems and water saving possibilities

In all countries a growing awareness of water as a finite resource were identified, but still work needs to be done. Often water is seen as a political issue rather than a basic need for life.

Several methods and tools are available to promote water awareness to create an environment to support effective water policies and an understanding of water issues, which should be applied.

(f) Discrimination of marginalized groups

Discrimination is still in place depending on political power, especially discrimination of people living in remote areas and social groups with low economic capacity.

(g) Growing number of people who can't afford water

In each of the countries analyzed a growing number of people exists who cannot afford a minimum of water supplied. Often people with no or low access to water are affected, living in poor neighborhoods who must buy water from private vendors at high water prices. A free provision of a certain amount of water or providing of water at an affordable level to serve basic needs should be obligatory.

(h) People centered approach

As expected for a human rights approach, the UN concept for water as a human right is characterized as a sole people-centered approach to development, not recognizing the "water rights" of environment in an equal manner.

A people centered approach is preferable to a top-down approach which was traditionally in place with water systems imposed on the people by governmental and professional sectors. It is more effective, efficient and less costly. But water is also needed to maintain and

recreate nature and environment. The amount of water for peoples' use needs to be balanced with the needs of the environment.

THE ROLE OF NGOS IN THE REALIZATION OF THE HUMAN RIGHT ON WATER

Internationally active NGOs could contribute in several ways to the realization of the right to water.

The identified possible fields of activity are as follows:

- Promoting human right concepts by raising awareness and informing on aspects of the right to water and on how citizens can claim that right and assist others in fulfilling it;
- Building capacities among local groups to monitor the commitment and work of local government and therefore contributing to ensuring that an adequate policy is in place, and that the policy is implemented;
- Supporting local service provision by raising awareness to water as a limited resource, e.g. awareness campaigns, informing and training, especially in schools for instance in the management of community water supplies.
- Contributing to the development and promotion of international standards, benchmarks and indicators on the right to water;
- Documentation and highlighting of violations of the right to water;
- Advocating in international and regional forums on behalf on those who have had their right to water threatened or violated.

Especially in Palestine, but in all other countries as well, the political situation is affecting much work and engagement of NGOs in water issues. During the last decade working on water issues became a key NGO working concept in most of the countries of the Near East. Environmental NGOs are the main player; NGOs which are affiliated with political parties are recently only exceptionally engaged.

The fact that several NGOs are running regional offices in different countries is seen as a great advantage in contributing to the realization of the human right concept on water. Precondition for solving the ongoing water crisis is cooperation between the affected states, primarily if they are using the same water resources. Cooperation between Israel and its Arab neighbours is seen as a precondition for

each future project. Sensitivities of the Arab and Israeli partners in doing so needs to be carefully taken into account.

Depending on the project content, a suitable project partner needs to be identified. Numerous NGOs have been identified in each country by the project partners which certainly are willing to cooperate.

Sufficient financial sources need to be provided.

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ANNEX 1: WHO INDICATORS FOR PHYSICAL WATER ACCESS

Table 1: Service level and quantity of water collected

Service level	Distance/time	Likely volumes of water collected	Needs met	Intervention priority and action
No access	More than 1 km/ more than 30 min round trip	Very low (often below 5 Liter/capita/d)	Consumption can not be assured, Hygiene practise compromised, basic consumption may be compromised	Very high Provision of basic service
Basic access	Within 1 km/within 30 min round trip	Average unlikely to exceed approximately 20 Liter/capita/d	Consumption should be assured, Hygiene may be compromised, Laundry may occur off-plot, e.g. away from home	High Hygiene education Provision of intermediate level of service
Intermediate access	Water provided on plot through at least one tap (Yard level)	Average of 100-200 Liter/capita/d	Consumption assured, Hygiene should not be compromised, Laundry likely to occur on-plot, e.g. within the confines of the household	Low Hygiene promotion still yields health gains Encourage optimal access
Optimal access	Supply of water through multiple taps within the house	Average of 100-200 Liter/Capita/d	Consumption assured, Hygiene should not be compromised, Laundry will occur on-plot	Very low Hygiene promotion still yields health gains

Source: (Howard 2003)