



Development and Human Rights

A Right Based Approach to Water issues

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Overview

1. Introduction
2. Right to Water – legal analysis
3. How to use the right to water in national and international procedures
4. Experiences from rights based work
5. Role of development aid
6. Value added of a rights based approach



1. Introduction – Rights based approach to water

- Agenda setting:
 - Recognition of the right to water **and** sanitation is still at the beginning
 - Conflictive issue: in countries / transborder water use
 - Conflicts with huge infrastructure projects (World Commission on Dams)
 - Privatisation of water supply debate
 - Huge civil society mobilisation on water – increasingly focus on a rights based approach
 - Rights based –needs based discussion
 - Does a rights based approach discourage societal support to the needy



1. Violations of right to water and sanitation - central cause

- Beside all physical shortages and crises phenomena – access issues are defined by political decisions
- Illustrative examples
 - New Delhi (non-registered slums)
 - Ghana – Western Region (water pollution + deviation of streams through mining projects)
 - Manila, Managua (price increase 400 %)
 - Colombia (Water use for horticulture)
 - Südafrika and other countries (Pre-Paid Water-Meters)



2. Right to Water – legal analysis (1)

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
 - Right to an adequate standard of living, including food, clothing, housing.... (Art. 11)
 - Right to Health (Art. 12)
- No mentioning of the word „water“ in that texts
- A „Self-Standing Right“?
- On the way to a full recognition
 - General Comment No. 15
 - Study of the Office of the High-Commissioner for Human Rights (September 2007)
 - Resolution / Decision of the Human Rights Council (March 2008)
 - Independent Expert
 - Human rights obligations to access to water and sanitation

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2. Right to Water – legal analysis (2)

- Other special Rapporteurs work
 - Right to Housing (Kothari),
 - Right to Food (Ziegler)
 - Right to Health (Hunt)
 - Sub-commission → Hadji Guissé
- Documentation of violations by civil society organisations
 - Bread for the world / FIAN
 - COHRE
 - More groups are following at the national level



2. Right to Water (3)

Content of the right to water

- Content elements (GC 15)
 - is both part of the right to adequate food and the right to health (irrigation water is part of right to food)
 - For personal / domestic use (more than drinking water because of health and sanitation aspects)
 - Access
 - Physical
 - Economic / affordability
 - Non-discriminatory
 - Information must be available



2. Right to Water – legal analysis (4)

- Soft law
 - Agenda 21
 - Millennium Development Goals
 - Johannesburg 2002
 - Universal Declaration of Human Rights
 - etc.
- Hard law
 - International Covenant on Economic, Social and Cultural Rights
 - General Comment 15 (GC15) on the right to water (November 2002)



2. Right to Water (5) National obligations

- Para 17-29: national obligations (GC 15)
 - Respect: no interference with the enjoyment of the right to water
 - Protect: control of third parties (even in situations of privatisation (para 24))
 - Fulfill (use the maximum of the available resources)
 - Facilitate: individuals or groups access to water resources
 - Promote: knowledge on sanitation etc.
 - Provide: direct provision, if „facilitation“ does not work



2. Right to Water (6) International Obligations

- Para 30-35: International Obligations (GC 15)
 - New quality in General comments in being quite detailed
 - Negative obligations:
 - no violation by a state party in other countries
 - make sure that IGOs do not contribute to violations
 - No embargo
 - Make sure that state parties respect the obligations when signing and ratifying new international treaties
 - Positive obligations:
 - Support other countries in implementing
 - Control third parties (private actors) from your country working abroad
 - Use your role in IGO to support the fulfillment



2. Right to Water (7) Special issues

- Specific issues in the General Comment that needs to be highlighted:
 - Para 13-16: Detailed regulation to avoid discrimination (all reasons)
 - Para 37: Core obligation (provision of a minimum essential amount of water is of immediate nature)
 - Para 39-44: Examples of violations (acts of commission, acts of omission)
 - Para 24: Privatisation needs adequate regulation (affordable supply of water)
 - National Strategies needed



2. Right to Water (8)

National strategy

- (1) Identification of vulnerable groups
- (2) Check legislation
- (3) Check current policy framework and policies
- (4) Monitoring
- (5) Accessible recourse procedures are needed



3. How to use the right to water in national and international procedures (1)

- National action opportunities for CSO:
 - Education (knowing your rights)
 - Participation in public planning procedures
 - Public pressure and awareness raising
 - Documenting cases
 - Quasi legal procedures (National human rights commissions)
 - Legal procedures (litigation)
- Differentiation:
 - Rights holder oriented
 - Duty bearer oriented



3. How to use the right to water in national and international procedures (2)

- International procedures
 - Treaty bodies: CESCR
 - Standard setting
 - Parallel reports
 - Individual cases → Optional Protocol
 - Human Rights Council
 - Support work of Independent Expert
 - Support to General Comment No. 15
 - Discuss open issues (privatisation)
 - Public pressure (Int. Human Rights Organisations) on IGOs (e.g. World Bank)



4. Experiences from the rights based work (1)

- Method 1: Case related work
 - Case related approach
 - Violations and threats of violations
 - Consent of victims
 - Activities:
 - Letter writing campaigns,
 - public awareness and media work,
 - fact finding missions,
 - Litigation
 - Core of any rights based approach
 - Can / should be done by specialized organisations (human rights organisations)





4. Experiences from right based work (2)

- Method 2: policy check (national strategy)
 - Vulnerability checks
 - Discuss policy alternatives based on impact assessments,
 - Monitoring state obligations / Parallel report
- Method 3: Budgeting rights
 - Check budget allocation
- Method 4: Education and awareness raising – knowing your rights
 - Informal education work
 - Check formal education work
- Method 5: Training of legal personal
- Method 6: more is possible.....

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5. Role of development policy

- Support a rights based approach
 - Value added in creating political will
 - Criteria for good governance
 - Reliable participation etc. (interdependence of all human rights)
- negative
 - no violations of the right to water through own projects
 - no violation through project of IGOs, where the governments is member of
 - no embargo, sanctions etc.
 - Respect the right to water, when negotiating new international agreements
- Positive
 - Support developing countries in implementing the right to water
 - Control of private actors working abroad



6. Value added of a rights based approach

- Accountability of governmental actors
- Accountability and responsibilities of private actors
- Human Rights principles for processes:
 - Transparency
 - Participation
 - Non-discrimination etc.
- Focus on vulnerable
- Claiming / litigation
- Clear definition of the role of the state
- Clear definition of the role of other actors
 - Church / NGO roles in supplying
- Strengthening of civil society actors – first step knowing your rights



Thank you for your attention

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